

# **EPIQ AUSTRALIA PTY LTD**

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**INQUIRY INTO THE CITY OF PERTH**

**PUBLIC HEARING - DAY 112**

**THURSDAY, 19 SEPTEMBER 2019**

**INQUIRY PANEL:**

**COMMISSIONER ANTHONY (TONY) POWER**

**COUNSEL ASSISTING:**

**MR CHEYNE BEETHAM**

**COUNSEL APPEARING:**

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

.19/09/2019

HEARING COMMENCED AT 10.01 AM:

5 COMMISSIONER: I will begin with an Acknowledgment of Country,  
Mr Beetham. 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: Sir, I recall Mr Harley.

15 COMMISSIONER: Thank you. Mr Harley, please come forward and take a seat  
in the witness box

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

20 COMMISSIONER: Mr Harley, you remain on your affirmation. I will just take  
appearances. Ms Randall, an appear for Mr Mianich?

MS RANDALL: Yes, Commissioner.

25 COMMISSIONER: Thank you. Ms Saraceni, you appear for Mr Mileham?

MS SARACENI: Thank you, sir.

COMMISSIONER: Thank you. Mr van Hattem, you appear for Mr Harley?

30 MR van HATTEM: With my learned friend Mr Malone, yes, Commissioner.

COMMISSIONER: Thank you. Mr Houweling, you appear for Ms Barrenger?

35 MR HOUWELING: No.

COMMISSIONER: No? Who do you appear for?

MR HOUWELING: Lexi Barton.

40 COMMISSIONER: Ms Barton, yes, thank you.

MR HOUWELING: Together with my learned friend Ms Waugh who was here  
yesterday, while I was in another matter.

45 COMMISSIONER: Thank you very much, Mr Houweling. Apologies for the  
mistake.

MR HOUWELING: Thank you.

COMMISSIONER: Mr Harris, you appear for Ms Barrenger?

5 MR HARRIS: Yes, sir.

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

MR CORNISH: I do, thank you, Commissioner.

10

COMMISSIONER: Mr Hart, you appear for Mr Crosetta.

MR HART: May it please you, Commissioner.

15

COMMISSIONER: Mr Skinner, you of course appear for Mr Linnios?

MR SKINNER: May it please you sir, thank you.

COMMISSIONER: Ms Siavelis, you appear for Ms Battista?

20

MS SIAVELIS: Thank you, sir.

COMMISSIONER: Mr Wyatt, you appear for Ms Moore?

25

MR WYATT: Yes.

COMMISSIONER: Ms Young, you appear for Mr Hasluck?

MS YOUNG: Yes, Commissioner.

30

COMMISSIONER: Thank you. Mr van der Zanden, you appear for Ms Scaffidi?

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

35

COMMISSIONER: Thank you. Mr Beetham.

MR BEETHAM: Mr Harley, you will remember yesterday I was asking you some questions about whether you recalled notifying Councillors Hasluck and Barton about the complaints made about you and Councillor Green by Mr Mianich?---Yes.

40

On 22 or 23 February?---Yes.

And I think your evidence, and correct me if I'm wrong, is you couldn't recall but you couldn't be 100 per cent certain either way, is that right?---That is correct.

45

Madam Associate, could I ask you to bring up a document please at 11.0780.

Madam Associate, if you could scroll down to the bottom portion of that email and enlarge it, please. Mr Harley, this is an email recently brought to the Inquiry's attention and you will see there at the bottom it's an email from you to Mr Mianich and it's dated 23 February?---Yes.

5

In that email - well, is that an email that you remember sending?---Yes.

In that email you write to Director Mianich and you say, amongst other things that, "At 4.14 pm yesterday evening", and I take that to mean the 22nd?---Yes.

10

You received a letter from him notifying you of a complaint of a minor breach to the Standards Panel?---Yes.

Madam Associate, if you could scroll up to the top of the page, please. Thank you, Madam Associate. Is this, Mr Harley, an email from you forwarding your email to Mr Mianich, to Mr Linnios, Ms Green, Ms Barton and Mr Hasluck?---Correct.

15

Am I right in saying that you did that on 23 February at about 12.25?---Correct.

20

Do you have a recollection of doing that, now that you've seen that email?---Yes.

Madam Associate, could you please now move forward to 11.0786. Before we look at that email, Mr Harley?---Yes.

25

Having now seen that email, those two emails that you wrote, are you able to say anything further about your recollection as to whether you notified Councillors Barton and Hasluck about those complaints?--- Yes, I did notify them.

30

Was it just via this email to your recollection?---Having thought about it overnight and seen this email, I also recall that I met with Councillor Hasluck in his office and informed him about the details of the complaint that had been made against me by Mr Mianich and namely, the issue in relation to rangers allegedly searching Councillors' offices for material that related to Ms Scaffidi.

35

And you did that subsequently to the email we were just looking at, which I can tell you was at 12.25 pm on Friday, 23 February?---Looking at the email, the email was simply forwarding the correspondence to Mianich without giving any explanation. It therefore seems more likely to me that I had discussed the complaint and the details of complaint before I'd forwarded the email, otherwise I would have forwarded the email with some explanation.

40

You don't have a clear recollection as to precisely how it happened?---The time, no.

45

You're just confident that both of those things happened: you had the discussion and you forwarded the email?---That's correct.

Madam Associate, if we could - perhaps just for the cogency of the chain, if we could go forward one more page to 787. Sir, this chain has been given the TRIM number 24806.

5 COMMISSIONER: Thank you.

MR BEETHAM: You will see there, Mr Harley, a version of your email from 12.25 on 23 February there in the middle of the screen?---Yes.

10 You will see the bottom part, at least, of a response from Ms Green, yes?---Yes.

Madam Associate, if we go back to 786 so we can see the top of that response. You will see the top of Ms Green's response?---Yes.

15 Is that an email response that you recall receiving?---It is.

Madam Associate, if we could just zoom in on the email in the middle of the screen from - it appears to be from Mr Hasluck. Can I just ask you to read that to yourself, Mr Harley? I imagine you may have read it recently?---I have, yes.

20 Is that an email you also recall receiving?---Yes.

From Mr Hasluck?---Yes, in which he confirms having read the email that I had sent to Mianich.

25 By that statement, are you referring there to the last sentence in that email?---I am.

Where Mr Hasluck writes, "Reece, did you receive a reply from Mianich"?---Yes, proving that he had read that email, yes.

30 Thank you, Madam Associate, that can now be taken down. I will turn to now some other evidence you gave yesterday, Mr Harley. My understanding of your evidence, and paraphrasing in a sense, is that the motion that was eventually put up to Council was the brainchild, I think was the word I used yesterday, of yourself and Ms Green?---Yes.

You were the primarily custodians of the motion?---Yes, it's fair to characterise it in that way.

40 You will be aware that the motion was given to the City by Mr Hasluck?---Yes.

And it was moved by Mr Hasluck at the meeting?---Yes.

45 Are you able to offer an explanation as to why it was that it was Mr Hasluck who moved the motion, rather than yourself or Councillor Green?---Yes. Overnight again, I'd seen correspondence where Councillor Hasluck was an enthusiastic participant, having made amendments to the motion. I recall speaking to

Councillor Hasluck about the fact that he was very much in support of the motion at the time and as a new Councillor, committed to transparency and all the rest that he'd campaigned on. I believe that he felt like it was his contribution to make, to demonstrate leadership.

5

You mentioned a few things in that response. You first is that you saw some correspondence overnight, you're talking about last night?---That's correct.

10 Which demonstrated that Councillor Hasluck amended the motion, is that right?---Yes, had written to the group indicating an amendment that he wished to make to the motion, correct.

Can you recall what that amendment was?---It was something in relation to the renumbering of the clauses 1 and 2.

15

That's a little bit confusing for me?---Sure.

20 Given that there's only two clauses. Can you explain what you mean about that re-numbering?---I don't have the document in front of me, I'm afraid but my recollection is that it was in relation to Mr Hasluck saying that clause 2, that being the appointment of blank, needed to be inserted into either the notice of motion or the draft motion.

25 Was it not there in the previous version of the draft?---I don't have access to the draft document that came before that so I can't be certain but I think that that is the case.

Just so I can clarify that and we can find the document if need be?---Yes.

30 The version of the draft upon which Mr Hasluck was commenting, from your recollection, did that only have the one item on it, was it, the change in policy, and then he said, "You should insert" - - -?---That is my understanding but I cannot say with certainty. If I could read the correspondence, it would get to the bottom of it.

35 Thank you, Mr Harley. You also said you had some discussion with Mr Hasluck?---Yes.

40 About his enthusiasm for the motion - I may have put that - - -?---Yes, that is correct. I recall two conversations with Mr Hasluck around the period, one in his office where I spoke to him about the details of the, in my view, vexatious complaint about me and the other one was a conversation that we had in relation to the motion and the need to appoint an Acting CEO to the role.

45 Can you remember where you had that conversation, the second conversation?---Yes, I was sitting in my bedroom in my house and I was speaking to Mr Hasluck over the phone.

Do you remember whether or not you had called him or he had called you?---I don't.

5 Do you remember which day of the week this conversation was on?---I don't, obviously before the meeting and some time around the proposing of the Special Council Meeting.

10 Is it fair to say it's somewhere between or around the 24th to 27 February?---No, it would have been before the calling of the Special Council Meeting.

15 Before the 24th?---That's correct. We were discussing the need to call a Special Council Meeting.

20 Can you recall whether or not it was you or Councillor Green or any of the other Councillors suggested to Mr Hasluck that he move the motion, or whether he volunteered to do so?---I can't recall if it was myself or Councillor Green or Councillor Hasluck offering to do so himself, but I recall that that was discussed at the meeting at Councillor Green's house on the Saturday morning.

25 As to who would be the mover of the motion?---That's correct, and I - it is my recollection that Councillor Hasluck offered to do so and I'd seen subsequent email correspondence from Councillor Green confirming that Mr Hasluck had offered to do so, or "had kindly agreed to", I think was the phrase that Councillor Green had used.

30 Some of this correspondence you're talking about, if the Inquiry doesn't have it, are you able to produce copies for the Inquiry upon request?---Absolutely, yes. These have already been provided to my counsel.

35 Thank you, Mr Harley. Was there any discussion when you had - you said there was this discussion in the backyard of Councillor Green's house about who would move the motion. Was there any discussion about whether it was strategically better if Mr Hasluck moved the motion rather than you or Councillor Green?---My recollection of the discussion was that it was something that Councillor Hasluck wanted to do. He seemed to me to be a man of principle and wanted to do the right thing and this is what he had repeated many times. He was very strongly in favour of the Special Council Meeting and the need to fill it and my recollection is that he was eager to be an active participant in solving this issue that the Council faced.

40 And that issue, as I understand from the points of view of yourself, Councillor Green?---Yes.

45 And Councillor Hasluck, was that the City had an Acting CEO that the three of you at least didn't have a lot of faith in and wanted somebody else in that role?---That is correct.

Madam Associate, could I ask you now to please bring up the document at 11.0529, TRIM reference, sir, 14320.

5 COMMISSIONER: Thank you.

MR BEETHAM: Just before we look at that document, coming back to that discussion in the backyard of Councillor Green's house?---Yes.

10 About who would move the motion, did you personally, whether you expressed that to Councillor Hasluck or Councillor Green, give any consideration yourself as to whether or not it would be strategically beneficial for somebody other than yourself to move the motion?---I didn't think that would be the case. I would have been more than happy to move the motion because I, you know, defend my actions on that day without fear. So I had no problem at the time. I didn't have a view  
15 about whether or not it would be strategic one way or the other. All of us were signatories, all of us proposed the meeting. Any of us could have moved the motion. The moving of a motion, I don't - it's the vote that counts, not necessarily the moving. The moving, the seconding, the debate - - -

20 [10.15 am]

Sorry, I'm perhaps using "moving" a little imprecisely there. When I say moving, I'm including, quite clumsily, the sending of the motion to the City. So we know Mr Hasluck sent the motion to Mr Mianich on the afternoon of the  
25 Saturday?---Yes.

Was there any discussion about that step to be taken as well, who would send the motion to the City, to kick off the process?---Sure. Thank you, I understand?---I do recall that Councillor Limnios said he was not able to send it and in fairness to  
30 him, that was because maybe he wasn't as tech savvy as us and there was a need to apply multiple signatories and send a final scanned copy and I think he was on the road. I do not recall there being any particular importance about who sent the letter.

35 Was there any concern in your mind that if you sent the letter, it would be seen as a response to Mr Mianich's complaints about you?---I would have had no qualms about sending the letter.

40 Including to Mr Mianich, in particular?---Correct, yes.

You've given some evidence there about the need to apply multiple signatures; are you able to shed some light on how the document got signed by the five people who signed it?---Yes, there was an email chain where the document was sent  
45 around and people applied their digital signatures to the document before it was finally transmitted.

Are you aware of whether anybody signed it in hard copy with a pen?---I'm not

aware.

Did you sign it that way?---I can't recall.

5 You have a recollection, do you, of it being circulated for electronic signature?---I believe - yes. Yes, certainly I have that recollection and I would say with 70 per cent certainty that I signed it with a digital signature. We weren't all in the building on the same day together, it was something that was done digitally and remotely.

10

To the best of your recollection?---To the best of my recollection.

Do you have any recollection as to who signed the document first?---No. I'm happy to provide the correspondence which provides the chain of events.

15

Thank you, Mr Harley. If you can have a look at the document on the screen now?---Mm hmm.

If I can just get you to read that to yourself. Have you read that?---Yes.

20

Just for the benefit of the transcript, you will see that's an email from Ms Moore who was at that stage the Crisis Manager under the Crisis Management Plan?---Yes.

25

And it's an email to the Lord Mayor and all of the other Elected Members?---Mm hmm.

On the afternoon of the 27th, a couple of hours before the Special Council Meeting?---Yes, that's right.

30

And you will see it's an email - that's essentially an email from Mr Mileham, the CEO?---Yes.

In that email, Mr Mileham gives notice to Council that he will be back at work on the Tuesday, the next week, 6 March?---Mm hmm.

35

You gave some evidence yesterday that one of your concerns was that you would be without a CEO for a potentially indefinite period of time?---Yes.

40

And that's why you wanted to amend the policy and appoint an Acting CEO?---That's correct.

So once you received this email you knew that would no longer be the case and Mr Mileham would be back on the Tuesday?---No, I didn't.

45

You didn't?---Mr Mileham asserted that he was intending to come back but I didn't believe that he would come back because, before an employee returns to work

after a period of stress leave, we would have wanted to receive correspondence signing him off as fit to work.

5 You will see in that - if you can have a look at the email itself, I think you describe Mr Mileham as saying, he was asserting that he intended to be back at work?---M'mm.

10 But if you look at the first line in his email, you will see that he says, "My first back at work will be Tuesday, 6 March", so I suggest to you it's a little bit stronger than simply an assertion of an intention to return?---That was his intention, although if he'd been particularly stressed on the Friday before, perhaps he might have decided not to return.

15 So when you received this email, is it the case that you didn't put much stock in what Mr Mileham had written?---Correct.

And you weren't confident at all that he would be back on the 6th, even though he says he will be?---I wasn't confident that he would return at all.

20 You see later on in the email he writes that he "sees no urgent reason or requirement for the action", the action there he's talking about is the Special Council Meeting?---I see that, yes.

25 "Or change of policy given the acknowledged capacity of the ELG to manage operational matters" until his return on Tuesday?---Yes. Given the Executive had just declared a crisis, I didn't take any stock in what he'd written.

30 Can you explain that a bit for me, because as I understand it, what Mr Mileham is saying is, he's got confidence in the Executive Leadership Group to keep the ship on track until his return on Tuesday and I think your explanation as moment ago was that since they had enacted the Crisis Management Plan, you didn't accept that; is that - - ?---It was my view that they had enacted the Crisis Management Plan incorrectly which demonstrated, in my view, a severe lack of judgment on the part of the Executive. I did not have any faith that Mr Mileham would be returning to the role. It was my view, given that he had appointed a solicitor and that we had been previously advised that he was on a period of indefinite leave, that this email was sent simply to prevent us from proceeding with the Special Council Meeting, rather than being a genuine piece of correspondence.

40 Is this part of your broader concern that Mr Mileham and others were - I think your words were "blow up the Council"?---Correct.

45 So when you received this note that says "the acknowledged capacity of the Executive Leadership Group to manage all operational matters", that's a view you did not share?---Well, if the Executive Leadership Group can manage all operational matters without the CEO, a bit of a concern to me. It wasn't a view that I shared. It was my view that we needed to appoint an Acting CEO,

particularly because we had a meeting scheduled with the Minister the following day.

5 I've heard some evidence to that effect from somebody else in the course of the examinations. Can you explain to me why it's necessary to have a CEO or an Acting CEO in place for the purposes of meeting with the Minister the following day?---The meeting with the Minister? We wanted the Minister to know that it was the Council that was in charge of the City, not the Administration appointing, in essence, their own person to run the City. We didn't have faith in the - - -

10

Can I just interrupt you again?---Sure.

15 When we go back to look - I will explain why I'm about to ask you this question but if we go back to look at the transcript and prepare submissions and write the report, your transcript's going to say a lot of "we decided, we decided"; what I need to know is what your views were at the time?---Sure.

20

So that if I write in the submission, "Mr Harley had this view", that's a fair representation of your evidence?---I'm happy to respond in that way.

So if you could go back to what you were talking about, about having a CEO in relation to the Minister's meeting?---Yes.

25

And just talk from your point of view, please?---Sure. I thought it was essential that the Council act to ensure that there was in fact an Acting CEO. We were a Council with a declared crisis without an Acting CEO, with a CEO and subsequently an Acting CEO on stress leave, and frankly, it was my very firm view that it was Council's responsibility to fill the leadership vacuum void, which I believe had been created, and we needed to take a decisive step to let the Minister know that we understood our powers under the Act, that we were in charge of the organisation, we had appointed a acting Executive to run the City in the absence of the CEO and if the CEO were not to return, we had someone in whom we trusted to deal professionally with the matters that we were facing.

30

35

As I understand that evidence, in summary, or one of the primary motivations for you was - one of the reasons you wanted the CEO in place for the purposes of that meeting with the Minister was to show the Minister that the Council could steady the ship and run the organisation?---And - yes, and as I gave in prior evidence yesterday, it was my hunch, I guess, or the Minister really had two options in front of him which was an immediate suspension or a show cause notice. It was my hope that the Minister would issue a show cause notice and it was Director Battista that I thought was best placed to respond to that notice.

40

45

Did you give any consideration as to whether the fact of the Council having appointed an Acting CEO would have had an effect on the decision of the Minister to either issue a show cause notice, suspend the Council or do something else?---Yes. I thought that it was more likely that if the Council had acted

decisively to appoint an Acting CEO, that the Minister would perhaps be more likely to give us the opportunity to respond to a show cause notice rather than moving to instantly suspend us. A Council without an Acting CEO with a crisis plan in place I thought was a Council much more likely to be suspended.

5

Madam Associate, could I ask you now to move forward to a new document which is at 11.0551, TRIM reference, sir, 14324. Madam Associate, if you could just zoom in on the top portion of this document, please. Thank you. Can I ask you just to read the first few paragraphs to yourself, Mr Harley, just to familiarise yourself with the document?---Sure.

10

Do you recollect ever reading that before?---No.

Madam Associate, if I could ask you to scroll to the bottom of the document, please, a little bit further down, please, Madam Associate. Thank you, Madam Associate. If you could just read that last paragraph as well, Mr Harley. Is that large enough on the screen for you?---Yes, yes. Sure.

15

Do you recall ever reading that paragraph in any correspondence?---Certainly not.

20

So that document is titled, you may have seen on the top of the document, "Administration advice re motion to change Policy 12.6"?---Yes.

You have no recollection of receiving that from the Administration?---No.

25

That document could be taken now, please, Madam Associate. Mr Harley, I now want to move forward to the Special Council Meeting?---Sure.

Are you familiar with, and I'm sure you are, the City's policies and Codes of Conduct?---Yes.

30

And you are aware, I take it, of the notion of an impartiality interest?---Yes.

When you were preparing the motion to amend the Council Policy and appoint a new Acting CEO and putting that motion up to Council and then debating and voting on it, did you give any consideration as to whether or not you needed to declare an impartiality interest given the complaint made about you by Mr Mianich?---I did not give it consideration - well, I gave it consideration in such that I didn't think it was necessary to make one.

35

40

So you did think about it?---I cannot say that I remember actively thinking about that at the time.

Do I understand your evidence then to be, sitting here now your view is you didn't need to make an impartiality declaration?---Correct.

45

Can you say why?---Yes, because the motion was not to remove Mr Mianich from

the role of Acting CEO, the motion was to amend the policy to reiterate our powers under the Act to appoint blank. It was my view that Mr Mianich was not appropriate for the role, but it was ultimately a decision of Council as to who was going to be appointed to that role.

5

Prior to the motion being debated upon and voted upon by the Council, am I correct in thinking that the five Councillors who signed the motion had all reached a view that Ms Battista was the appropriate person to be the Acting CEO?---That was my view and it was a view that I understood to be shared by those Councillors.

10

So going into that meeting, were you fairly confident you would be coming out of the meeting with an amended policy and Ms Battista appointed as the Acting CEO?---Yes.

15

So in that case, isn't that motion really, even though it says blank, knowing that, isn't that motion really a motion to replace Mr Mianich with Ms Battista?---The motion was to reiterate - well, the motion as it stands was not as you described it. The intentions of Councillors before going into the meeting might have been a particular way - - -

20

But my understanding of your evidence is, you went into that meeting knowing that your four other Councillors who had signed the motion shared the same view as you and you would likely come out of that meeting with Ms Battista as the Acting CEO?---Yes.

25

So when you knew that, you can read that motion, can't you, with the blank filled in with Ms Battista and at that point in time, from your point of view, for all intents, real intents and purposes, that second part of the motion was a motion to remove Mr Mianich and appoint Ms Battista?---That was my intention going into the meeting, yes

30

[10.30 am]

35

So in those circumstances, did you give consideration to that particular set of facts and consider whether you should have declared an impartiality interest in those circumstances?---No, I don't - I did not believe that I needed to declare an impartiality interest.

40

Your evidence a moment ago was, as I understand it, because your view was that it wasn't a motion to remove Mr Mianich?---But also - - -

Is that correct?---My - - -

45

Sorry, I will let expand in a moment but was that correct? Is my recollection of the evidence correct?---I've confirmed to you my intention going into the meeting.

Yes?---Yes, and the way that I intended for the meeting to proceed.

But what I'm asking is, the reason why you considered you didn't need to make an impartiality declaration is because your view was that that second part of the motion was simply to appoint somebody, it wasn't a motion to remove  
5 Mr Mianich. That's how I'd understood your evidence, but if I'm wrong about that, please let me know?---Could you repeat the question just so I can think about it more carefully?

10 Yes. I will go back a couple of steps?---Yes, thanks, that would be helpful.

One view that might be taken is that because Mr Mianich had made a complaint about you and you had then moved a motion which would affect his position as Acting CEO or could affect his position, you ought to have declared an impartiality interest?---Yes, that's a view, yes.

15 And as I understand it, that's not a view that you share?---That's correct.

My understanding of why you don't share that view is because when you looked at that motion, you saw the second item on it, the appointment of blank, not as a  
20 motion removing Mr Mianich, is that why you thought you didn't need to make an impartiality declaration?---That is correct because my assessment was that this was not a move that I was making or that others were making to get back at Mr Mianich, it was a move made, informed by, in our view, the handling and our faith in whether or not this gentleman would be able to handle complaints of that  
25 nature professionally in the future and deal with the issues that faced the City. So I characterised it differently. Even if, for example, the motion had have been to appoint Ms Battista to the role, I still would not have thought it necessary to declare an impartiality interest.

30 My understanding of your evidence - - -?---Because it's not personal. It's not a personal issue for me.

On my understanding of your evidence yesterday, and the transcript from yesterday will say what the transcript from yesterday says, is that you accepted that part of  
35 your motivation, at least part of it in moving the motion was the complaint that Mr Mianich had lodged with the Local Government Standards Panel?---Was about the way in which he had handled the complaint, not about the fact that he had made a complaint. I accept that CEOs need to, you know, refer matters for independent review from time to time and I accept that's the role. I had suspicion.  
40 Given that his confidential complaint appeared on the ABC news at 7 am the next morning, I had suspicion about the way in which that handled, given that the complaint was about rangers, apparently searching our offices. So there are - - -

45 Can I interrupt you again?---Yes. So those were the motivations.

I just want to be fair to you. It's certainly my recollection you accepted just the simple proposition that at least part of the motivation or the motion was partly

connected to the lodge of the complaint to the Local Government Standards Panel?---Yes.

5 That is the case?---Connected to, yes, and in my view, the Acting CEO's handling of those issues.

Yes, but that particular complaint was a complaint about you?---Yes.

10 So when you mentioned a moment ago there was nothing personal about the motion, that's not quite accurate, is it, because you've just told us there's a connection between a complaint about you and the moving of the motion?---It wasn't a personal issue, it was about my assessment of the handling of those matters and the confidence that I had in this Executive member to deal competently with complaints.

15 I don't want to labour the point too far, Mr Harley, but I take it your view then and your view now is that you didn't have any need to make an impartiality declaration?---That's right.

20 And notwithstanding that when you read that motion, having regard to the knowledge that you had about how the votes would go, that motion really was a motion to remove Mr Mianich from the role and put Ms Battista into that role?---Correct.

25 Madam Associate, could I ask you now to play - I'm going to play a part of the Special Council Meeting, Mr Harley?---Sure.

I'm not going to play as much as what we played yesterday but just a short portion, commencing, Madam Associate, if my note is right at 5 minutes and 20 seconds.  
30 Sir, the TRIM reference for the audio is 14360.

(Audio played to the court.)

35 Thank you, Madam Associate. Mr Harley, that's your voice we heard on the audio there?---Yes.

And the Lord Mayor asked you a question about whether there was any connection between the complaint and the motion?---Yes.

40 And you've told the Lord Mayor, Council, the people that were attending the meeting and the ratepayers of Perth that there's no connection?---That's correct.

And you've told this Inquiry yesterday and today that there was some connection?---That's correct.

45 Are you able to tell the Commission why it is that you answered the Lord Mayor's question the way you did?---Sure, yes. At the Council meeting I didn't want to go

into the details of the complaint. I didn't to go into the details of my concerns with the Acting CEO's handling of the complaint, so I read the question as being whether or not this was a personal retribution against the Acting CEO and that wasn't my view at the time and still isn't.

5

The question was broader though, wasn't I, than simply whether it was personal retribution, it was whether there was any connection, do you accept that?---Yes, the question was broad and I accept what you say.

10 Would you also accept that you should have answered that question honestly and fulsomely so that Council could have had an informed and proper debate on the motion?---Yes. A more accurate response would have been to go into the details of the confidential complaint and its handling.

15 I think a more accurate response, Mr Harley, in the first case, wouldn't it, would have been to simply have said, "Yes, there is a connection between the two of those things"?---Yes, that would have been a more accurate response and then would have led to a more fulsome discussion about my concerns.

20 And looking back, is that something that you should have done?---Yes.

Did you not do it because you wanted to hide that connection from the Lord Mayor and the other Councillors?---No. No, the reason I did not go into the details is that there were a range of very serious - - -

25

Sorry, Mr Harley, if I can interrupt you?---Yes.

It's not that you didn't go into the details, it's that you simply lied to the Lord Mayor?---No.

30

MR van HATTEM: I object.

COMMISSIONER: Just hang on a minute. Yes, Mr van Hattem? Do you wish to be heard in the absence of the witness?

35

MR van HATTEM: I will be guided by you, Commissioner. There's two reasons.

COMMISSIONER: In light of what I think is coming, it best be in the absence of the witness.

40

MR van HATTEM: Thank you, Commissioner.

COMMISSIONER: Mr Harley, I will have you excused from the hearing room?---Thank you.

45

Thank you.

**WITNESS WITHDREW.**

COMMISSIONER: Yes, Mr van Hattem.

5 MR van HATTEM: Thank you, Commissioner. The objection is in particular in  
relation to the characterisation of "lie". I can expand if it would assist you,  
Commissioner. The expansion is this: this witness has said that there was a more  
accurate answer available. I do quarrel with the use of the word "lie". I do accept,  
10 as is plainly the case, this witness has accepted that it wasn't a fulsome answer but  
I think there's some judgment in the word "lie" that is a distraction to the work of  
this Inquiry, in my submission.

COMMISSIONER: I'm not easily distracted, Mr van Hattem. Do you think it  
was untruthful?

15 MR van HATTEM: I think to answer a question about connection in difficult  
circumstances creates difficulties, Commissioner and so - you've heard my  
submission and I understand the purpose of this Inquiry and I can't take the matter  
further, sir.

20 COMMISSIONER: But to answer my question, do you think to say there was no  
connection when there was a connection was untruthful?

MR van HATTEM: My submission is it was not untruthful.

25 COMMISSIONER: I see. Thank you. Mr Beetham.

MR BEETHAM: Sir, the submission is a fairly straightforward submission, it's  
simply that the question was put by the Lord Mayor to Mr Harley, was there any  
30 connection, he said, no, there was no connection; he's told this Inquiry that there is  
a connection. My submission is that is plainly untruthful. I can use the word  
"untruthful" if that would make my friend happier, but in my view I don't know if  
there's another way to characterise that evidence.

35 COMMISSIONER: Thank you, Mr Beetham. I suspect that Mr van Hattem's  
eager to respond.

MR van HATTEM: Thank you, Commissioner. I'm obliged to both of my  
learned friends in relation to this. The witness' answer was that when he was  
40 asked the question, he had a reading of what the word "connection" meant.

COMMISSIONER: No, what he said was, that's how he read the question.

MR van HATTEM: Thank you, sir, yes, "That's how I read the question." He  
45 answered the question on the basis of how he read the question so I think the  
question of whether or not it's dishonest or honest is indeed a matter for this  
Inquiry to determine but in my submission, the fair way to put these proposals is to

allow him to give his answers and the characterisation of them is a matter for the report rather than the question, in my submission.

5 COMMISSIONER: Mr van Hattem, I'm not persuaded by your submissions. It seems to me that the way in which the question was asked by the Lord Mayor and answered is quite different to the way in which your client has given his evidence, and it would be helpful if the submission that will inevitably follow this question was based on a blunt question to the witness because it could not then be said that he had not been directly confronted with the proposition, and that will be more  
10 helpful to the Inquiry. So on that basis, I'm not going to accept your objection.

MR van HATTEM: May it please you, sir.

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

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

20 COMMISSIONER: Mr Harley, in your absence your counsel's objection was persuasively argued but in the end, I declined to rule in his favour, so the question will be re-put to you?---Sure.

And I just need to make it clear to you that your exclusion from the hearing room is no reflection on you?---Thank you.

25

Mr Beetham.

MR BEETHAM: Thank you, sir.

30 I will go back a couple of steps, Mr Harley. You heard the Lord Mayor ask the question of you whether there's any connection and there's a pause and then you said - there's quite a pause because she was after anybody to answer that question and you said, "No, Lord Mayor, I can tell you there's no connection between those two things", that's right?---Yes.

35

And you've told this Inquiry there is a connection?---Yes.

40 And I'm suggesting to you that in responding to the Lord Mayor the way you did, you lied to the Lord Mayor?---I don't accept that.

40

Why do you not accept that?---Because the way I read the question was, was there a personal motivation? In light of hearing the recording and thinking about it, if the Lord Mayor had of said to me, "Does anyone have concern with the conduct of the Acting CEO", I would have jumped up and explained those. The way that I  
45 read the question was about whether or not there was a personal motivation based on the fact that the complaints had been made

[10.45 am]

5 You agreed with me, I think, before stepping out of the hearing room, that the question was a bit broader than that. The question was put by the Lord Mayor, whether there was any connection between the complaints and the motion?---Thank you. Yes, I agree.

You agree that it was broader than that?---I agree.

10 So it's not simply - - -?---I agree, hearing it now.

But you heard it then?---I heard it then but a Council - - -

15 If I interrupt you, you heard it then, yes?---Yes. I said yes.

And you've just heard the pause that was in the middle of the question and the answer, and can I suggest to you that would have given you sufficient time to think about the question, to understand the question and respond to it in a complete and truthful way?---The stressful environment of a Council Chamber in the moment  
20 when you're responding to questions of that nature doesn't necessarily allow you to pause for long periods of time and think about the complete way in which you could answer a question. It was my gut reaction to a question that I thought was, was there a personal motivation or a connection to the complaint and my answer then, and today, is no.

25 I thought your answer today and yesterday before the Inquiry was that yes, there was a connection?---I said connection but I'm talking to you, Mr Beetham, about a personal motivation.

30 Yes, but I think your words a moment ago, Mr Harley, were, was there a personal motivation or connection, is that the phrase that you used and you now say - I'm getting confused by what your evidence is as to whether there was or was not - - -?---I'm happy to restate it for clarity.

35 - - - a connection?---Yes.

My understanding of your evidence to date has been there was a connection?---There was a connection, yes.

40 When the Lord Mayor asked about it, you said it wasn't?---That's correct.

And your explanation for saying that is that you read the question in some other way?---As to whether or not there was a personal motivation based on the complaint having been made, yes, that's how I understood the question.

45 Thank you, Mr Harley. Mr Harley, I now want to turn to the meeting that you had with the Minister the following day?---Sure.

At Dumas House, I think it was, is that right?---Yes.

5 Can you tell the Commissioner who was at that meeting?---Yes, the Minister, his Director-General, Mr Ord, Annaliese Battista, the Acting CEO, all Councillors, with Councillor Davidson participating via phone conference, and the Lord Mayor.

10 Thank you, Mr Harley. Is it at that meeting that Council was informed by the Minister that the Minister was going to suspend the Council?---No, it was at that meeting that the Minister suspended that - he was either going to suspend the Council or issue us with a show cause notice but needed to take further advice.

So at that stage you knew that both options were on the table?---Correct.

15 And did you express a view to the Minister as to which option would be a preferable option?---Yes, I very strongly expressed the view that the Minister should issue us with a show cause notice and I explained that the Council had appointed an Acting CEO in which we had faith and asked him to provide us with the opportunity to respond.

20 And did any of the other Councillors express a view as to which option was preferable or whether a third option was preferable?---Yes, the Lord Mayor and Councillor Adamos said that they wanted an immediate Council suspension, which I thought was odd.

25 I just want to break that down. When you say the Lord Mayor and Councillor Adamos, I assume they didn't speak together. Did they both say that separately?---Separately.

30 They expressed the view that there should be an immediate suspension?---They said it was their view that the Council should be suspended. The rest of the Council were trying to prevent that from happening and to work constructively with the CEO and the government.

35 Did the Lord Mayor or Councillor Adamos give a reason as to why they thought and they urged upon the Minister, on your evidence, that the Council should immediately be suspended?---I cannot recall if they gave detailed explanation about their thinking. I think it was quite brief. The Minister facilitated a round-robin around the room and everyone offered their view and the Lord Mayor  
40 and Councillor Adamos both said separately that they thought that the Council should be suspended.

And all the other Councillors offered the contrary view?---Correct.

45 Including, I think, did you say it was Councillor Davidson on the telephone?---That's my recollection, yes.

So there was a split, in a sense, in the Council, with two going one way and the rest going the other?---That's my recollection. I later said in the press conference that it was my view that the Lord Mayor was quite happy to blow up the Council.

5 Did you base that on anything other than the what the Lord Mayor had said in that meeting?---She told the Minister that she wanted the Council to be suspended and also, it must be remembered that she no longer had a political - a majority of aligned Councillors.

10 So did you think in those circumstances, the Lord Mayor was happy for the Council to be suspended because she couldn't control the Council?---Correct.

Was that something that was ever expressed to you by the Lord Mayor?---No.

15 That's something you inferred from the change in circumstances on the Council?---Yes.

And her comments to the Minister?---And her, I guess, demeanour in Council meetings. She felt a bit as if, what's the point any more? She can't win motions.

20 She was sitting in the Council Chair watching motions get passed without her approval and I read into that she felt as if she'd lost control.

Did you ever have a discussion with the Lord Mayor about any of these things?---We weren't on speaking terms at that point.

25

Madam Associate, if we could now go to what I think will be the last document for Mr Harley and it's 11.0687, and if I could just ask you to enlarge that, please, Madam Associate?---Okay. I just need to read that.

30 Yes, please take a moment to read that, Mr Harley?---Yes.

Am I right in understanding that the division between the responsibilities of Council and the Administration is, generally speaking, that Council's responsible for strategic and overall direction of the City and the Administration is responsible for the day to day operation or running of the City?---Yes.

35

In that context, can you explain what you mean in this sentence that you write to Mr Murphy:

40

*At this stage, I believe the Administration were in full mutiny.*

?---Yes. I said in yesterday's testimony that I had seen examples where the Administration were, in my view, making it very difficult for a new democratically elected majority of Councillors to achieve certain policy outcomes. I had - - -

45

Can I just interrupt you there? I will let you finish that in a moment but that evidence you're referring to from yesterday was, for example, in relation to the car

parking?---One of them, yes - - -

Is that the type of thing you mean?---Yes, that's the type of thing.

5 Sorry, keep going?---I was suspicious about the stress leave issues. Mr Mileham, Mr Mianich, I believe, Ms Barrenger and potentially Mr Ridgwell all went on stress leave in a period of time in which Director Annaliese Battista continued as Acting CEO running the City. So I was of the view that there was some sort of concerted effort to cause a sense of crisis at the City.

10

MS SARACENI: Excuse me, Commissioner. Could we just have some clarity about the timeframe that this witness is referring to in relation to those periods.

COMMISSIONER: Yes, that would be helpful, thank you.

15

MR BEETHAM: That's where I was - - -?---My email to Mr Murphy was on 9 March.

20 Yes. You mentioned that during the period when Ms Battista was Acting CEO?---Yes.

25 As I understand your evidence, and I think this is the way Ms Saraceni understood your evidence, during that period, Mr Mileham, Mr Mianich, Ms Barrenger and Mr Ridgwell all went off on stress leave?---To my recollection, yes.

25

During the period of Ms Battista Acting CEOship?---Correct.

I understand her Acting CEOship ended when Mr Mileham returned to work?---That's correct.

30

So you understand that those four people went on leave during the four days Ms Battista was at the helm of the City?---That's my understanding, yes.

35 In relation to Mr Mileham, are you saying that's in addition to the stress leave he was already on?---No, about the period that has already been under discussion. So my recollection of events is that Director Battista and Director Crosetta were the only two Directors still functioning in the role at the time.

40 At what time?---At the time immediately after our suspension.

40

All right, so - - -?---So between Director Battista's appointment and the period up until Mr Mileham returned to the role.

My understanding is Mr Mileham returned to the role on 6 March?---Yes.

45

So Ms Battista was only acting in the role from 28 February, 1, 2, 3, 4 and 5 March?---Yes, about a week, yes.

Are you suggesting that Mr Mileham took additional stress leave?---No.

Are you suggesting Mr Mianich took additional stress leave?---No.

5

Ms Barrenger?---Yes.

You're saying she took stress leave in that period?---That's my understanding, yes.

10 And Mr Ridgwell?---That's my understanding.

And your understanding is that those leaves were all stress leaves, not some other type of leave, pre-booked annual leave, for example?---Yes, my understanding was that Annaliese was left with only Paul Crosetta.

15

Where did you get that understanding from?---From Annaliese.

Did Ms Battista also tell you that those people were away on stress leave?---My recollection is that she advised us that it was only herself and Mr Crosetta still in the chairs, in essence.

20

For that period?---For that period.

So your evidence about this leave isn't any evidence about what happened after, say, 9 March?---No.

25

Thank you for clarifying that, Mr Harley. Those are all my questions for Mr Harley, Commissioner.

30 COMMISSIONER: Thank you. What I will do now is I will invite counsel, other counsel to let me know if they have any applications.

MR BEETHAM: Certainly, sir.

35 COMMISSIONER: Mr van der Zanden, do you have an application?

MR van der ZANDEN: No, sir.

COMMISSIONER: Thank you. Ms Young?

40

MS YOUNG: I do, Commissioner.

COMMISSIONER: Very well. In that case, Mr Harley, I'm going to ask you to leave the hearing room?---Sure.

45

**WITNESS WITHDREW.**

COMMISSIONER: Yes, Ms Young.

5 MS YOUNG: Commissioner, there's now a difference in recollection between  
Councillors Harley and Hasluck as to the conversations that were had in the  
lead-up to the Special Council Meeting, or rather the request for the Special  
Council Meeting that was made on 24 February 2018. It's in that context that I  
would like to ask Councillor Harley three matters which all relate together. The  
10 first is Councillor Harley's understanding of the limitations of him disclosing  
information about complaints made under the Local Government Standards Panel,  
that being limited to his understanding of the requirements under the Local  
Government Act that those matters be kept confidential, which would then lead  
into the second issue as to whether or not then Councillor Harley was circumspect  
in his discussions with Councillor Hasluck about those conversations - - -

15 COMMISSIONER: Sorry, just wait a minute. Mr Parkinson, is furiously turning  
pages and it's hard to hear what you're saying. What was the second one?

20 MS YOUNG: The second one is, in the context of Councillor Harley's  
understanding of the limitations as to disclosing information about complaints  
made to the Local Government Standards Panel, I wish to ask Councillor Harley  
whether he was then circumspect about the details he provided to Councillor  
Hasluck about the nature of the complaints made.

25 COMMISSIONER: Yes.

MS YOUNG: Leading then to the third issue which I will try and do relatively  
succinctly, and that is to test Councillor Harley's memory of those conversations  
that he says he had with Councillor Hasluck.

30 COMMISSIONER: Yes. Ms Young, I can't imagine there will be any difficulty  
with any of those matters, but I will turn to Mr Beetham.

MR BEETHAM: No, sir, there's no objection nor difficulty with that.

35 COMMISSIONER: Thank you. In that case, you have leave to ask questions on  
all three matters.

MS YOUNG: Thank you, sir.

40 COMMISSIONER: Thank you. Mr Wyatt?

MR WYATT: No questions.

45 COMMISSIONER: Thank you. Ms Siavelis?

MS SIAVELIS: No, thank you, Commissioner.

COMMISSIONER: Thank you. Mr Skinner?

MR SKINNER: I have no application at all, thank you very much.

5 COMMISSIONER: Thank you, Mr Skinner. Mr Hart?

MR HART: No application, sir.

COMMISSIONER: Thank you, Mr Hart.

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MR CORNISH: No application.

COMMISSIONER: Mr Cornish, no application?

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MR CORNISH: No application.

COMMISSIONER: Thank you. Mr Harris?

MR HARRIS: No application, sir.

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COMMISSIONER: Thank you. Mr Houweling?

MR HOUWELING: Yes, thank you, Commissioner. One application and it relates to the special resolution of 27th of the 2nd and the wording of that particular resolution which really had two parts and it relates to his evidence that he was the main protagonist of the special resolution and in respect of the questioning and the line of questioning of Counsel Assisting, it did not differentiate between the two parts of that resolution, so that his motivation presently is put on the basis that at least one of his motivations was a complaint which had been made to the Department, whereas he also gave evidence that a motivation was that Council ought to retain the power under section 5.36 of the Local Government Act, for the appointment of the Chief Executive Officer.

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30

So insofar as Ms Barton is part of the support of that particular motion, the question that really arises is the question related to the lie, and I use that word advisedly and broadly, just for a coat hanger, so to speak, what's been suggested at least as a lie, but where there's two parts to that motion.

35

COMMISSIONER: Yes

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[11.00]

MR HOUWELING: Really, his personal motivation may well have been in respect of the appointment of Mr Mianich to take the position of Acting CEO, or continue in the position of Acting CEO, where his motivation in the change of the policy is really a change which is directed consistent with the provisions of section 5.36 of the Local Government Act, when a policy was out of step with the

45

legislation. It only relates to small, discrete issues, Commissioner.

COMMISSIONER: I understand the point, Mr Houweling.

5 MR HOUWELING: Thank you, Commissioner.

COMMISSIONER: Mr Beetham?

MR BEETHAM: There's no objection to that, sir.

10

COMMISSIONER: Thank you. You have leave, Mr Houweling.

MR HOUWELING: Thank you, sir.

15 COMMISSIONER: Ms Randall, do you have an application?

MS RANDALL: No application, Commissioner.

COMMISSIONER: Very well. Ms Saraceni?

20

MS SARACENI: Yes, sir. The topic is in relation to the letter of complaint that was lodged by Mr Mianich to the Department of Local Government. It was lodged, as I recall the document, on about - - -

25 COMMISSIONER: Shall we have it brought up?

MS SARACENI: That would be useful, sir.

COMMISSIONER: Can you give me the document number, please?

30

MS SARACENI: I don't have the number, sir.

COMMISSIONER: Just bear with us for a moment.

35 MR BEETHAM: This is the complaint in relation to Councillor Harley?

MS SARACENI: Yes.

MR BEETHAM: Bear with me, sir.

40

COMMISSIONER: Yes, of course.

MR BEETHAM: Sir, the complaint is attached to an email which is in brief 12. The email is at 12.0839.

45

COMMISSIONER: Yes, I will just have that brought up. 12.0839, thank you, Madam Associate.

MR BEETHAM: And the complaint follows over the page, 840 and following.

5 COMMISSIONER: Thank you. Would you please bring up 840, Madam Associate.

MR BEETHAM: And the complaint goes through to 846, following which there is a letter to Mr Harley advising him of the complaint, which starts at 847.

10 COMMISSIONER: Yes, thank you. Ms Saraceni.

MS SARACENI: Thank you, sir. So the complaint is dated 22 February - - -

15 MR BEETHAM: Sorry, if I can just interrupt? I apologise to Ms Saraceni. The document on the screen at the moment is the letter to Mr Harley, not the complaint itself. If you could like the complaint itself, it's on 840.

COMMISSIONER: We will go back to that. Is that what you want, Ms Saraceni?

20 MS SARACENI: I'm looking for a date, Commissioner.

MR BEETHAM: The bottom right-hand, near the signature.

COMMISSIONER: 22 February 2018 is the date.

25 MS SARACENI: Thank you, sir. The documents are dated 22 February 2018 which was a Thursday. Mr Mianich - - -

COMMISSIONER: Is that the document you want brought up, first of all?

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MS SARACENI: Yes.

COMMISSIONER: Thank you.

35 MS SARACENI: Mr Mianich commenced in his role on Monday, the 19th. We have heard how busy and how chaotic the City of Perth was at about that time and given the complaint itself, then all the attachments to the complaint, it's on my instruction, a document that was not created by Mr Mianich, it was actually created by Mr Mileham and Mr Mianich did sign-off on it because he was the one  
40 who was there on the day that it was ready to go, but given this witness' evidence in relation to Mr Mileham and his return, despite being told in writing that it was going to be on 6 March, what I would like to put to this witness is that he must have known or had a very strong suspicion that the complaint had been prepared by Mr Mileham and that any feelings he had was not just against Mr Mianich but  
45 also extended to Mr Mileham.

COMMISSIONER: I understand the point.

MS SARACENI: That is the nub of it, sir.

COMMISSIONER: Mr Beetham, is that sufficient for you to respond to?

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MR BEETHAM: Yes, and I have no objection to that, sir. In fact, listening to Ms Saraceni, it may be that following that line of questioning, I might explore that a little bit further as well.

10 COMMISSIONER: Yes, it seems like an eminently sensible line of questioning to pursue.

MR BEETHAM: Yes, sir.

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

MS SARACENI: Thank you.

COMMISSIONER: Mr van Hattem?

20

MR van HATTEM: Commissioner, two matters.

COMMISSIONER: Yes.

25 MR van HATTEM: The first is this: there were references to email chains and my application is for leave for my instructors to collate all of the relevant emails and to provide them to the Commission. This relates to emails, as I understand it, that are sent between Councillors, in part on private email accounts and it may be the case that the Inquiry does not have all of those emails. That's my first  
30 application, Commissioner.

COMMISSIONER: And the second? Let's go to the second, it might be related.

35 MR van HATTEM: The second, in a sense it's another document which is the finding in relation to the complaint. This is a document - the finding of the Local Government Standards Panel I'm not aware whether or not the Inquiry has that document. If the Inquiry does not have that document, I seek your leave to provide it to the Inquiry.

40 COMMISSIONER: Thank you very much, Mr van Hattem. I will hear from Mr Beetham. Mr Beetham, if you need a bit of time to consider your response, take it.

MR BEETHAM: No, sir.

45

COMMISSIONER: Very well.

MR BEETHAM: In respect of the first one, no objection to the materials being provided to the Inquiry and that can be done by way of conferral, I'm sure, with Mr Parkinson and these documents can be checked against the Inquiry's database to see whether we do in fact have them already; no difficulty with that. In relation to the second point, standing here on my feet I'm not sure whether we do have that document, the resolution of the complaint to the Local Government Standards Panel. Mr Parkinson's suggests to me that we may but I understand if we do, it's not on my brief, it's within the large database of the Inquiry.

10 COMMISSIONER: Yes.

MR BEETHAM: Enquiries can be made over the break as to whether we have that and if we don't, it would seem to me to be appropriate for us to receive that document.

15 COMMISSIONER: Yes, I agree, it would be appropriate to receive that document. Indeed, it seems to me it would be appropriate to receive the first cache of documents too.

20 MR BEETHAM: Yes, sir, I agree.

COMMISSIONER: And it may be that on receipt and review of any additional documents, there might be a need to further examine Mr Harley. That will not cause a difficulty for you, will it, Mr van Hattem?

25 MR van HATTEM: No, Commissioner. My learned instructor has provided an additional point, that is, that this document that I've referred to concludes with the Panel's finding that there was not a breach of - did not breach regulation 9.1, so did not commit a minor breach. Mr Harley has given evidence that it was thrown out. It might assist the Inquiry if I ask him whether that's what he means by "thrown out" but it may well be that the Inquiry can form that view without me asking that question.

35 COMMISSIONER: I can form that view without you asking that question.

MR van HATTEM: I'm obliged.

COMMISSIONER: I mean no disrespect, Mr van Hattem.

40 MR van HATTEM: No, certainly. That goes without saying.

COMMISSIONER: Your client has been quite emphatic about his view about that complaint and the outcome of it, so I don't need very much more.

45 MR van HATTEM: Thank you, sir. Subject to any other matters arising, I have no other applications.

COMMISSIONER: Mr van Hattem, thank you for that. I may come back to you when the other counsel have completed their examinations because it may be that some matters arise out of that which you need to deal with.

5 MR van HATTEM: I'd be obliged.

COMMISSIONER: If that does happen, Mr van Hattem, you will let me know, won't you?

10 MR van HATTEM: Yes, sir.

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

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

COMMISSIONER: Mr Harley, in your absence, I heard a number of applications to examine you and as a result of hearing and deciding those applications, you will be asked questions by Mr Houweling, for Ms Barton, Ms Saraceni for Mr Mileham, and Ms Young for Mr Hasluck, and because of the topics on which they wish to examine you, that is the order in which they will examine you. It may be at the end of that examination that your counsel will have an application to ask some further questions of you but he has indicated to me that if he does wish to do so, that he will let me know. Mr Houweling, are you ready to proceed?

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25

MR HOUWELING: Thank you, Mr Commissioner. I may just ask Mr van Hattem to move out, in part because I feel exposed without a Bar table in front of me. I'm most grateful.

30

COMMISSIONER: Best not to have exposure.

MR HOUWELING: Thank you, Commissioner.

35 COMMISSIONER: When you're ready, Mr Houweling.

EXAMINATION BY MR HOUWELING

Mr Harley, I would like to ask you some questions about the resolution which was put to the Special Council Meeting on 27 February. As I've heard your evidence, you've given evidence about Council retaining power. You have also given evidence about the question of your personal motivation in answer particularly to the question asked of you at that meeting by the Lord Mayor, whether there was a connection. In respect of whether there was a connection, are you able to inform this Inquiry of whether that relates to both parts of that resolution, and do you recall that there are two parts to the resolution?---Yes.

40

45

One part - what is your understanding of one part?---Is to amend the policy in -  
tweaking it slightly but in essence, reiterating Council's powers under the Act to  
appoint an Acting CEO for any period of time.

5 And do you know what the second or other part of that resolution related  
to?---Which was Council appoint blank to the role of Acting CEO.

Right. You answered a question about which you were asked about your personal  
motivation. To which part of those two would you say that your personal  
10 motivation related?---To the second part.

Secondly, did you express that to any other person prior to that resolution being  
put forward, at any time?---Express a personal motivation in relation to the  
appointment of Ms Battista?

15 Any person?---So I have given evidence to say that I did not believe at the time  
that I had a personal motivation for any of the decisions that I made. My  
motivation was based on an assessment of the conduct of Mr Mianich in the role  
and that related to the second point.

20 Yes, and did you express that to anybody else?---I did so in writing, I guess, by  
referring the email correspondence that I'd sent to Mr Mianich to other members,  
to other Elected Members. I had a concern that the confidential complaint had  
been leaked and potentially by the City, so I did express my concerns about the  
25 way that Mr Mianich was handling a confidential complaint to other Elected  
Members at the time.

May it please the Commission.

30 COMMISSIONER: Thank you. That was very helpful, Mr Houweling.  
Ms Saraceni.

MS SARACENI: Thank you, Commissioner

35 EXAMINATION BY MS SARACENI

Mr Harley, I would like to ask you some questions in relation to the evidence that  
you've given about the complaint made against you to the Standards Panel?---Yes.

40 You said earlier today that you received a copy of your complaint?---Yes, at 4.14  
pm.

On Thursday, 22 February?---That's correct, yes.

45 That document comprised a form and various annexures to it?---Yes.

Would it be fair to say it was a bundle of documents?---Yes.

That formed the complaint?---Yes.

5 There's also evidence that other Councillors received a complaint as well?---Correct, yes, two others.

Do you know whether the complaints they received had similar type bundles of documents with them?---Yes, I was advised that they did.

10 Thursday, 22 February?---Yes.

That date was only three days after Mr Mianich commenced as Acting CEO?---That's correct.

15 [11.15 am]

So that date he started was Monday, 19 February?---I accept that. I'm not sure 100 per cent but I accept that that is the case.

20 Some of your evidence has been that it was a busy time for the City of Perth?---Absolutely.

There was a lot happening?---Absolutely.

25 Would you accept that Mr Mianich had a lot on his plate when he started as the Acting CEO on Monday, 19 February?---Yes.

30 Would you also accept that given the detailed nature of the complaint against you, that he would not have had time to prepare it between 19 February and when he sent it off on 22 February?---Yes. My view is that he was the signatory on the letter but had not prepared the complaint.

35 Would you also accept that it was Mr Mileham when he was the CEO, before he went on sick leave, who prepared the complaint?---It was my assumption that it was Mr Mileham in liaison with the Governance team, yes.

Despite the email that we have seen when you were notified that Mr Mileham was due to return on 6 March?---Mm hmm.

40 You felt that he was not going to return at all?---Yes, that's correct.

45 Would it be true to say that your view that he had prepared the complaint had any connection with your assessment that he was not going to come back, despite being told that he was due back on 6 March?---No, that's not correct. My view was that when a CEO, and I used the phrase at the time, pushes the stress leave button, it makes it rather unlikely that they are going to return to the role.

Thank you, Mr Harley. I have no further questions, sir.

COMMISSIONER: Thank you. Ms Young.

5 MS YOUNG: Thank you, Commissioner

EXAMINATION BY MS YOUNG

10 Councillor Harley, at the time of the two discussions that you've spoken about this morning, that you said that you had with Councillor Hasluck before the request was made for the Special Council Meeting on 24 February 2018, at that time did you have an understanding that subject to certain exceptions, it was an offence under the Local Government Act to disclose information about a complaint that had been made about you to the Local Government Standards Panel?---No.

15 So is it fair to say then that at the time you had those two discussions with Councillor Hasluck that you hadn't considered whether or not an exception to that offence provision would apply to you?---Correct.

20 Notwithstanding that, do you accept that at the time you had those two discussions with Councillor Hasluck, that you considered, I think as you said to the Commissioner yesterday, that a complaint is a confidential matter?---Yes.

25 And as such, you treated the fact of the complaint as a confidential matter?---I had a view that if I was the person against whom the complaint was made and I chose to speak about that with another person, that it would have been in essence, me breaching my own confidentiality. So that was my view of the world at the time.

30 Your view of the world at the time was that you needed to be circumspect about who you might speak to about a complaint made about you?---Yes, that I would only speak to people who I trusted.

35 And that you would be careful also, in speaking to those people about the exact extent of the information that you would seek to disclose about the complaint that had been made about you?---Yes, and also because the nature of the complaint was about a whole raft of allegations which had been made about other people in the City.

40 So is it fair to say then that in those two discussions you've told the Commissioner about this morning that you had with Councillor Hasluck, that you were careful about the details that you revealed to him about the complaint that had been made by Mr Mianich about you?---I wouldn't say that I was overly careful. I trusted in Mr Hasluck and disclosed all of the substantive matters that were at play.

45 I'm not saying whether you were overly careful, but do you accept that you were careful or circumspect in terms of the information you provided Councillor Hasluck?---Careful? No, I wouldn't use that word. I think it was open and

transparent with Councillor Hasluck about the complaint and the nature of the complaint and the details.

5 In the conversations that you had with Councillor Hasluck, you informed him about the fact that there had been a search conducted of your office, is that your evidence?---No, I informed him that there had been an allegation made to me that there had been a request of rangers to conduct a search of Councillors' offices for any matters that could be used politically by the Lord Mayor. It was clear to me - sorry. The person who corresponded with me said that it had been a request but it  
10 had not been carried out.

Had you sought an explanation from Mr Mianich as to that request?---I had sought multiple explanations from Mr Mileham about that request - Mr Mileham.

15 So could it have been that in your conversations with Councillor Hasluck about seeking a reply from Mr Mianich, that it may have been that you were talking to him about your request from an explanation to Mr Mianich about the searches of your office?---No. No, the email to Mr Mianich was whether or not - which other members of the Administration were aware of the confidential complaint because  
20 it had appeared on the radio at 7 o'clock the following morning after it having been relayed to me. So the question to Mr Mianich was quite clearly about, in essence, a question of a leak. It wasn't in relation to any details about the complaint.

Councillor Harley, I'm not asking you about what the request was to Mr Mianich, I'm asking you whether or not you accept that in your conversations with  
25 Councillor Hasluck, that it may have been that when you were talking about a request made to Mr Mianich, that you were talking about a request for an explanation as to the request to search your offices?---No, because as I gave testimony earlier, I said that I'd had that meeting with Councillor Hasluck in the  
30 period of time between receiving the notification of the allegation and the following day. So the conversation with Mr Hasluck would have been about the substance of the complaint and my outrage, I guess, at the way in which it had been handled.

35 When you say "it would have been" about the complaint - - -?---It was.

- - - and the way it was handled, would you accept that is what you infer it would have been about, having refreshed your memory overnight from your gmail  
40 account?---That's correct.

And that prior to refreshing your memory from the gmail account, you didn't have an independent recollection of those two conversations with Councillor  
Hasluck?---That's correct.

45 Thank you, Commissioner.

COMMISSIONER: Thank you. Mr van Hattem?

MR van HATTEM: Nothing to add, thank you, Commissioner.

COMMISSIONER: Thank you. Mr Beetham.

5

MR BEETHAM: Sir, just a couple of questions following on from Ms Saraceni's examination.

COMMISSIONER: Of course.

10

MR BEETHAM: Mr Harley, you were taken to the complaint made about you by Ms Saraceni and you accepted that you considered it was a complaint drafted by Mr Mileham?---Yes.

15

And you've given some evidence to the Commission that you have views about Mr Mianich's handling of complaints and his capacity to do so?---Yes.

Did you have those similar views about Mr Mileham?---Yes.

20

And did you have those views with respect to Mr Mileham with respect to this complaint?---Yes.

Around this time, were there any discussions between yourself and other Councillors, including in particular the five Councillors who signed the motion, about Mr Mileham's ability or appropriateness as CEO?---Yes.

25

Was there any discussion about steps that could be taken to have Mr Mileham replaced?---Yes.

30

Who did you have those discussions with?---So to fully answer the question, there were conversations about Mr Mileham's handling of complaints because we had received the survey results mentioned yesterday, that there was a significant issue from a perspective of staff. We were - we - so I - should I speak as I or in relation to others.

35

Please speak as I if you're speaking about something you've done?---Sure.

You're saying the group did something as a block, make that clear?---I was - I had questioned whether or not potentially Mr Mileham's stress leave was because a complaint had been made about him.

40

Yes?---There had obviously been this Project Percy thing earlier but I was wanting to know whether or not there had been some other complaint made about Mr Mileham and we'd look at his contract which indicated that there was a provision in the contract which would allow us to suspend Mr Mileham from duties pending the outcome of a complaint, and I believe that Councillor Green made enquiries with the CCC and the Public Sector Commission and the

45

Department as to whether or not there were any ongoing enquiries about Mr Mileham.

5 Did you understand or did Councillor Green convey to you that she did those things to see whether or not you could trigger the suspension provisions in Mr Mileham's contract?---Yes. We were concerned that if he was under investigation for some particular thing, if the nature of that investigation was serious, that it might be that we needed to suspend him from the role.

10 Was that part of a - I will go back one step. You had an intention or desire to suspend Mr Mileham from that role, is that correct, from the role of the CEO if you could do so under his contract?---If there were investigations of serious misconduct underway, then yes, that would have been the appropriate thing to do.

15 Did you otherwise have a view or a desire to suspend or remove Mr Mileham from the office of CEO simply because you didn't think he was an appropriate person for the job?---No, I saw them as performance management issues in relation to handling of complaints and the other issues underway. It was a surprise to us - to me that he took stress leave around the time that we were just about to commence  
20 a Performance Review.

Would you have preferred somebody else in the role of CEO? If, in your ideal world of the selection of people you had as Directors and Mr Mileham, would you have preferred somebody else?---No, not at the time. After Mr Mileham took  
25 stress leave, then I had concerns about his ability to continue in the role but before that time, no, I hadn't thought that we were - you know, that we should remove him, that we should replace him, that someone else should act in the role. It was the stress leave which triggered my view that he perhaps wasn't appropriate to remain in the role.

30 Going forward indefinitely?---Yes. As I've said before it was my view that given the circumstances, he was probably unlikely to return.

35 Did you want to, once he went on stress leave and this motion that we looked at quite a bit started to be generated, was there discussions about replacing him substantively with Ms Battista or somebody else?---No.

40 The motion that was put up was not a step along the way of a broader plan to remove Mr Mileham and replace with somebody else?---Not in my view. The policy which we had just moved quite clearly indicated that someone could only act in the role for a particular period of time. If Mr Mileham had have been on continuing stress leave for more than six or nine months, then we would have had to have put someone in the role more substantively, but no, we just passed the policy that intimated that it was for a short period of time, an acting capacity.

45 So if and when Mr Mileham returned to the role, you would have been happy for him to return to the role of CEO provided he - I think your evidence before was he

5 passed a fitness to return to work program?---Yes, I had concerns about whether or not he'd be able to return to the role and I would have, as I guess as one of the co-employers, I would have spoken to other colleagues and suggested that we needed to see some kind of medical fitness assessment before he returned to the role.

10 Yesterday, you gave some evidence to the effect that Mr Mileham, amongst others, was one of the people you thought were doing things to try to blow up the Council?---Yes.

15 And notwithstanding that view, you say you still would have been comfortable with Mr Mileham returning to the office of CEO and being the CEO of the City in an hypothetical world, had it gone ahead?---So my view about quote, blowing up of the Council as you mentioned, happened - that view was formed when Mr Mileham took stress leave. The view hadn't been formed before that point.

20 So as of 27 February when the motion's been put up to Council and you'd been told that Mr Mileham was going to return to work on the Tuesday, you received that email, yes?---I didn't have confidence, but yes, I received that notification.

25 And assume an hypothetical world where the Council wasn't suspended and Mr Mileham returned to work on the 6th, would you have been happy with his return in that role or would you have rather had somebody else in that role?---I think as I gave in testimony before, I had concerns about Mr Mileham's ability to continue in the role because of the stress leave. So if he had returned from stress leave, I would have had continuing concerns about his ability to perform in the role or perhaps, I guess, his capacity.

30 Is that something you would have monitored with a view to taking steps, if needed?---Yes.

[11.30 am]

35 In you formed a view that the stress had gone and the stress leave type issues weren't a problem for Mr Mileham any more in the role, would you have otherwise been happy for Mr Mileham to continue in the role of Chief Executive Officer?---Yes, and I would have paid special attention to the Performance Review process which we had, you know, just started to commence. I have a view that a Council that doesn't get along with the CEO can still get along with the business of the Council. The Local Government Act is quite clear that the Administration need to carry out lawful directions given by Council, so I didn't have a concern that we wouldn't be able to implement Council decisions and to carry on. I did have a concern about the capacity of the individual to carry out the duties.

45 Thank you, Mr Harley. One moment, sir. Thank you, sir. No other questions.

COMMISSIONER: Thank you, Mr Beetham. Mr van Hattem, the documents

that you and your instructors propose to provide to the Inquiry, can you indicate to me when they will be provided?

MR van HATTEM: In relation to the finding, it could be provided this morning.

5

COMMISSIONER: Yes.

MR van HATTEM: In relation to the emails, I anticipate by Monday - I'm told today. They haven't been reviewed, as I understand it, sir, but I'm told today is possible.

10

COMMISSIONER: Thank you very much. In that case, Mr Harley, I'm going to excuse you from further attendance today. It may be necessary to recall you, as I'm sure you're aware, but unless there are any other housekeeping matters, Mr Beetham?

15

MR BEETHAM: No, sir.

COMMISSIONER: What I propose to do now is take the morning adjournment, which will allow sufficient time for the arrangements to be made for the next witness. Mr Harley, I want to thank you for your assistance today?---Thank you.

20

I will adjourn now.

25

**WITNESS WITHDREW**

(Short adjournment)

30

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HEARING RECOMMENCED AT 11.47 AM.

COMMISSIONER: Thank you, Mr Beetham. Do you call your next witness?

5 MR BEETHAM: I do, sir. I call Alexis Barton.

COMMISSIONER: Thank you. Ms Barton, please come forward and take a seat in the witness box. Ms Barton, I understand you wish to make an affirmation?

10 MS BARTON: Yes, that's correct.

COMMISSIONER: Thank you. Madam Associate.

**MS Alexis Louise Foster BARTON, affirmed:**

15

COMMISSIONER: Thank you. Take a seat. I will now hear applications to appear and be represented. Ms Randall?

20 MS RANDALL: Yes, Commissioner. I would like leave to appear and represent Mr Mianich.

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

25 MR BEETHAM: No, sir. There's no objection to the applications that I foreshadow will be coming in a moment.

COMMISSIONER: To none of them?

30 MR BEETHAM: No, sir.

COMMISSIONER: In that case, leave is granted, Ms Randall. Ms Saraceni?

MS SARACENI: Sir, I seek leave to appear on behalf of Mr Mileham.

35 COMMISSIONER: Thank you. Leave is granted, Ms Saraceni.

MS SARACENI: Thank you.

40 COMMISSIONER: Mr Houweling?

MR HOUWELING: May it please the commission, I appear for Ms Barton this morning, together with my learned friend Ms Waugh.

45 COMMISSIONER: Yes, leave is granted, Mr Houweling. Mr Malone?

MR MALONE: Commissioner, I seek leave to represent Councillor Harley.

COMMISSIONER: Yes. Leave is granted.

MR MALONE: Thank you.

5 COMMISSIONER: Mr Harris?

MR HARRIS: Sir, I would seek to leave to appear on behalf of Ms Barrenger.

COMMISSIONER: Thank you, leave is granted, Mr Harris. Ms Ford.

10

MS FORD: Commissioner, I seek to appear on behalf of Dr Green.

COMMISSIONER: Thank you, leave is granted. Mr Hart.

15 MR HART: May it please you, Commissioner, I seek leave to appear for Paul Crosetta.

COMMISSIONER: Leave is granted. Mr Skinner.

20 MR SKINNER: May it please you, sir, I seek leave to appear on behalf of Mr Limnios.

COMMISSIONER: Thank you, leave is granted.

25 MR SKINNER: Thank you very much, sir.

COMMISSIONER: Ms Siavelis?

MS SIAVELIS: Commissioner, I seek leave to appear on behalf of Ms Battista.

30

COMMISSIONER: Thank you, Ms Siavelis. Leave is granted. Mr Wyatt?

MR WYATT: Commissioner, I seek leave to appear on behalf of Rebecca Moore.

35 COMMISSIONER: Thank you, Mr Wyatt, leave is granted. Ms Young?

MS YOUNG: Commissioner, I seek leave to appear on behalf of Councillor Hasluck.

40 COMMISSIONER: Thank you, Ms Young, leave is granted. Mr van der Zanden?

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

45 COMMISSIONER: Yes, leave is granted, Mr van der Zanden, thank you. Mr Beetham.

MR BEETHAM: Thank you, sir Ms Barton, as you probably heard, my name is Mr Beetham. I just want to ask you some questions primarily around two topics, the Crisis Management Plan that was enacted by the Executive of the City of Perth?---Yes.

5

And the Special Council Meeting that was held on 27 February, do you know what those topics are?---Yes, I do.

10 Just for the purposes of the transcript, can you please state your name, address and occupation?---Sure. My full name is Alexis Louise Foster Barton, my address is [REDACTED], and my profession is lawyer/Councillor.

When were you elected as a Councillor of the City of Perth?---I was elected as a Councillor on - sworn in on 24 October 2017.

15

As you remain in that role?---Yes, I do.

The microphone just records your voice, Ms Barton, you don't have to lean into it?---I don't have to lean into it?

20

No, that's fine?---Okay, so I won't be doing this all day.

If you wish to, you can. When are you up for re-election?---My term runs for four years, so it would be October 2021.

25

Ms Barton, I know you've got some documents and a pen and things in front of you; can you tell me what those are?---This document is the record of my interview.

30

That's your voluntary discovery interview with the Inquiry's investigators?---That's correct, Commissioner.

And the other documents you have there?---Just some personal notes, Commissioner, I made this morning and sorry, a copy of the motion for the Special Council Meeting on 27 February.

35

Can I ask you just to bundle those up, please, Ms Barton, and if I can ask you to hand them to Madam Associate for the moment. Thank you, Ms Barton?---Pleasure.

40

Madam Associate, if we could have the motion up on the screen, please, at 11.0415, TRIM 14283.

COMMISSIONER: Thank you.

45

MR BEETHAM: If I could ask you just to enlarge that on the screen, please, Madam Associate. Can you read that okay on the screen at that size,

Ms Barton?---Yes, I can.

Do you recognise this document?---Yes, I do.

5 You will see it's dated 24 February 2018?---That's correct.

And it's a request to the CEO of the City to schedule a Special Council Meeting?---Yes.

10 Did you have some involvement in the preparation of this document?---Not this specific document, no, the amended version.

The amended version?---Yes.

15 Madam Associate, if you could just scroll down a little bit, please?---I had involvement in the sense that I signed it.

Yes?---But not in the drafting of the document.

20 So Ms Barton, you didn't prepare any of the writing in this document, any of the drafting of the motion, is that right?---I just want to make sure that this - is this the amended - - -

25 No?---No, this is not. So no, I did not have any involvement in the drafting of document, Commissioner.

COMMISSIONER: Thank you.

30 MR BEETHAM: You signed the document under your name there, Councillor Lexi Barton?---That's correct.

Do you recall how you signed that, is that with a pen or electronically?---I signed it with a pen.

35 Were you the first person to sign the document, do you remember?---My recollection is that Councillor Green was the first person to sign the document.

Did Councillor Green give you a copy of this to sign?---The document was sent to me electronically.

40 And you printed it out, did you, and signed it?---That's correct. I had difficulties using the - - -

Electronic signature?---Yes, that's correct. I'm not very tech savvy.

45 What did you do with the document once you had signed it?---Once I had signed the document, Commissioner, I scanned the document and then emailed it on to

everyone in the email chain.

5 Are those people, when you say "everyone in the email chain", Councillors Hasluck, Linnios, yourself, Councillor Green and Councillor Harley?---That's correct.

Did you send it to anybody else?---No, I did not.

10 Were you here during the course of either Councillor Harley or Councillor Hasluck's evidence, Ms Barton?---I attended this morning for part of Councillor Harley's evidence.

15 Did you hear Councillor Harley give any evidence about a meeting that took place at Councillor Green's house on the morning of Saturday, the 24th?---I heard him give evidence to that effect.

Do you recall being invited to that meeting?---No, I do not.

20 And you didn't attend the meeting?---No, I did not.

25 Can you recall when the first time was that somebody raised with you a motion of this time?---I can't recall the exact time, Commissioner. However, I recall receiving a phone call and the email on, I think it was a Saturday. I remember being at home.

30 So the phone call you received on Saturday?---To the best of my recollection, yes, the phone call was on a Saturday.

35 And that email you say you say was on the Saturday as well?---Yes, attaching the document.

40 Was the document at that stage signed by Ms Green or was it a draft version of the document?---It may have already been signed by Councillor Green, I'm not too sure. I would have to have a look at the email chain.

45 When you received this phone call, who was the phone call from?---I spoke to - I'm certain I spoke to Councillor Green, I believe Councillor Harley and Councillor Linnios. I may have spoken to Councillor Hasluck as well. I can't be sure.

Is this all in the one telephone call?---No, no, separate telephone calls.

Were these on the Saturday?---I believe so, yes.

45 Your recollection is you had a number of phone calls about the motion on Saturday?---Yes.

Can you remember if the first one was with a particular Councillor?---No, I can't recall who I spoke to first.

5 Did anyone raise with you, in the week leading up to that Saturday, an idea about making this change to the policy and moving items in the motion?---Not that I recall.

10 Do you recall having any discussion with any of your fellow Councillors about a desire, your desire or somebody else's desire, to amend the policy and to move the items in this motion?---Sorry, can you repeat the question, please?

Certainly. In the period before the Saturday, the 24th?---Yes.

15 Do you recall speaking to anybody about a desire to amend Council Policy 12.6, or to appoint an Acting CEO?---No, not that I recall.

So your first - - -?---This first became aware to me on the Saturday when I received the document via email.

20 When you first this first became aware to you, do you mean the whole idea of amending the policy and appointing a different or a new Acting CEO?---Yes, I do.

25 So the first time you became aware of that is when you received the document on the Saturday morning or when you received the phone call?---To the best of my recollection, yes, that's how it happened.

I think your evidence was you spoke with Councillor Green, Councillor Harley and Councillor Limnios and possibly Councillor Hasluck?---Yes. I would have tried to discuss the motion with all of the Councillors involved.

30 When you say "would have", is that something you assume you would have done based on your normal practice, or is that something you recall trying to do?---It was normal practice for me to discuss motions with other Councillors, especially those involved.

35 Do you recall specifically speaking with Councillor Green, Councillor Harley and Councillor Limnios?---Yes, I do - no, I don't think I spoke to Limnios.

40 I will take it in turn. Do you recall speaking with Councillor Green?---Yes, I do.

And do you recall speaking with Councillor Harley?---There may have been a phone call but the contents of which I can't recall, so - - -

45 I think - - -?---Hasluck I spoke to - as I said, I had difficulties signing the document using the electronic signature, so I believe I spoke with Hasluck about that and in the process, discussed the motion.

Why would you speak to Councillor Hasluck about the difficulties in signing with an electronic signature?---My understanding was that a number of the Councillors wanted to make minor amendments to - - -

5 Were you one of those Councillors?---Actually, because I said I didn't have any involvement in the drafting of the document, but I believe I did ask for - if you could scroll up, please, on the document.

Yes, please, Madam Associate. Is that - - -?---That's right.

10

Do you want that enlarged at all?---And it has been amended to say "to address the following." The copy that was forwarded to me read "to address the follow: 2/3 items", and I said that didn't make sense and it would read better if we changed it to what it is now

15

[12 noon]

So the sentence you're referring to, just so it's clear for the transcript and people here, is the sentence that commencing, "We hereby request a Special Council Meeting"?---That's correct.

20

And you say the end of that sentence finished in a different way?---That's correct.

And it was your amendment then, was it, to change it to, "The following"?---That's correct.

25

COMMISSIONER: Sorry, what did you say it said before that?---It's actually on the copy that I gave Madam Associate. It said, "We hereby request a Special Council Meeting to be held on" and this is just from memory, "Tuesday, 27 February", I can't recall whether it said 5 pm or a different time, and then it said, "To address the follow: 2/3 items."

30

MR BEETHAM: The document you're referring to that you've just given Madam Associate, is that a document you produced to the Inquiry previously?---I believe so. It would be in the email chain that Councillor Harley referred to earlier in his evidence today.

35

In his evidence this morning?---Yes.

40 When you had these conversations with Councillor Green, did Councillor Green - what did you talk about?---The specifics I cannot recall. In general, the purpose for amending the wording of the policy.

45 Did you talk about why the policy needed to be amended in the first place or why any of these motions needed to be moved?---I would think so, yes.

Do you remember doing that?---I remember speaking with Councillor Green about

the need for Council to retain its power to make the decision as to who the CEO should be.

5 When you say you remember speaking to Councillor Green about that, was that you expressing that view to Councillor Green, was it her expressing that view to you or was that a shared view communicated between the two of you?---I believe it was a shared view.

10 When you say you believe it was a shared view, was it your view?---It was my view, yes.

So when you say you believe it, you understood it was shared by Ms Green?---I can't speak for Mrs Green, or Ms Green.

15 When you say you believed, your understanding was that she did agree with that view?---Yes.

20 Did Ms Green mention to you at all during that telephone conversation that Mr Mianich, the current Acting CEO at the time, had lodged a complaint against her with the Local Government Standards Panel?---No, she did not, not that I recall, no.

25 Did Ms Green, in the days leading to the Special Council Meeting on the 27th, mention that to you at all?---Not that I remember, no.

30 When was the first time - you're aware of that now, sitting here today, that a complaint was lodged by Mr Mianich against Councillor Green?---I was aware - I am aware or was aware that a complaint had been made, I didn't know that it was Mr Mianich that made the complaint. I've never seen the complaint.

35 I will just try and unpack that a little bit. I think you said you were aware and you are aware. So were you aware on 24 February that a complaint had been made about Ms Green?---I'm not too sure, whether I knew about it then or whether it had come to light after all of this.

By "all of this", are you including - - -?---I mean the Special Council Meeting.

40 So you're not sure, if I understand your evidence correctly, whether you knew about the complaint about Ms Green at all between the 24th and 27 February?---It's not something that I recall knowing about when I decided to sign this document.

45 And is it something that you recall Ms Green telling you?---Yes, but I can't recall when she told me, whether it was before or after the Special Council Meeting.

Did you have - I think you said you probably had a conversation with Councillor Harley as well?---Most likely, yes. As I said, I can't be sure.

You don't remember that. It is fair to say if you don't recall precisely whether that conversation took place, you don't recall whether he told you that a complaint had been made about him?---Yes, I'm sorry, my recollection of that would be nil.

5

Of whether he told you that. Do you recall ever receiving any emails from either him or Councillor Green revealing the fact that a complaint had been made about either of them?---No, I don't.

10 Can I ask you, Madam Associate, please, to turn up the document at 11.0780, TRIM 24805.

COMMISSIONER: Thank you.

15 MR BEETHAM: If I can ask you, Madam Associate, to scroll to the email at the bottom of the chain and just enlarge that for me, please. This is not an email you're involved in directly, Ms Barton, but I just want to show it to put you in context. You will see it's an email from Mr Harley to Mr Mianich?---Yes, I do.

20 And you will see it's dated 23 February at 12.22 pm. If you can just read that to yourself and let me know when you've read that?---I've finished reading it.

Other than looking at it now, do you have any recollection of seeing that before?---No, I don't. I must have received it but I can't remember it.

25

You don't remember receiving it?---No, I don't.

You don't remember reading it?---No.

30 If I could ask you to scroll up to the top of the page, please, Madam Associate. When you say you should have received it, is that a reference to this email?---Yes, I saw that when - - -

35 When the document came up on the screen?---When the document came up on the screen, yes.

And you see your name is there in the, "To" list?---That's correct.

40 Is it your - are you able to shed any light for the purpose - for the Inquiry's benefit as to your habit when it comes to emails, do you check them regularly?---Yes. I notice that it was sent on a Friday. However, I wouldn't have been at Council House on a Friday. I have both my kids on a Friday.

45 Do you have external access to your City of Perth email?---Yes, via the City of Perth issued phone.

So it's possible, is it, that you might have picked the email up on your phone that

Friday afternoon while at home?---It could have been possible, yes. It is possible that I have seen the email, I just can't recall.

5 I understand. Madam Associate, if you could please now move forward to the document at 11.0785, TRIM reference, sir, 24806.

COMMISSIONER: Thank you.

10 MR BEETHAM: If I can ask you, Madam Associate - you may have read my mind - if you can zoom in on the email at the bottom. Is that large enough?---Yes.

For you to read, yes, Ms Barton. You will see that's an email from Mr Hasluck and it's on the Saturday in the morning?---Yes, 9.26 am.

15 And that's to your, what I understand is your personal email address?---No, that's incorrect.

20 What email address is that?---My personal address is [REDACTED]. That is an email address I used during the campaign period.

Is that an email address to which you had access on this day?---I would have had access but I would not have checked it.

25 Do you have any recollection of reading that email before?---No, I do not.

Madam Associate, if you could go over the page, please. I suspect I know the answer to this question, Ms Barton, but if you could read that page and tell me, at least the first email on the page and tell me if you have any recollection of that?---No, I have no recollection of that.

30 And the one below?---No, the second one.

Sorry to labour the point - - -?---It's addressed to Steve Hasluck - no, Steve - - -

35 Just so we are on the same part of the page?---Yes.

I am looking at the email that is at 24 February, 7.48, Steve Hasluck wrote, "Hi Jemma"?---Mm hmm.

40 Have you seen that before?---Not before today.

If I can ask you just to look at the email that commences at the bottom of the page from Jemma Green?---I don't recall receiving that email.

45 I understand from your evidence you at some point became aware of complaints made about Councillor Green and Councillor Harley?---Yes, that's right.

And did you subsequently become aware that they were made by Mr Mianich?---No, I did not.

5 When you became aware of the complaints, were you made aware of the detail of the complaints?---No, I was not.

Can you recall how you became aware of the complaints?---I think it was mentioned in conversation with Councillor Green and Councillor Harley.

10 Am I right, am I, in that you can't put a precise date on when that happened?---Unfortunately not, sorry.

15 You don't have to apologise, Ms Barton, it's okay. Had you ever been involved - I understand you were only on Council for a short period of time before Council was suspended, that's right?---That's correct.

20 Had you ever been involved in a motion of this type before to amend the Council Policy to deal with the CEO?---I had involved in motions to amend Council Policy, not Council Policy relating to the appointment of the CEO.

25 In the course of signing this motion, the one we looked at a moment ago and the amended version that was eventually moved at the Special Council Meeting, was there discussion amongst you and other Councillors as to the reasons for the motion and the amendment?---Yes.

30 What were those discussions about?---My discussions involved, from memory, the fact that Council needed to retain its power under the legislation to appoint the CEO that it considered appropriate for the position. I also discussed the need for Councillors to be notified of when this is going to occur, which I believe is also in the wording of the policy.

35 Can you just explain that last point to me, notified of what?---A clause in the policy said that Councillors must be notified within, or as soon as practicable, I think - - -

About?---About the appointment of an Acting CEO, or it may have been the appointment of an Acting CEO or whether the CEO was going on leave.

40 Was there discussion between you and other Councillors about the adequacy of Mr Mianich as a CEO?---No, there was not.

At all, or are you talking about - - -?---Not that I recall, I didn't discuss.

45 There was no discussion about that?---No discussion.

Was there a discussion about the adequacy of Mr Mileham as a CEO around this time?---No, not that I recall.

5 What was your motivation for agreeing to, and as I think the minutes show from the meeting, seconding the motion?---My motivation was that I ran an election campaign on the platform that I would ensure that there was good governance and transparency and on the basis that I'd identified that Council required, or needed to retain its power to appoint who it decided was the best or most appropriate person to be CEO or Acting CEO. That was the basis of my decision.

10 Did you have a view yourself, even if it wasn't discussed with other Councillors as at 24 February? So I'm talking about the day that the first motion was signed, the unamended motion?---Mm hmm.

15 Did you have a view on that day as to Mr Mianich's capacity to be a CEO?---Sorry, can you repeat that? Did I have a view?

Yes. So on 24 February 2018 when you signed this first motion, did you have a view about Mr Mianich's capacity as CEO, whether he was good at the job, bad at the job, appropriate, those types of things?---My view wasn't positive or negative.

20 Did you have a view about who might be a better Acting CEO or substantive CEO?---Not necessarily better but perhaps my preference would have lied with either Annaliese Battista or Paul Crosetta.

[12.15 pm]

25 When you signed - Madam Associate, if you go back to the motion at 415 - this motion that's about to come up on the screen and it contained that second item, "The Council appoints blank to the role of Acting Chief Executive Officer", did you have an idea as to who might be blank?---It was my understanding that the blank would be Annaliese Battista.

30 When you say it was your understanding that would be the case, what do you mean by that?---I believe it was during the discussion with Councillor Green that she mentioned Annaliese.

35 So I understand your evidence, Ms Green indicated to you - - -?---I most likely asked who was going to fill the blank.

40 But this is not a decision you came to separately, you asked Ms Green who would be blank?---I didn't ask her who would be blank, I simply asked - I actually can't recall what I asked but I remember it coming up in the conversation - - -

Did you ask - - -?---That it would be Annaliese.

45 I'm sorry, I cut you off there, what was that last part?---I recall there was some discussion about it being Annaliese.

In this discussion, did you ask or raise the fact that you had an Acting CEO in place at the time, Mr Mianich?---No, I did not.

5 Do you find it unusual that Council, or at least some Councillors on Council, it appeared, wanted to remove Mr Mianich and appoint somebody else?---No, I did not.

10 Why did you not find that unusual?---It was a new Council. It's not unusual for a new Council to make decisions of this nature.

Of an Acting CEO?---That's correct, yes.

15 And you were quite comfortable, were you, with the decision that appears was made on the Saturday, the 24th, to in effect appoint Ms Battista in place of Mr Mianich?---Yes, I was comfortable with the decision.

You said you had a preference, I think, for Ms Battista and Mr Crosetta?---That's correct.

20 In relation to Ms Battista, can you explain why you had a preference for her?---I'd had more dealings with Annaliese Battista than in Paul Crosetta. Both were confident and competent.

25 So in respect of why Ms Battista would, in your view, be a good Acting CEO, what was the reason for that? I think you said competent and confident, can you expand on that?---That's correct. I had previous experience working with Annaliese. She always dealt with matters professionally. She was efficient, qualified and I believed she would be able to work with Council going forward.

30 Did you have a view that Mr Mianich could not work with Council?---No.

Did you have a view that Mr Mileham could not work with Council?---Mr Mileham was on sick leave.

35 COMMISSIONER: When you say no in relation to Mr Mianich, did you mean no, you didn't have a view or - - -?---I didn't have a view here or there, Commissioner.

Thank you.

40

MR BEETHAM: I appreciate Mr Mileham was on leave at the time but just generally in relation to Mr Mileham, did you have a view as to whether he could work effectively at all with Council?---Sorry, do you mean excluding the fact that he was on sick leave completely?

45

I mean, did you have a view about Mr Mileham as CEO in the role, putting aside the fact that he was on stress leave, whether he could work with the Council as

CEO?---My experience with working with Mr Mileham was that some things worked and some things didn't.

5 Can you expand upon that for the benefit of the commission?---I believe Mr Mileham would have been able to perform the functions the of CEO should he return, yes.

10 Did you have any concerns about the way he had been performing the functions of CEO before he went on leave?---There was the Chief Executive Inbox, that was my major concern with how matters were being dealt with by the CEO.

What was your concern about that?---I was concerned with the effectiveness of the CEO Inbox.

15 What do you mean by effectiveness?---Or lack thereof.

20 Those of us in the room who aren't as familiar with the CEO Inbox as you, Ms Barton, can you explain what you mean by, that the CEO Inbox had a lack of effectiveness?---The CE Inbox was where, if any Councillor had a question that needed to be answered by management, it would be sent to the CE Inbox. You would then get an automated response and promised a response within, I believe, five working days. As a Councillor, it was my view that this period was too long. I had incidents where requests or questions were not answered or I received information that was insufficient - in my view insufficient.

25 And the responsibility for that inbox did you understand to be Mr Mileham's responsibility?---Yes, I did.

30 And other than that, did you have any in terms of his ability as CEO?---No, I didn't.

35 If I can come back to your knowledge of the complaints made about Councillors Green and Harley, I think your evidence is you're not sure when you learned about those?---Yes, I can't be clear as to whether, or when I learned.

If I pose an hypothetical to you: had you known about those complaints prior to the motion, signing the motion that's on the screen, do you think you would have been involved with the signing of that motion?---Yes.

40 Can you explain why?---Because they are irrelevant.

Why?---The motion amends policy that retains Council's power to appoint the CEO, not dealing with individual complaints.

45 You will see if you look at the motion, it's in two parts, could you agree with me?---Yes, that's right.

And the first part deals with the amendment of policy so that Council can, in your words, retain the power to appoint a CEO?---That's right.

Can you see that?---Mm hmm.

5

The second part is a bit different, isn't it? It talks about the appointment of a particular person, yes?---Yes, that's right.

And on 24 February 2018, the person in that role as Acting CEO was Mr Mianich?---Mianich, yes, that's correct.

10

And it, as I understand from your evidence, was anticipated by you and other Councillors that he would be removed and replaced with Ms Battista?---That's correct.

15

Are you suggesting that knowledge of the complaints made by Mr Mianich about Councillors Green and Harley, who are co-signatories with you on this motion, is also irrelevant to that second part of the motion?---It had no bearing on my decision to sign the motion.

20

I just want to understand that?---It wouldn't have had, had I known.

Can you explain why?---Because I considered Annaliese Battista to be the best person for the role.

25

So had you known that these complaints had been made, you wouldn't have any concerns about the fact that the motion was, in effect, seeking the removal of Mr Mianich and the appointment of somebody else?---No.

Did you discuss with anybody - sorry, did you discuss with any of the other Councillors the timing of the motion, the fact that it was being proposed on a Saturday, to be called for a meeting urgently three days later?---Not that I recall, no.

30

Did you ask anybody, "Why are we dealing with this on this Saturday"?---Not that I remember, no.

35

Did anybody discuss whether or not it could simply be a motion that could have been put off to a regular Council meeting?---I think perhaps Councillor Harley took issue with it, being that - I can't recall, no, but something's saying - something about it going to committee first but that's all I remember.

40

Do you recall Councillor Harley saying something like, "It should go to committee first" or "it should not go to committee first"?---I can't remember Councillor Harley's exact words, I'm sorry.

45

But you recall him mentioning something about a committee?---Yes, something

along those lines.

5 But nobody raised whether or not - in your recollection nobody raised whether or not the matter should simply be put off to a regular Council meeting?---Not that I remember.

And you didn't turn your mind to that question yourself?---No.

10 And you didn't question at all why you were dealing with this on a Saturday for a meeting a couple of days later, on the 27th?---No. I quite often dealt with Council related matters on the weekend.

15 I appreciate that might have been the case, Ms Barton, but was it often that you were dealing with Council related matters on the weekend for the purposes of a Special Council Meeting three days later?---No.

20 That would have been, as I understand from your response there, an unusual state of affairs?---Yes, in the brief time that I was on Council, this would be considered unusual.

And you didn't question that, the unusual nature?---I didn't, no.

25 At this stage, on the Saturday, do you know when Mr Mileham was due back at Council - sorry, at the City?---I think there was a memorandum that was sent out discussing that he was planning on returning.

Perhaps I will show you a document?---I think Rebecca Moore sent an email.

30 I will show you a document at 11.0529, TRIM reference, sir, 14320.

COMMISSIONER: Thank you.

MR BEETHAM: Is that large enough on the screen?---Yes.

35 Thank you, Madam Associate. You will see, Ms Barton, this is an email from Ms Moore and it's an email on the Tuesday?---Yes, I remember receiving this.

You remember receiving this?---Yes.

40 I think you referred to it as a memo, is this what you were talking about when you said there was something Mr Mileham's return?---Yes.

You see that's on the Tuesday, the 27th; did you know before receiving this - - -

45 COMMISSIONER: Do you need a moment to read it, Ms Barton?---Yes, that would be good, thank you, Commissioner. Thank you, I've read it.

MR BEETHAM: I think your evidence a moment ago was you recall receiving this email?---Yes.

5 And you will see that it refers to Mr Mileham coming back to work on Tuesday, 6 March?---Yes.

And you will see you received that email on 27 February at 3.25?---That's what the email says, so yes.

10 Prior to that date, I'm interested in your knowledge of Mr Mileham's return to work before that, before receiving this email, and particularly when you signed the motion that we saw on the screen a moment ago?---No, I did not know that he was intending on returning.

15 So was your understanding that you had no knowledge of his return to work?---I was unaware that he was intending to return to work, on the Saturday.

20 When you received this email, and you saw that Mr Mileham was indicating he would be back at work on 6 March, and you received this email before the Special Council Meeting to be held that afternoon, did you give any consideration then to not going ahead or deferring the motion that you had signed?---No, I did not.

25 Can you explain to the Commission why?---Commissioner, the motion put forward was amending policy to ensure that Council retained its power to appoint who it thought was the most appropriate person to be CEO of the City. I didn't see how this would have any bearing on that.

30 And a motion - - -?---The motion was not for that specific circumstance, it was for the future.

The motion was in two parts, am I right?---That's correct, yes.

35 And the second part was to appoint an Acting CEO with effect, essentially, from the evening of the 27th, the morning of the 28th?---Yes, that's right.

Having regard to this email and that time frame, that would mean your Acting CEO would only be an Acting CEO for the Wednesday, the Thursday, the Friday?---That's correct.

40 And then as I understand from other evidence - - -?---Provided Mr Mileham returned, yes.

45 Yes. As I understand on other evidence that we have heard from the Inquiry, the CEO or Acting CEO is effectively on call over the weekend and on public holidays, is that your understanding?---I don't know. I've never called a CEO on the weekend.

So you're not aware whether or not there's a policy or an expectation that the CEO be on call over the weekends and public holidays?---I would expect that they would be available - would have to be available and in the policy wording, I think that was (indistinct)

5

[12.30 pm]

So your Acting CEO would be Acting CEO for those three business days?---That's correct.

10

The Wednesday, Thursday, Friday?---Yes.

And possibly on call on the Saturday, Sunday, Monday?---Yes.

15

And if this suggestion that Mr Mileham was going to return to work is accurate, you would have Mr Mileham back?---Correct.

20

So having regard to the fact that you would only need an Acting CEO for three days, did you give any thought to whether or not you really needed to go ahead with the motion on that urgent basis?---No, because this was all conjecture as well. We hadn't received any sort of evidence to indicate that Mr Mileham was in fact fit to return to the position of CEO and I remember considering that.

25

When you say it's all conjecture, I can ask you to look at the email and you see Mr Mileham writes, through Ms Moore, do you accept that?---Yes.

:

30

*I confirm that my currently certified medical leave is set to expire such that my first day back at work will be Tuesday, 6 March.*

There's nothing in that - - -?---The fact that - - -

35

Ms Barton, if I can finish my question, please. There's nothing in that, is there, that's conjecture?---The fact that his current - - -

Ms Barton, is there anything in there that's conjecture?---No.

40

In fact, this is a piece of correspondence effectively from your substantive CEO telling you he will be back at work on the 6th, isn't it?---I presume it was copy and pasted from the CEO's email.

45

But you're accepting it's from Mr Mileham?---It was from Rebecca Moore but the excerpt is from Mr Mileham, I presume.

Yes. You will see that above the bit in italics, Ms Moore writes, "Please find below an email received from the CEO which he's asked the ELG to distribute on

his behalf"?---Yes.

And at the time of receiving this, did you have any reason to doubt it was from Mr Mileham, the part in italics?---No, I did not have any reason to doubt.

5

Is there any reason why you doubted that he would return to work on 6 March?---I found it quite extraordinary that someone would be able to return so quickly from sick leave.

10 Why did you find it extraordinary?---Well, working in worker's comp for many years, stress is not something that you just simply recover from.

So based on that experience, you thought Mr Mileham, when he wrote this, couldn't possibly have been genuine in his return?---There was no evidence provided that he would actually be fit to return on the 6th.

15

Is his email not evidence?---No.

That he considered himself fit to return?---He may have thought himself fit to return.

20

Why was that not sufficient for you to be satisfied that he's likely to return on that date?---I don't think it's unreasonable to expect a medical certificate certifying him fit to return to his role.

25

That's not my question, Ms Barton. I appreciate you might think that but why is it that that's not sufficient. The CEO's gone on stress leave, he's taken it upon himself to write to Council and say, "I'm going to be back on Tuesday"; why is it that you don't accept what Mr Mileham is writing?---It seemed ingenuine and convenient.

30

Why? We will split that answer in two. Why was it ingenuine, to adopt your word? I'm not sure you'll find the answer on the screen, Ms Barton?---No.

35

You said you found it ingenuine and I'm asking you why?---Yes, and I'm thinking about why.

Did you not know when you answered the question and you said ingenuine, you didn't know the reason when?

40

MR HOUWELING: In fairness to the witness, Mr Commissioner, if she wishes to consider her answer, that's entirely - - -

COMMISSIONER: And I'm giving her the opportunity to do so.

45

MR HOUWELING: Thank you, Mr Commissioner.

WITNESS: Thank you. I guess I found it ingenuine because the CEO had recently gone on sick leave and then was all of a sudden coming back. To me, that raised red flags.

5 MR BEETHAM: Why was it all of a sudden, what do you mean by that?---Well, he's all of a sudden written to us saying that, that he's coming back.

10 Could part of that motivation simply be that he had heard you were having a Special Council Meeting that afternoon to appoint an acting in his role?---Could be, I don't know.

15 You also described the email as convenient, can you explain what you mean by that?---It was sent on Tuesday, 27 February at 3.25 pm, hours before the special - -

15 You might need to expand upon that for me?---That's hours before the Special Council Meeting.

20 So why was that convenient? Convenient for what?---For the purposes of trying to persuade Councillors not to go ahead with the Special Council Meeting.

25 If Mr Mileham genuinely wanted to return to work on 6 March, genuinely intended to return to work on 6 March and genuinely held the views in the last paragraph of that email, you would expect him, wouldn't you, to tell the Council before the Council meeting?---Yes, but I would expect him to provide certification that he was fit as well.

30 Just in terms of the convenience of the timing, it wouldn't be unusual, would it, to be told then?

MR HOUWELING: I object.

35 COMMISSIONER: Is this an objection that should be heard in the absence of this witness?

MR HOUWELING: Yes, perhaps.

40 COMMISSIONER: I suspected it was. Ms Barton, I'm going to ask for you to be excused from the hearing room?---Thank you, Commissioner.

**WITNESS WITHDREW.**

COMMISSIONER: Yes, Mr Houweling.

45 MR HOUWELING: Thank you, Mr Commissioner. Mr Commissioner, I'm happy for learned counsel to set the platform for simply one word and it's the word "usual", so there would be a platform which would need to be established to enable

the witness to answer the question sensibly. I'm sure there's a basis, I'm sure there must be a platform for that, so that she's able to consider what the real word "usual" is. From what I can see, and I will be seeking leave eventually to examine, but the email was received at 3.25 pm, the meeting had been called for 5 pm, at least on the minutes or the proposed special resolution. So the word "usual" in that context of a meeting taking place about an hour and a half later probably would need to have some basis or some platform. That's my only submission, it's very brief.

10 COMMISSIONER: Yes, thank you, Mr Houweling. Mr Beetham?

MR BEETHAM: I'm happy to withdraw and move on, sir.

15 COMMISSIONER: Very well. Mr Houweling, you've only been here a short time. I have no difficulty with objections of that kind, with one counsel approaching the other before making a formal objection and that sometimes saves a lot of time. It's not a criticism of you, it's just a more efficient way of dealing with these kinds of objections.

20 MR HOUWELING: Thank you, Mr Commissioner.

COMMISSIONER: Madam Associate, would you please have the witness brought back into the hearing room. Ms Barton, please resume your seat in the witness box.

25

**MS Alexis Louise Foster BARTON, recalled on former affirmation:**

30 COMMISSIONER: Ms Barton, in your absence, your counsel made his objection and it was resolved and your removal from the hearing room is no reflection on you whatsoever?---Thank you, Commissioner.

MR BEETHAM: Madam Associate, could I ask you now to bring up a different document which is the document at 11.0551, TRIM reference 14324.

35 COMMISSIONER: Thank you.

40 MR BEETHAM: Madam Associate, if I could ask you to just enlarge the top portion of this document. Ms Barton, can I just ask you to read the heading to this document, the one that starts, "Administration advice", just to yourself and maybe the first couple of paragraphs, just to familiarise yourself with the document. Just let me know when you've read that, sort of, first couple of paragraphs?---I've read the first three paragraphs.

45 Thank you, Ms Barton. Having read those paragraphs, do you recall ever seeing that document before?---No, I don't, Commissioner.

Madam Associate, if I could ask you just to go to the bottom of the document, and

if I can ask you to just carefully read that last paragraph, and if you need that enlarged on the screen, please let me know?---Sure. I've read the last paragraph on the page.

5 Having read that, does that refresh your memory as to whether you've ever seen that paragraph before?---No, it does not.

Thank you, Madam Associate, that document can come down. Ms Barton, you gave some evidence that your view was, I think that Ms Battista was your preferred Acting CEO, is that right?---Yes. I thought Paul Crosetta or Annaliese Battista were two good candidates.

10

I think you expanded upon Ms Battista, can you expand upon why you considered Mr Crosetta a good candidate?---I'd had previous dealings with Paul Crosetta and I believed that he handled the matters in a timely way and very - he did a very good job. He also had a lot of experience as well.

15

In?---In Local Government.

20 Mr Crosetta?---Yes. That was my understanding, he had experience, as a Director.

Within the City of Perth?---That's correct.

Did he understand he had any other Local Government experience?---Not that I was aware of.

25

So when you say "lots of Local Government experience" you're just talking about in his capacity as Director of Construction and Maintenance at the City of Perth?---That's right, and I had dealings with him that led me to believe that he was very good at his job.

30

Can you give us an example of one of those dealings?---There was a complaint from a resident in the Nedlands area, I believe, and it was directed to me. It was then handled by Paul and the matter was resolved very quickly, so - - -

35

Did you have a view as to the appropriateness of the other Directors at the City?---No, I did not.

So you didn't have a view about Ms Barrenger?---No, I did not. I didn't have any dealings directly with Ms Barrenger on any particular issue.

40

Is that the same with Ms Moore?---Ms Moore, I had dealings with in regards to parking - in regard to parking.

Did you have a view as to whether or not she would be an appropriate CEO?---No, I did not. They were limited dealings. Most of my dealings were with Annaliese and Paul.

45

So you had no view about Ms Moore, is that right, and her capacity to be an Acting CEO?---I had no experience of Ms Moore to suggest that she would not be able to be - - -

5

Did anybody, any of your fellow Councillors express any views to you about what they thought about Ms Moore as an Acting CEO?---No, not that I recall.

What about the other Directors whom we have been speaking about?---No, not in their capacity to Act as CEO, no.

Madam Associate, could you please bring up the document at 11.0517, TRIM reference, sir, 14314.

15 COMMISSIONER: Thank you.

MR BEETHAM: If I could ask you, Madam Associate, just to zoom in on that email in the middle of the page. Sir, while that's happening, I can indicate I'm likely to finish fairly close to 1 with my questions for Ms Barton.

20

COMMISSIONER: Thank you.

MR BEETHAM: Is that large enough for you to read there, Ms Barton?---Yes, it is.

25

You will see it's an email from Mr Harley to Mr Limnios, copied to others, including yourself?---Yes, that's correct, and it's my correct email address.

By correct you mean - - -?---Well, my private email address.

30

You will see Mr Harley says a number of things but in about the middle of the email he writes:

35 *Steve/Lexi, if Rebecca is willing to take this extraordinary step despite the clear will of Councillors, that gives you some indication of how she would function in the Acting CEO role.*

Do you see that?---Yes, I can read that.

40 [12.45 pm]

Can you recall receiving that?---No, I don't recall.

45 And I take it you don't recall having any other discussions with Councillor Harley, for example, about the appropriateness of Ms Moore as the Acting CEO?---No, I don't.

Was there any discussion amongst the Councillors in the lead-up to the Special Council Meeting about simply leaving the City without an Acting CEO?---Sorry, could you repeat that?

5 Was there any discussion amongst the Councillors in the lead-up to the Special Council Meeting about leaving the City without an Acting CEO?---No, not that I recall.

Did you give that idea any consideration yourself?---No, not that I remember.

10 Following the Special Council Meeting, you had meeting with the Minister, is that right, the following day?---Yes, I believe so. I can't remember the exact date of the meeting. It was in the afternoon.

15 Do you have a recollection of the meeting itself?---Yes, some.

Can you recall who was there?---I remember Janet Davidson being via telephone, the Lord Mayor was there, Councillor Adamos, Hasluck, Green, Limnios, Chen - I think that's it, isn't it?

20 And you?---And me, yes, of course.

At that meeting, we have heard varying accounts of that meeting, is it your recollection that at that meeting the Minister indicate that the Minister was going to be suspending Council or did the Minister indicate something else?---The Minister indicated that he could make two decisions: one, that he could choose to suspend the Council; the second was that he could give a show cause notice under the Act, but he later then said that it was his intention that he would be suspending the Council.

30 So he put the two options forward and am I right in understanding that at the end of the meeting, he indicated his intention to suspend Council?---Mm hmm.

35 During the intervening period when he put the options and made the decision, was there discussion about which option was better?---No, I don't think there was an intervening period. My recollection of the meeting was that he said, "I have these two options but this is what I think I'm going to do at this point in time."

40 Did he ask or did anybody express any views as to those options?---Not to the options. People expressed views to the fact that he was - his intention was to suspend.

Did you express a view?---I didn't express one, no.

45 Did you hold a view?---Yes.

What was it?---Shock. Not necessarily - more shock that he would not afford a

show cause notice to the Council.

So your preference, had you been given a choice, was that a show cause notice would be given?---Yes, that's correct.

5

Did you anyone else express a view as to their - - -?---I remember that Councillor Harley spoke, Councillor Hasluck spoke and I remember Councillor Green speaking, and Adamos - everyone spoke except for Chen and myself actually.

10 Okay?---So everyone except - I can't remember Chen making any comments, but, everyone else did.

So the rest of the Councillors, including the Lord Mayor spoke?---Yes.

15 I think you mentioned Councillors Harley and Hasluck first up?---I can't remember what order the Councillors spoke in.

Can you recall what Councillor Harley said?---It was along the lines of requesting that the Minister consider providing us a show cause notice, it was the same with  
20 Hasluck as well.

Hasluck expressed the same view?---That's right.

25 And the other Councillors, did they express the same view?---I can't remember. Green was shocked and asked the Minister to consider a show cause notice. Adamos and Scaffidi seemed somewhat happy about the decision. I can't remember what they said though, I can't remember their exact words.

30 What give you the impression that they seemed somewhat happy?---It was something to do with not being surprised or - I can't remember their exact word, there was a word - I know that Councillor Green wrote it down in the meeting.

Do you recall - so one of the two said something?---Yes, they both said something but I just can't remember the exact words of what it was that they said.

35

Do you recall, and I imagine you do since you brought the transcript with you, the interview you had with the Inquiry's investigators last year?---Yes, I recall having an interview, yes.

40 In that interview you said to the Inquiry investigators that, "The Lord Mayor commented that she was pleased with the Minister's decision or intention to suspend Council", you say that at transcript on the date, 24 July 2018 which is at 11.0148?---I accept that I would have said that. It was something along those lines, yes.

45

Having that stated to you, does that refresh your memory at all?---Not really of her exact words, no. I couldn't be sure.

If somebody else was to give evidence to the Inquiry that that's what the Lord Mayor said, would you quibble with that?---I guess it depends on the words.

5 If they used those words from - - -?---That I used from my transcript?

Yes?---No, I wouldn't argue with that.

10 In the time that's available before the break, the lunch break, can I ask you now some general questions, Ms Barton, about your impressions of the culture at the City of Perth during your time there?---Yes.

15 Can you describe in general terms your impression of the culture of the City of Perth in the period while you were a Councillor?---I was only a Councillor at the City for four months, or thereabouts.

Yes?---There was definitely the sense of a divide between Council and the Administration.

20 What gave you that sense?---Right from the beginning, we were constantly being told that we were not to communicate, essentially, with the Administration and I found that to be unproductive.

25 Some of the words that have been used to describe the culture of the City around this time by other people are words like toxic and a culture of entitlement; did you share those views at all about the culture of the City?---I didn't have any first hand experience of those particular views.

30 So is the answer that no, you didn't share those views because you hadn't had experience of those - - -?---No, I didn't share those views. It was clear that there was something there but I didn't have time to experience it.

35 Did you have a view as to, or did you come to reach a view about the relationships between Councillors and about whether or not they were healthy, professional relationships, or fractured relationships or something in between?---There were some Councillors I spoke with on a regular basis, others not as much but a divide? No.

40 No? Was your relationship with all Councillors a good relationship in your view?---I would like to think so, yes.

Did you observe any relationships between Councillors that you considered were perhaps not quite so good?---I didn't observe any, no.

45 Notwithstanding that you were only on Council for a short period of time, did you form any views during that period about how the culture of the City and the functioning of the City could be improved?---Yes.

5 Can you share those with the Commission?---I believe closing the gap between Council and the Administration would have helped greatly. I think that there was a need for mutual respect between the Council and the Administration. I think that would have helped both sides, allowing some communication between the two.

10 Is that a reference to what I understand you to be saying that you found it difficult to communicate with the administrative staff including, because of this CE Inbox?---Yes.

So you think steps that could be taken to break down those barriers would be a positive step to be taken?---Yes.

15 Am I right in thinking that your view is that would improve the functions of the City?---Breaking down the barriers between Council and Administration, yes.

20 Are there any other insights you gained during your time as a Councillor about how things could be improved, culturally or otherwise at the City?---Perhaps more team building exercises between the Administration and Council would have improved relationships.

Did you attend - - -?---We did attend some workshops regarding that.

25 I was about to ask you about that. Did you attend a workshop held by an outfit called Bartlett Workplace?---Yes, I did.

Did you find that helpful?---Yes.

30 Do you think work workshops of that type would have assisted the relationship between the Executive and the Council?---Yes, I do.

35 Is there anything that during your time at the City you thought was particularly bad about the City's cultural roles or how it functioned, or anything that you thought was particularly good about those things?---No, not in particular.

Thank you, sir. Those are my questions.

40 COMMISSIONER: Thank you, Mr Beetham. I will see if there are any applications.

MR BEETHAM: Yes, sir. I understand Mr Houweling has foreshadowed at least one.

45 COMMISSIONER: Very well. Mr van der Zanden, do you have an application?

MR van der ZANDEN: No, I don't, sir.

COMMISSIONER: Thank you. Ms Young, do you have an application?

MS YOUNG: No, Commissioner.

5 COMMISSIONER: Thank you. Mr Wyatt, do you have an application?

MR WYATT: No, Commissioner.

COMMISSIONER: Thank you. Ms Siavelis, do you have an application?

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MS SIAVELIS: No, Commissioner.

COMMISSIONER: Mr Skinner, do you have one?

15 MR SKINNER: Not at all, may it please you, sir.

COMMISSIONER: Thank you. Mr Hart?

MR HART: No, Commissioner.

20

COMMISSIONER: Thank you. Ms Ford?

MS FORD: No, Commissioner.

25 COMMISSIONER: Thank you. Mr Harris?

MR HARRIS: No, sir.

COMMISSIONER: Thank you. Mr Malone?

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MR MALONE: No, sir.

COMMISSIONER: Thank you. Ms Randall?

35 MS RANDALL: No, Commissioner.

COMMISSIONER: Thank you. Ms Saraceni?

MS SARACENI: Yes, sir. Yes, I do.

40

COMMISSIONER: You do have one?

MS SARACENI: Yes.

45 COMMISSIONER: In that case, the convention that the Inquiry's adopted is that the witness is outside of the room while I hear the applications, so I will have you excused from the room?---Yes, Commissioner.

**WITNESS WITHDREW.**

5 COMMISSIONER: Yes, Ms Saraceni.

MS SARACENI: Commissioner, the topic is in relation to evidence given by this witness as to Mr Mileham's return to work after a period of sick leave. In particular, she gave evidence of her experience in worker's compensation and I would like to ask her whether she realised he was on sick leave, not on worker's compensation leave, whether she'd ever seen or asked to see the medical certificate which certified the period of unfitness, the fact that the period of unfitness stopped on 5 March 2018, the fact that there is no requirement for - when there's sick leave as opposed to worker's comp leave, to have a fitness certificate, that's not a necessary requirement, and then put to her the fact that her understanding that Mr Mileham was potentially not ever going to come back or not for a long time was in fact because of the allegations he'd made of breach of his contract of employment and breach of his workplace rights following the Project Percy matter, and we have already seen an email that Mr Mileham sent to the Lord Mayor and the other Councillors on 14 February.

20 COMMISSIONER: So it's a number of topics?

MS SARACENI: It's all to do with Mr Mileham's return to work, sir, but a series of questions going to that point.

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

MR BEETHAM: There's no objection to that, sir.

30 COMMISSIONER: No, I wouldn't have thought so. Thank you, you have leave.

MS SARACENI: Thank you, sir. There's just one thing, I did ask solicitor assisting if he had a copy of the first medical certificate and he said he didn't but potentially over the break, that might be able to be provided, otherwise I would be asking without the document being able to be shown to the witness, as I understand it

[1.00 pm]

40 COMMISSIONER: You're assuming that I will not ask you to ask these questions straightaway?

MS SARACENI: I can. I guess I'm just flagging that I don't the document to put to the witness, sir.

45 COMMISSIONER: Of course, Ms Saraceni. That would be entirely fair that you have the document.

MS SARACENI: Thank you.

COMMISSIONER: Thank you. Mr Houweling?

5

MR HOUWELING: Thank you, Mr Commissioner. I do have a number of questions. Quite properly the basis to the view of who made the alternate CEOs was put by my learned friend. He came back to Mr Paul Crosetta and asked Ms Barton the basis on why she at least would think he might be an appropriate person. She was asked about Ms Battista, explained that there was some efficiency and that she was qualified and able do the work, but there would be a basis to which that view or where that view came from. Of course, that would ultimately go to our ultimate submission relating to the fact that she came to an independent view as to who it was who would be able to fulfil that particular role and it really relates to the dealings with she then had had with Ms Battista in respect of that role. That's one area.

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15

COMMISSIONER: Yes.

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MR HOUWELING: I don't know whether you wish to hear from counsel on each one of them?

COMMISSIONER: How many do you have?

25

MR HOUWELING: I think I have three.

COMMISSIONER: Perhaps you could give me the other two and then I will hear from Mr Beetham.

30

MR HOUWELING: Yes, and I will do so a little more promptly.

COMMISSIONER: You don't need to be prompt, take as much time as you need.

35

MR HOUWELING: Thank you, except I've got another court waiting for me on a reserved decision at 1 o'clock. So this of course takes priority, Mr Commissioner.

COMMISSIONER: All of a sudden your submission just might have become more persuasive.

40

MR HOUWELING: Thank you. The events of the 27th in the Special Council Meeting have a chronology. I would like to take the witness somewhat through a little bit of a chronology because on the 27th there of course was the email that had come in at 3.25. There was a meeting with Mr Douglas at 4 pm. The notes of that meeting taken by Ms Barton have been reproduced and provided to this commission. That was held at 4 pm and then at 5 pm there was a Special Council Meeting, together with a Special Council Meeting agenda. Nowhere in the notes or the Special Council Meeting agenda does it appear that the Council was then

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formally placed on notice that it was the intention of Mr Mileham to have returned to work and a number of questions about that particular chronology. It may well be that the audio will be of assistance in respect of the meeting of the 27th.

5 Unfortunately, I don't have that available to me so it might be something that the commission says, at least in respect of what the meeting was informed on the 27th isn't going to be best assisted by the witness' recollection as to whether or not at the beginning of the meeting it was stated, "Is everybody here? Is everybody aware of the email that had been received at 3.25 pm today that Mr Mileham intends to return on 6 March?"

10

Unfortunately, I haven't got the audio so I'm unable to help the Commission in that respect but I know that it's available, so I simply wish to at least ask. It might be that occurred before the audio kicked in in any event.

15 COMMISSIONER: I understand the point.

MR HOUWELING: The last relates to the culture. My questions go to, after 8 January, whether Ms Barton noticed a noticeable change in culture within the City of Perth and in particular, the change in the way within which the Chief Executive Officer was then interacting with not only the Lord Mayor. As I understand, in her  
20 initial evidence she gave evidence that there was laughing and joking while other persons were speaking between the Chief Executive Officer and the Lord Mayor. She touched on it briefly in respect of the question of mutual respect, but it was also in respect of the silos that effectively were being created by the Chief  
25 Executive Officer so that the Councillors themselves were unable to have interaction with the people at the operational level, but at least in respect of the Chief Executive Officer and the Lord Mayor taking a view as to, or operating in a manner which gave an impression to the rest of the Councillors that they were effectively running the show and had great camaraderie together, whereas the other  
30 Councillors were treated in a particular way.

There is an adjunct to one of those questions and that is that when Ms Barton first became aware of when the Chief Executive Officer in fact went on stress leave because he also had annual leave, as she understood, planned. So the fact of the  
35 Chief Executive Officer going on stress leave was not something that she as a Councillor evidently had understood immediately. It may be of assistance to the Commission to ask or to explore a little about when at least she became aware of the Chief Executive Officer first going on stress leave. That's the brief compass of the issues.

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COMMISSIONER: So that's a fourth matter?

MR HOUWELING: It is. I would hope that that would be incorporated in, in fact, the chronology.

45

COMMISSIONER: Presumably as a result of the helpful Post-It note that you were handed by Ms Waugh?

MR HOUWELING: It is, precisely. It wasn't asking me if I wanted water.

5 COMMISSIONER: Thank you. Mr Beetham, are you in a position to respond to those four matters?

MR BEETHAM: I am, sir.

10 COMMISSIONER: Thank you.

MR BEETHAM: In relation to the first one, the basis for Ms Barton's view about Annaliese Battista, my recollection of the evidence is Ms Barton explained the basis for that view and that is that she had several dealings with Ms Battista during her time as a Councillor and had worked with her before and that's where she  
15 formed that impression, so I don't know if there's anything further that can be said that would assist the Inquiry in that regard.

COMMISSIONER: Yes.

20 MR BEETHAM: In relation to the second point, I've got it written down here as 2(a), I don't know what you have it written down as, sir, as to the documents that my friend was referring to being the notes that Ms Barton took at the meeting prior to the Special Council Meeting and any correspondence, the agenda and minutes, as I understood it. Those documents will speak for themselves, sir, as to whether  
25 or not there was any formal confirmation of Mr Mileham's return to work. I don't know if there's any benefit in taking Ms Barton to the documents in those circumstances.

As to the audio of the Special Council Meeting, I have listened - I have had the  
30 benefit of listening to that. My recollection, sir, and I will check this over the break, is that Ms Moore does bring to the attention of the assembled Councillors that Mr Mileham was to return to work 6 March, but as I say, I can check that over the break and if that's the case, confirm that with my learned friend. If that is the case, I think the audio would again speak for itself and there would be no need to  
35 take Ms Barton to it for that purpose.

In relation to the change in culture, I think it's from 8 January - I understand that's the date the Lord Mayor returned to the City - I have no objection insofar as questions are asked about a change in the culture. I would suggest the questions  
40 would need to be quite open questions in respect of that topic, sir.

As to the last - what I understood to be the last topic about when Ms Barton became aware that Mr Mileham went on stress leave, my recollection of the materials available to the Inquiry is that there is an email and my recollection is  
45 that's an email forwarded or prepared in conjunction with the Lord Mayor and Mr Mileham to the Councillors to indicate that he would be going off on leave at a certain date. I don't have the reference at my fingertips to that, sir, but again, I

could check that over the break and if that email exists and reveals that it was sent to Ms Barton on that particular day, then again that document will speak for itself.

5 COMMISSIONER: Thank you Mr Beetham. This is what I will do. I'm not persuaded in relation to topic 1 that there is any purpose in exploring that any further. Ms Barton had an adequate opportunity to give her reasons for why she had a preference for Ms Battista as the Acting CEO, and so I don't believe that the purposes of the Inquiry would be advanced any further by that matter, so I'm not going to give you leave on that, Mr Houweling.

10 In relation to the third topic, the matter of culture, I am going to give you leave to ask some questions on that. As Mr Beetham has rightly pointed out, it's a matter where you should exercise some discretion in not asking leading questions because it really is her view that I want.

15 MR HOUWELING: Yes, sir.

20 COMMISSIONER: In relation to topics 2 and 4, I'm not going to rule on those at this stage and the reason for that is because, I've come to the view that there ought to be further conferral over the lunch break about what the documents which need to be reviewed do and say and it may be that after that conferral, you might be of the view that there's no need to explore those matters further. If, on the other hand, you come to the view that you do need to take it further, then you can let me know and then I will rule on it.

25 MR HOUWELING: Yes, and perhaps if the audio shows precisely what learned counsel is suggesting, that stands on its own. I haven't had the benefit of that and if there is an email informing all Councillors of when stress leave was taken, that will be better than the witness' memory in any event.

30 COMMISSIONER: Indeed, Mr Houweling. Thank you very much. I will now adjourn the Inquiry until 2.15.

35 **(Luncheon Adjournment)**

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45

HEARING COMMENCED AT 2.20 PM

5 COMMISSIONER: When I adjourned, Mr Houweling, I had not yet dealt with all of your application. I understood there was going to be some conferral between that adjournment and now; has that happened?

10 MR HOUWELING: That has taken place and that's removed the need for some of the questions on the audio which show some evidence about the question of when Council were informed, that's the Council as a whole collected at that special meeting, were informed of the return of the Chief Executive Officer, so that satisfies that. The second matter is that there is an email which is in record, having been sent to all Councillors, advising of the date on which the Chief Executive Officer has taken stress leave. I have asked Counsel Assisting if, when it comes to ultimate submissions, that we would have access to those and he's confirmed that  
15 with leave, we would be able to seek that access.

COMMISSIONER: All right. I will hear from him on that.

20 MR HOUWELING: That only leaves really one question or one group of the questions.

COMMISSIONER: Yes.

25 MR HOUWELING: It goes to the question of culture and I believe, Mr Commissioner, you've already given leave in respect of being able to ask about the change of the culture that occurred upon the return of the Lord Mayor.

COMMISSIONER: I have.

30 MR HOUWELING: Thank you. That really only leaves that question with that other question or that other matter being able to be obtained from the Commission or from the Inquiry at a point in the future.

35 COMMISSIONER: Thank you, Mr Houweling. Mr Beetham, what is the position with submissions?

40 MR BEETHAM: Mr Houweling has asked me before the matter resumed whether it would be possible to have access to those materials if needed for the purposes of submissions in due course and as Mr Houweling's indicated, I said that is possible subject to the leave of the Commission, sir.

COMMISSIONER: Thank you.

45 MR BEETHAM: Sir, can I also just note for the benefit of the commission, the email to which Mr Houweling referred is in brief 12 at 0.707. I think Mr Houweling and Ms Saraceni brought this to my attention just in passing, referred to it as indicating taking of stress leave. My understanding of the

language of the email itself is "medical leave", so I just wished to make it clear for the record that the language is "medical leave."

5 COMMISSIONER: Just bear with me for one moment.

MR BEETHAM: Certainly, sir. Pardon me, I misspeak, "personal leave", and you will see that at the bottom of 707 in the last paragraph of the email.

10 COMMISSIONER: Yes, thank you. Ms Saraceni, you also indicated that you might have a need to have a look at some documents over the luncheon adjournment; have you had that opportunity?

MS SARACENI: Yes, I have, thank you, Commissioner.

15 COMMISSIONER: Does that affect any part of your application?

MS SARACENI: No, in relation to sick certificates, there ought to be two and the Inquiry's only been able to find one but the one is actually the one is that the crucial one, thank you, sir.

20 COMMISSIONER: Thank you, Ms Saraceni.

MR HOUWELING: Mr Commissioner, one of the problems I had was that I hadn't read the email, I did see the date, which referred to personal leave - - -

25 COMMISSIONER: Do you want to do that now?

MR HOUWELING: I can take learned counsel's word on that.

30 COMMISSIONER: I would be quite happy for you to look at it and take a bit of time to do that.

MR HOUWELING: I might just have a bit of a word because that is a little bit of a different point, if I may.

35 COMMISSIONER: Yes. Another good point, Ms Waugh? Have I got that wrong, Mr Houweling?

40 MR HOUWELING: An excellent instructor, Waugh for the defence. The email is in fact clearer than I had at first assumed and now having been shown the email and read it, it refers in a little more detail about the nature of the personal leave. So I won't press that question.

45 COMMISSIONER: Thank you, Mr Houweling. Madam Associate, would you please have Ms Barton brought back into the hearing room. Please resume your seat, Ms Barton,

**MS Alexis Louise Foster BARTON, recalled on former affirmation:**

5 COMMISSIONER: Ms Barton, if your absence, I heard and dealt with two applications to examine you and you will be examined, therefore, by Ms Saraceni on behalf of Mr Mileham, and also by your own counsel. I've invited Ms Saraceni to proceed with her questions first, but before that happens, I just want to make it clear to you that your exclusion from the hearing room is no reflection on you?---Thank you, Commissioner.

10 Ms Saraceni.

MS SARACENI: Thank you

EXAMINATION BY MS SARACENI

15 Ms Barton, I have some questions in relation to the evidence you gave earlier today about Mr Mileham, his absence from work and then his return to work, do you recall giving that evidence earlier?---Yes.

20 Your evidence so far is that on Saturday, 27 February when you signed the motion that we have looked at, calling for the Special Council Meeting - - -?---Wasn't that on - the Special Council Meeting was on the 27th?

25 I apologise, the 24th. I beg your pardon, the Saturday was the 24th?---Sorry, I was a bit confused.

Sorry, I've written it down incorrectly. You signed the motion on 24 February, the Saturday?---That's correct, yes.

30 And your evidence, as I've recorded it as at the time you signed it, you were unaware that Mr Mileham would be returning to work, do you recall giving that evidence?---Yes.

35 Had you seen Mr Mileham's sick leave certificate?---No, I had not.

Did you ask HR at the City to view Mr Mileham's sick leave certificate?---No, but it was raised in a meeting, I can't remember which one.

40 A meeting of whom?---It was a committee meeting, I believe. It may have been when we found out that Martin had gone on sick leave.

45 What sort of committee?---It may have been - I can't remember exactly which meeting it was but I want to say the CEO Performance Review Committee meeting.

Were you a member of the CEO Performance Review Committee?---All of the Council attended.

That was for the Annual Performance Review of Mr Mileham?---That's correct.

5 You don't have a recollection of the date though of that?---No, the exact date I can't remember.

I don't have access to the documents so I'm sorry, I can't help you there?---No, that's okay.

10 But if we focus back on Saturday, 24 February?---Yes.

Your evidence remains that you weren't aware when Mr Mileham was coming back to work, that's correct?---No - yes.

15 Do you recall receiving an email from Mr Mileham sent to the Lord Mayor and to all Councillors explaining his absence from work before 24 February?---Not before 24 February, no.

20 Madam Associate, would it be possible for you to call up, please, document 12.0702. Sorry, Madam Associate, you'll have to make that a bit larger, I can't read that. If you just take a moment to look at this email, 14 February 2018 at 8.01 from Mr Mileham to the Lord Mayor and it's addressed, "Confidential to Council"?---Yes

25 [2.30 pm]

Do you recall receiving that email?---May I read it?

30 Of course?---Yes, I do remember receiving this email. I don't know if it was this email, it may have been forwarded to me at a different date.

But you remember reading it?---Yes.

35 Were you aware that Mr Mileham was originally scheduled to go on annual leave?---Yes.

40 In his absence on annual leave, Mr Mianich was scheduled to act as a CEO?---I was only informed of that - I believe it was at the CEO Performance Review Committee meeting. I can't remember exactly. I wasn't consulted prior to that decision being made.

45 Mr Mileham has advised the Council here that he was not going to take annual leave but instead was taking personal leave. Do you recall being advised of that?---I remember the Lord Mayor telling me that in the meeting. I believe I received this after that.

Yes. We don't have a date for that?---Yes.

Unless solicitor assisting might be able to advise but I'm not able to help you there, Ms Barton. Just moving on from there though, you read that email and then you gave some evidence in relation to your experience in worker's compensation law and you gave that evidence in relation to why you understood or thought Mr Mileham wasn't going to come back potentially at all?---It's a reason why red flags were raised, in my - - -

When did Mr Mileham proceed on worker's compensation leave?---He didn't.

You would accept that under Mr Mileham's employment contract, that he's entitled to sick leave?---Yes.

And that in accordance with the usual legal standards, it's 10 days sick leave per year?---Yes.

And that the sick leave unused accrues from year to year?---Yes.

So when Mr Mileham tells you he's proceeding on personal leave, you did not know the type or the reason why he was taking personal leave, did you?---When I found out, when the Lord Mayor told me - she told all of us that it was because of the Percy Project.

Because of the?---The investigation into Mr Mileham.

The Project Percy matter, is that what you said?---I believe so, yes. I'm not privy to any of those documents so I don't - - -

No, but before I thought you said something that sounded like the PP, Project Percy?---Yes. This is what's referred to in this email in front me.

Madam Associate, could the witness perhaps be shown a document which is marked TRIM 15397. I understand there is no other number for it. I think it's over the page, Madam Associate - no, it's a sick certificate. Another page, perhaps - yes. If you just take a moment to look at that. Is this the first time you've seen that document?---Yes, it is.

This is a medical certificate for Mr Mileham for the period 21 February up to 2 March 2018 inclusive, do you see that?---Yes.

We have heard evidence 2 March was a Friday, you'd accept that?---Yes.

And this particular certificate - - -?---I don't have a calendar so I will rely on you.

That's the evidence before the Commission, it's a Friday?---That's fine.

This certificate talks about being unfit, do you see that?---Yes.

But there's no description as to the reason for the unfitness?---That's correct.

5 On what basis did you form, or do you say that Mr Mileham was on stress leave as opposed to personal leave?---That was the impression that I got from what the Lord Mayor had said during the meeting when I first learned about him going on leave.

10 Thank you for clarifying that. If the CEO, Mr Mileham, was unfit only to the end of business on 2 March 2018, on the Friday, given your earlier evidence you would accept that he would have been ready to be on call on Saturday, the 3rd, Sunday, the 4th and on the public holiday, Monday, 5 March?

15 COMMISSIONER: Yes, there's an objection.

MR HOUWELING: I wonder if I could speak to - - -

COMMISSIONER: Yes, please confer.

20 MS SARACENI: Sorry, perhaps if I could ask you that in a different way, Ms Barton. Your earlier evidence when Counsel Assisting was asking you some questions was in relation to how many days Mr Mianich was going to be the Acting CEO and he took you through the fact that he was going to be the Acting CEO on set dates, do you remember that evidence there?---Yes, I do.

25 And that Mr Mileham was scheduled to return to work on Tuesday, 6 March?---Yes.

30 And there were some questions asked of you in relation to a CEO works only on business days or whether the CEO works in addition to business days, do you recall that?---Yes.

35 As I recall your evidence, you said, if I could paraphrase that Saturday, Sunday, public holidays, the CEO is to be on call, or words to that effect; I think that was your evidence?---I think so. I don't - yes. There was a discussion about whether he would be on call on the weekend or on public holidays.

40 And is that your view, that a CEO should be on call on a Saturday, Sunday and a public holiday, as well as on business days?---I would think so if it was an emergency for the City.

Ms Barton, Mr Mileham's medical certificate says that he is unfit up to and including 2 March 2018 which was a Friday?---Mm hmm.

45 Yes?---Inclusive, yes.

And I understand you haven't seen this document before?---I haven't.

But it's a document that the Inquiry has from the City of Perth records. Would you agree that Mr Mileham, after 2 March 2018, on the basis of this, would have been fit to - sorry, would not have been unfit to be available for work on Saturday,  
5 Sunday or Monday in early March?---Now I'm confused. You're going to have to repeat that.

I apologise. Yes, I phrased that very poorly. I appreciate you haven't seen this document before today but it does show that Mr Mileham's personal leave was to  
10 conclude on 2 March 2018 which was a Friday, yes?---Yes. Due to expire.

Yes?---To use his own words.

Yes, and there is no other medical certificate for Mr Mileham - sorry, I withdraw that. Hypothetically, and it is the fact that there was no other medical certificate  
15 for Mr Mileham after 2 March 2018 whilst the Council was still sitting?---Correct.

If you accept that for a moment?---Yes, I accept that.

20 COMMISSIONER: May I try?

MS SARACENI: Thank you, sir.

COMMISSIONER: This medical certificate indicates a period of unfitness up to  
25 and including 2 March?---Yes.

If we allow for a long weekend, there's nothing that you were aware of, was there, to indicate that he would not be fit for work from 6 March?---No.

30 Thank you.

MS SARACENI: Or in fact earlier, given your evidence that a CEO should be available on weekends and public holidays? So as of Saturday, the 3 March, the day after this certificate expires - - -  
35

COMMISSIONER: Be careful there, Ms Saraceni, because you're conscious of a document which speaks of 6 March.

MS SARACENI: I beg your pardon, sir?  
40

COMMISSIONER: You need to be careful because there is a document which speaks of his return to work on 6 March.

MS SARACENI: Yes, but I'm relying on this witness' evidence as to being  
45 available on call for the weekend.

COMMISSIONER: I know that, that's why I'm warning you.

MS SARACENI: Thank you, Commissioner.

5 Ms Barton, do you still maintain your position that Mr Mileham was absent on stress leave?---Yes, to the best of my recollection, I believed he was on stress leave. That was the implication.

10 I understand you're not a doctor but you've worked in worker's comp as you've said, is stress a medical condition as far as you understand?---Yes.

It's a medical condition?---Stress - I don't know, I'm not a doctor.

I don't have any further questions, thank you, sir.

15 COMMISSIONER: Thank you, Ms Saraceni. Mr Houweling.

MR HOUWELING: Thank you, Mr Commissioner

EXAMINATION BY MR HOUWELING

20 Ms Barton, you were asked some questions about the culture of the City of Perth and you were asked about the fact that, or you explained from the beginning you were told not to communicate with persons who were at the operational level?---Yes.

25 I will come to that in just a moment, but can you explain what the relationship was like and the culture was like before the return of the Lord Mayor on 8 January 2018?---Prior to the return of the Lord Mayor, it was my impression that the CEO was trying to implement some changes to improve the relationship between  
30 Council and the Administration and my understanding was that was part of the point of the CEO Inbox, along with protecting his staff.

Prior to 8 January, what was your relationship like with the Chief Executive Officer?---Prior to 8 January, I had no complaints.

35 After 8 January 2018, after the return of the Lord Mayor, take your time but explain to the Inquiry what you observed by way of a change within what is broadly described - - -

40 MR BEETHAM: Sorry, sir, I object to that. That's quite a leading question in this area.

MR HOUWELING: I'm actually - sorry.

45 MR BEETHAM: It implies a change, sir.

COMMISSIONER: It does imply a change.

MR BEETHAM: That's the only basis for the objection, sir.

COMMISSIONER: Yes. Mr Houweling, what do you wish to say in answer?

5

MR HOUWELING: Yes, I need to establish the basis and I'm trying to go too fast.

COMMISSIONER: Take your time.

10

MR HOUWELING: Thank you.

Firstly, after the Lord Mayor returned, was there a change in the culture?---Yes, there was.

15

What did you notice about the change in the culture?---Prior to the Lord Mayor returning, I felt that communication with the CEO and other Directors was a lot better. After the Lord Mayor returned, it felt as though barriers were being put up to prevent us to doing our job.

20

When you say barriers, what do you mean?---Very strict use of the Chief Executive Inbox, just vague responses to our requests or questions that - we got emails back that didn't answer the question, you had to repeatedly email back and say, "No, what about this, what about this" in your email and you're asking a very simple question and you're expecting a simple response and it was as if they were avoiding the question and I say "they" because we didn't know who the author of the emails were at that point as well.

25

You said that you were told not to communicate with officers?---That's correct.

30

Can you tell us who told you that?---Neil Douglas told us that we were not able to direct or speak with other members of the Administration except for the CEO.

When did he tell you that?---It was - I can't remember the exact day but it was towards the very beginning, so when we were first elected

35

[2.45 pm]

How did at the tell you that?---It was sort of ad hoc advice at a meeting. It wasn't provided in a document, to my knowledge.

40

MR van der ZANDEN: Sorry, I didn't hear that answer.

WITNESS: Sorry. We were - - -

45

COMMISSIONER: Not provided in a document.

MR van der ZANDEN: They were or weren't?

COMMISSIONER: Not provided in a document.

5 MR van der ZANDEN: Thank you, Commissioner.

COMMISSIONER: That's all right. Carry on.

10 MR HOUWELING: After what you described as the change, what did you notice in respect of the relationship between the Chief Executive Officer and the Lord Mayor, if anything?---I definitely noticed that there was a relationship. It was one that I didn't think was professional. There was talking during Chambers to each other when other Councillors were speaking, things like that, that I considered inappropriate.

15

Did you feel included or excluded as a result?---Excluded.

20 Have you got any other examples of what you say was the change in the culture after 8 January?---After 8 January? There were examples of when I asked, and I can't be sure of the date, but one of the - I think this was after the Lord Mayor's return when I confronted or I emailed the CEO about whether the process had been put in place to appoint a new assistant for the Councillors. The response I got didn't answer the question, I had to probe further and then when I asked the CEO whether he was willing to consider Councillors' input into the appointment, 25 because the person was our assistant, I got the response that - something along the lines of, "I will consider your opinions as much as I have to under the Act."

30 How did that compare before, to your experience of culture, together with the Chief Executive Officer before 8 January 2018?---Before 8 January, I had met with the Chief Executive Officer and I found that communicating with him was a lot easier. There wasn't as many barriers, he was much more approachable. I got more response but I can't think of an exact example right now.

35 Did you have any views as to the reasons for the change that you've described to the Inquiry?

MR van der ZANDEN: Objection.

40 COMMISSIONER: Yes, Mr van der Zanden. Do I need to hear this in the absence of the witness?

MR van der ZANDEN: No, I don't think so, but I'm not sure if it assists the Inquiry to ask about views. This witness can be asked about what she saw or did or heard.

45

COMMISSIONER: Yes. Thank you, Mr van der Zanden. Mr Houweling, how do you wish to respond to that?

MR HOUWELING: This Inquiry is clearly interested in what the perspectives are, motivations for and ways within which certain things were done and how events unfolded and the views and the ways in which things were done, and the perception of the relationships and the like, although we accept on the margins, nevertheless has some degree of importance in respect of the motivation for the way within which Council was dealing with issues, progressing certain matters which have come on regularly in this Inquiry by way of evidence and put up on the screen.

So the view of Councillor Barton, who was a newly arrived Councillor, has some degree of import in respect of the way within which she acted in her role as Councillor and I really only have that and one other question.

COMMISSIONER: So as I understand your responsive submission, it is that the Inquiry is not bound by the rules of evidence and although this evidence in answer to your question may or may not prove ultimately valuable at the end, I can receive it on the basis that I give it appropriate probative value when I hear all of the evidence?

MR HOUWELING: That is so.

COMMISSIONER: Thank you.

MR van der ZANDEN: Commissioner.

COMMISSIONER: Yes.

MR HOUWELING: And far more eloquently put than I did. I don't know if Mr van der Zanden's persisting with his objection? I don't see him rising.

COMMISSIONER: You may ask the question.

MR HOUWELING: Thank you.

COMMISSIONER: I will give it the appropriate weight in due course.

MR HOUWELING: Thank you.

Ms Barton, what was your view of the reasons for the change in the culture?---In my view - after the Lord Mayor had returned?

Yes?---It was the return of the Lord Mayor that - they coincided with this change in culture.

The examples that you have in respect of that?---There would be the email that I described - there was another email that I sent regarding, we were advised at one

point that we had to provide names of guests attending Council House and we were told that this was policy. I wrote to the person who sent the email - I can't remember exactly who it was - and said could they please provide me with a copy of the policy, never received a response. I followed it up and then was told, "You  
5 need to send this to the Chief Executive Inbox" and it was forwarded there. Then there was some time, I finally got a response. I was never provided with the policy, I don't believe it ever existed. It was this kind of thing that led to - these types of examples that led to me believing there was a change.

10 Having regard to your responsibilities under the Local Government Act, how did this affect your role as Councillor?---It made it extremely difficult to comply with the roles and responsibilities of the Council under the Act, without jumping over numerous hurdles first.

15 Thank you, Mr Commissioner. That's my questions, thank you.

COMMISSIONER: Mr Houweling. Ms Barton, the conduct of those members of the Administration that you've described changing after the return of the Lord Mayor, I assume that your conclusions about the influence of the Lord Mayor on  
20 what you perceive as a change in attitude from the Administration - - -?---That's correct.

- - - is an inference on your part?---Is a?

25 Is an inference on your part?---Yes. No, before the Lord Mayor returned, we attended numerous workshops on culture - - -

Just listen to my question?---Sorry.

30 Is it an inference on your part?---No, I witnessed the change in the behaviour of those people.

Yes, and the connection you made with the Lord Mayor - - -?---Yes, that's an inference.

35 That's an inference, isn't it?---It coincided with the return with the Lord Mayor.

And is the inference based on anything else, other than what you have told me?---No.

40 Thank you.

MR HOUWELING: Thank you, Mr Commissioner.

45 COMMISSIONER: Mr Beetham, anything arising?

MR BEETHAM: No, sir.

COMMISSIONER: Any other housekeeping matters?

5 MR BEETHAM: No, sir, nothing from me. I think that completes this witness' evidence.

COMMISSIONER: Thank you. In that case, Ms Barton, I will shortly adjourn to allow the arrangements to be made for the next witness to give evidence but before that occurs, I want to thank you for your assistance. You're excused from further attendance today?---Thank you, Commissioner.

I will adjourn now pro tem.

**WITNESS WITHDREW**

15

(Short adjournment).

HEARING RECOMMENCED AT 3.06 PM

20 COMMISSIONER: Yes, Mr Beetham.

MR BEETHAM: Sir, I recall suspended Councillor Steven Hasluck.

COMMISSIONER: Thank you. Mr Hasluck, please come forward and take a seat in the witness box.

**MR Steven Jeffrey HASLUCK, affirmed:**

COMMISSIONER: Thank you. Take a seat, please, Mr Hasluck?---Thank you.

30

Ms Young, you continue to appear with Ms Clarke for Mr Hasluck?

MS YOUNG: With your leave, commissioner.

35 COMMISSIONER: Yes, of course. Ms Saraceni, you continue to appear for Mr Mileham?

MS SARACENI: Yes, sir.

40 COMMISSIONER: Ms Randall, you continue to appear for Mr Mianich?

MS RANDALL: Yes, Commissioner.

COMMISSIONER: Thank you, Mr van Hattem, you've made a return.

45

MR van HATTEM: I have, Commissioner.

COMMISSIONER: You appear for?

MR van HATTEM: Mr Harley.

5 COMMISSIONER: Thank you. Mr Harris, you continue to appear for Ms Barrenger?

MR HARRIS: Yes, sir.

10 COMMISSIONER: Ms Ford, you continue to appear for Dr Green?

MS FORD: Yes, sir.

COMMISSIONER: Mr Hart, you continue to appear for Mr Crosetta?

15

MR HART: May it please you.

COMMISSIONER: Thank you. Ms Siavelis, you continue to appear for Ms Battista.

20

MS SIAVELIS: Thank you.

COMMISSIONER: Mr Wyatt, you continue to appear for Ms Moore?

25 MR WYATT: Yes, Commissioner.

COMMISSIONER: Thank you. Mr Mariotto, you appear for Mr Linnios?

MR MARIOTTO: May it please.

30

COMMISSIONER: Thank you. Mr Houweling, you appear for Ms Barton?

MR HOUWELING: With your leave, Mr Commissioner.

35 COMMISSIONER: And Mr van der Zanden, you appear for Ms Scaffidi.

MR van der ZANDEN: Yes, Commissioner.

COMMISSIONER: Thank you. Mr Beetham.

40

MR BEETHAM: Mr Hasluck, you recall yesterday I asked you some questions in relation to your knowledge of complaints made to the Local Government Standards Panel by Mr Mianich about Councillors Harley and Green, do you remember that evidence?---Yes.

45

And you recall giving evidence to the effect of, you had no knowledge of those complaints until, as I understand it, about two days ago?---Correct.

Do you recall giving that evidence?---That's correct.

Is that evidence that you maintain today?---It is.

5

This morning the Commission heard some evidence from Mr Harley who gave some evidence about a conversation that he says he had with you - he couldn't put a precise date on it but in the days just before 24 February when the motion was prepared and signed?---Okay.

10

And he says that in that conversation with you, he told you about the complaints and the details of the complaints in relation to him. Can you comment on that at all, can you recall that?---No, I do not.

15

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

No recollection of having a conversation with him over the phone or at Council House about those topics?---I do not.

20

Madam Associate, could I ask you to go to the document at 11.0781, please. Mr Hasluck, for your benefit, this is just the mere end of an email chain. You will see it's an email from an address that's mediaportal.au@isentia, do you see that?---Yes, I do.

25

To Mr Harley?---Yes.

Do you need that blown up a bit on the screen?---If you don't mind.

30

Not at all. If I could get you to enlarge that, please, Madam Associate. That's perfect, Madam Associate, thank you. You will see that's an email to Mr Harley?---Yes.

On Friday, 23 February 2018 at 12.01 pm?---Yes.

35

Which is the day before you had that meeting at Councillor Green's house in relation to the motion?---Yes.

And the day before you signed that motion?---Correct.

40

You will see the first - Madam Associate, if you could just scroll down a little bit further - you will see there the first item to this media portal alert is titled, "The Department of Local Government is considering several" and then the word "complaints", but cut off, do you see that?---Yes, I do.

45

Then in the first line of that passage below it, it says, "The Department of Local Government is considering several complaints against Councillors of the City of Perth", do you see that?---Yes, I do.

Any recollection of seeing that before?---No, I don't.

5 Madam Associate, if you could scroll to the top of this page, you will see - sorry, Madam Associate, back to the previous page. Perfect, thank you, Madam Associate. You will see at the bottom there, you will see Mr Harley's signature block or his photo and address?---Yes, I do.

10 Madam Associate, if you could go up to the next page so that Mr Hasluck can see the remainder of that email and I if can ask you, Madam Associate, to zoom in on that email, enlarge the one at the bottom, please. You will see, Mr Hasluck, an email from Mr Harley on Friday, 23 February at 12.22 pm?---Yes.

15 To Mr Mianich?---Yes.

Copied to Mr Ridgwell?---Yes.

And he's the Governance Manager at the City?---Yes.

20 If I can ask you just to read that email to yourself quietly, please, and if you need that enlarge, please let me know?---Just maybe just scroll up a bit. That's okay, thank you. Okay.

25 You've read that?---Yes, I have.

Madam Associate, if you could scroll to the top of the page, please, so we can see the first email. You will see, Mr Hasluck, that Mr Harley has forwarded the email chain that I've just taken you to, to Mr Limnios, Ms Green, Ms Barton and you?---Yes.

30 With the narration, "Dear Councillors, please see my email below"?---Yes.

Do you recollect receiving that email?---I don't, no.

35 And the email that you just read quietly to yourself, do you recollect receiving that one either, seeing that one before?---No.

40 On the face of this document, would you accept that it appears to have been sent to you on Friday, 23 February?---Yes, it would appear so.

You don't recall receiving it?---No.

45 Madam Associate, if we could now go - sorry, sir, the TRIM reference for that series of emails is 24805.

COMMISSIONER: Thank you.

MR BEETHAM: Madam Associate, could we now go to 11.0787. You will see in the middle of the page there, Mr Hasluck, a copy of the email I just took you to, Mr Harley's forwarding email, the same language, "Dear Councillors, please see my email below, yours sincerely"---Yes, yes.

5

And you will see that email, like the one we just looked at, is dated 23 February 2018 at 12.25?---Yes.

10 You will see at the top of the chain there's what appears to be a response from Ms Green. You will see here name at the bottom of that?---Yes, I see the - yes.

Madam Associate, if you could now go forward to 786, please. Could I ask you, Madam Associate, to zoom in on that email in the middle of the page. This is another email in that chain, Mr Hasluck?---Mm hmm.

15

And you will see there it's an email from you, 24 February at 7.48 am. Sorry, Mr Hasluck?---I beg your pardon?

Do you see that, it says it's an email from you at 7.48 am?---Yes, I do, yes.

20

Is that your email address, [REDACTED] ?---Yes.

Can I ask you to read that to yourself?---Yes. Okay, yes.

25 You will see in the last sentence of that email, Mr Hasluck, you write, "Reece, did you receive a reply from Mianich"?---I do

[3.15 pm]

30 Would you accept that that is a request to Mr Harley as to whether he received a reply in relation to the email he sent Mr Mianich about the complaints?---It looks that way.

In that chain of emails, that's the way it reads?---It does look that way, yes.

35

So would you accept then, based on this email that at 7.48 am on 24 February 2018, you knew about the complaint that Mr Mianich had made, or the fact that a complaint had been made about Mr Harley?

40 MS YOUNG: I object. Can I confer with Mr Beetham just momentarily, it might deal with this?

COMMISSIONER: Of course, Ms Young. Yes.

45 MR BEETHAM: Perhaps we could go back, Madam Associate, to 11.0788. I withdraw that question, sir, and come back to it, subject to my friend's note.

COMMISSIONER: Yes.

MR BEETHAM: You will see here, Mr Hasluck, that this is an email from - this is the email I took you to before, a version of it from Mr Harley to  
5 Mr Mianich?---Mm hmm.

And you will see he writes, "Dear Director Mianich"?---Yes.

:  
10

*At 4.14 pm yesterday evening I received a letter from you notifying me of a complaint of a minor breach to the Standards Panel."*

?---Yes.  
15

That email is in the chain of emails that I'm taking you to and it's that email I'm referring to when I asked you whether or not your sentence, "Reece, did you receive a reply from Mianich"?---Yes.

20 It's in relation to that email, do you accept that? If you don't understand the question, I can appreciate that because it was clumsily put.

COMMISSIONER: Maybe put it in a different way.

25 MR BEETHAM: Can you recall, Mr Hasluck, that your email in the chain says, "Reece, did you receive a reply from Mianich"?---Okay.

Do you recall that?---Yes.

30 Would you accept that when you're asking Mr Harley that question, you're asking whether he received a response to this email that we are looking at here?---Yes.

So, Madam Associate, if you could now go forward to 786 again and if I can get you to enlarge the email in the middle, Madam Associate. You accept,  
35 Mr Hasluck, that on 24 February 2018 at 7.48 am you were aware that Mr Harley had received a letter from Mr Mianich notifying him of a complaint of a minor breach to the Standards Panel?---I would, I would have to, based on what I'm seeing.

40 Having looked at these materials, including your email in particular on the screen, does that refresh your memory at all about what was happening on that morning?---It still doesn't. In my mind, it still doesn't refresh my memory, no. I do not recall this.

45 Do you recall anything about a complaint - pardon me, either of two things, a complaint about Mr Harley, do you recall that?---I don't.

Or Mr Harley receiving a letter from Mr Mianich about a complaint?---I do not.

Bear with me, sir. Those are my only questions, sir.

5 COMMISSIONER: Thank you. In the circumstances of Mr Hasluck being recalled in this way, I am going to invite applications.

MR BEETHAM: Certainly, sir.

10 COMMISSIONER: But they will be confined to the topic of this evidence.

MR BEETHAM: Yes, sir.

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

15

MR van der ZANDEN: No, sir.

COMMISSIONER: Thank you. Mr Houweling, do you have an application?

20 MR HOUWELING: No applications, thank you.

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

MR MARIOTTO: No application, thank you.

25

COMMISSIONER: Mr Wyatt, do you have an application?

MR WYATT: No, Commissioner.

30 COMMISSIONER: Ms Siavelis, do you have an application?

MS SIAVELIS: No, sir.

COMMISSIONER: Mr Hart, do you have an application?

35

MR HART: No, sir.

COMMISSIONER: Ms Ford, do you have one?

40 MS FORD: No, Commissioner.

COMMISSIONER: Mr Harris, do you have one?

MR HARRIS: No application, sir.

45

COMMISSIONER: Mr van Hattem, do you have one?

MR van HATTEM: Yes, Commissioner.

COMMISSIONER: Very well. I'm going to have to ask for you to be excused?---Thank you

5

**WITNESS WITHDREW.**

COMMISSIONER: I will come back to you in a moment, Mr van Hattem. Ms Randall, do you have an application?

10

MS RANDALL: No, sir, no application.

COMMISSIONER: Ms Saraceni, do you have one?

15

MS SARACENI: No, Commissioner.

COMMISSIONER: Thank you. Ms Young?

MS YOUNG: I do not, only subject to perhaps what Mr van Hattem - - -

20

COMMISSIONER: I expected as much, yes, of course. Very well. Mr van Hattem.

MR van HATTEM: Thank you, Commissioner. It's not a matter I particularly press, I just wish to raise an issue for your consideration, sir. Yesterday, the evidence from this witness was that he was blind-sided, I remember him saying this was the first time he'd ever heard of it. The witness was also in the witness box when the audio was played and the question of complaints was there. I think his evidence was, "I didn't hear it."

30

So the reason I rise and make this application is, in all of those circumstances, it may be of assistance to this Inquiry to put those propositions together to this witness and I say that for this reason, sir, that it may well be, if there's no question of dishonesty, in my submission, based on the evidence heard, I would not be making any submission in relation to dishonesty. It may well be there was a lot in this Councillor's head at the time, a lot of things were happening. It was such that while sitting in a meeting in the Council Chamber - - -

35

COMMISSIONER: Before you go on with these submissions, do you wish to ask him questions?

40

MR van HATTEM: Sorry, sir, I just rise as the application is this, that this Inquiry might give consideration to the question of whether any further questions need to be put in relation to the question of a possible finding of dishonesty. I don't take the matter further, sir.

45

COMMISSIONER: Mr van Hattem, what I'm hearing is applications for

examination under the Practice Directions. Do you have an application?

MR van HATTEM: Having made those comments, sir, I don't have an application.

5

COMMISSIONER: Thank you. In that case, Ms Young, do you have an application?

MS YOUNG: I do not.

10

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

15 **MR Steven Jeffrey Hasluck, recalled on former affirmation:**

COMMISSIONER: Mr Hasluck, you'll probably be pleased that nobody wants to ask you any further questions. So it simply remains for me to thank you for your further assistance today and you are excused for the rest of the day?---Okay.

20

Thank you.

**WITNESS WITHDREW.**

COMMISSIONER: What I will do now, Mr Beetham, given we have another witness to follow, is I will adjourn for a short time to allow the necessary arrangements to be made, and you can notify my Associate when we are ready to resume.

25

MR BEETHAM: Certainly, sir.

30

COMMISSIONER: Thank you.

(Short adjournment)

35

40

45

HEARING RECOMMENCED AT 3.34 PM.

COMMISSIONER: Mr Beetham.

5 MR BEETHAM: Sir, I call suspended Lord Mayor, Ms Lisa-Michelle Scaffidi.

COMMISSIONER: Thank you. Ms Scaffidi, please come forward and take a seat in the witness box. Ms Scaffidi, would you like to take an oath or make an affirmation?

10

MS SCAFFIDI: Oath, please.

COMMISSIONER: Thank you. Madam Associate

15 **MS Lisa-Michelle SCAFFIDI, sworn:**

COMMISSIONER: Thank you, Ms Scaffidi. Mr Beetham, before you begin, I will hear applications and take appearances.

20 MR BEETHAM: Thank you, sir.

COMMISSIONER: Ms Randall?

MS RANDALL: Commissioner, I seek leave to appear on behalf of Mr Mianich.

25

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

MR BEETHAM: No, sir, and no objection to the rest of the applications as well, sir.

30

COMMISSIONER: Thank you. Leave is granted. Ms Saraceni.

MS SARACENI: Sir, I seek leave in relation to Mr Mileham.

35 COMMISSIONER: Thank you, leave is granted. Mr van Hattem.

MR van HATTEM: Sir, I seek to leave to appear for Mr Harley.

COMMISSIONER: Leave is granted. Mr van der Zanden?

40

MR van der ZANDEN: Yes, I seek leave to represent Ms Scaffidi, Commissioner.

COMMISSIONER: Leave is granted. Mr Harris?

45 MR HARRIS: Yes, sir, I seek leave to appear on behalf of Ms Barrenger.

COMMISSIONER: Leave is granted. Ms Ford?

MS FORD: Commissioner, I seek leave to appear on behalf of Dr Green.

COMMISSIONER: Leave is granted. Mr Hart?

5

MR HART: May it please you, Commissioner, I seek leave to appear for Paul Crosetta.

COMMISSIONER: Leave is granted. Ms Siavelis?

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MS SIAVELIS: Commissioner, I seek to appear on behalf of Ms Battista.

COMMISSIONER: Leave is granted. Mr Wyatt?

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MR WYATT: Commissioner, I seek leave to appear on behalf of Rebecca Moore.

COMMISSIONER: Leave is granted. Mr Mariotto?

MR MARIOTTO: May it please, I seek leave to appear on behalf of Mr Limnios.

20

COMMISSIONER: Leave is granted. Mr Houweling?

MR HOUWELING: I seek leave to appear for Ms Barton.

25

COMMISSIONER: Thank you. Ms Young?

MS YOUNG: With your leave, sir, Mr Hasluck.

COMMISSIONER: Leave is granted.

30

MS YOUNG: Thank you.

COMMISSIONER: Mr Beetham.

35

MR BEETHAM: Ms Scaffidi, my name, as you've heard, is Mr Beetham and I just want to ask you questions about essentially two topics. The first is the investigation report, come to be known as Project Percy?---Yes.

Do you know what I'm talking about there?---Yes.

40

And the second is the Special Council Meeting that was held on 27 February 2018?---Yes.

At which a motion was moved by some Councillors to amend a policy and to make the appointment of Ms Battista as the Acting CEO?---Correct.

45

You know what I'm talking about there?---Yes.

Ms Scaffidi, when did you first find out about the investigation and report that's now known as Project Percy?---I first found about it on Tuesday, 13 February at approximately 5 pm.

5

That's a very precise date and time, Ms Scaffidi?---It is.

Where do you get that precise date and time from?---I was in the SAT all day on 13 February in relation to the penalty hearing to do with the travel breaches matter. At the end of my time in the SAT, my barrister said to me, "When you get back to the office this afternoon, Mr Mileham is going to speak to you about a matter." He said, "Don't be overly concerned", which of course concerned me, and I said, "What is it" and my barrister's not one to bother with small talk, he said, "I'll leave it for Martin to detail you." When I went back to Council that afternoon, I think there was a briefing - I recall there was a briefing meeting and then Martin asked to see me and we went off into a side room and he asked me, did I know about - actually, the words were, "Did you know while you were on suspension, that you and I had been the subject of an investigation?"

10

15

20

And did you know?---I had no idea.

So when Mr Mileham raised this with you on the 13th, this is the first time you'd heard about it?---Correct.

25

Am I correct then in understanding that you were not interviewed as part of this investigation that was carried out?---No.

Your views weren't sought on the process for the investigation or the outcome of the investigation?---Not at all.

30

And did Mr Mileham provide you with any documentation in relation to the matter?---He didn't have any at that time. I obviously was shocked. I said, "Can I read this Project Percy" - - -

35

Can he mention to you, did he, that there was a report?---Yes, yes, and he said, "Look, I don't have a copy myself", he at that point said, "and I'm letting you know I will be going on stress leave" or leave "and citing breach of contract and I'll make sure I get a copy to you as soon as possible."

40

Did he draw a connection between the report and the investigation and him taking leave when he had this conversation with you?---I don't recall that.

Other than that discussion with Mr Mileham about Project Percy, did you discuss it with him otherwise?---Did I discuss it with him otherwise?

45

Or again?---Again? Yes.

When?---A couple of times, I believe, on the phone.

5 Do you know if that was after or before Mr Mileham went on leave?---He went on leave that night because I was in the SAT the next day and I didn't forward on an email Mr Mileham sent me until the Thursday, so it would have been after.

10 So that email that he sent you that you were referring to, that's something different, is it, from anything he showed or provided to you at the meeting that you're talking about?---At the first meeting on that Tuesday evening, he didn't have anything to show me.

15 Madam Associate, just for the sake of identifying the document, would you mind bringing up the email in brief 12 at 0707 and if I could ask you to enlarge the bottom portion of the email?---Yes, that's it.

Is that the email you're talking about there?---Yes.

The TRIM reference, sir, is 19376.

20 COMMISSIONER: Thank you.

MR BEETHAM: You will see that's dated 14 February?---Correct.

25 And if you scroll to the top, Madam Associate, is that an email from you forwarding that to the remainder of Council, Mr Mianich and Mr Ridgwell?---Yes.

30 So when you say you didn't forward an email until, I think you said the following day - - -?---I apologise, I thought it was the following day. It was obviously the Friday. So I was back in the SAT on the Wednesday all day.

Yes, but this is the email you're talking about?---Correct, it is the email I'm talking about.

35 Thank you, Madam Associate, that can come down now. Did you speak with Mr Ridgwell at all about Project Percy?---I don't remember if I did or not. I may have, I just don't recall clearly.

40 Did you speak with any of the other administrative staff of the City about Project Percy to your recollection?---No, I don't recall.

Did you at some point eventually take the opportunity to read the report that was produced?---I was sent the report on the Thursday, if I recall correctly, the Thursday - - -

45 So that I understand that, that's the Thursday between the Wednesday and the Friday of the emails we have just seen?---That's when it landed on my desk.

Yes?---I probably read it pretty quickly after receiving it, I would think.

When you say "landed on this desk" with this downward hand motion, do you mean a physical copy or are you talk about an email?---Physical.

5

So was it emailed to you as well, do you remember?---No, it wasn't emailed to me, I only got a hard copy.

So you get a hard copy of the document?---Yes.

10

Do you recall how you got that hard copy document or was it just on your desk?---It was sent to my desk. Yes, it was sent to me, so I don't know who sent it but it was on my desk.

15

And you read the document?---Yes.

Did it affect you in any way?---Yes.

20

How?---Upset me to think that such a thing had occurred, such an accusation or allegation was made.

25

Is it the fact of the allegation being made at all that was what upset you?---No, it wasn't the only thing that upset me because my recollection of the document suggested that I raised - so the document is quite lengthy and within it it says that Mr Mileham had had a meeting with Mr Fini and this conversation about a car park in Royal Street was raised and then further on, somewhere in the document it suggests that I raised it with him and there's been a lot in these hearings about coincidences; well, I mean, I didn't raise it with Mr Fini, Mr Fini raised it with me. So that was a very clear point of incorrect - - -

30

Was that of concern to you, that inaccuracy?---That was of great concern do me because I recall very clearly the meeting I had with Mr Fini, and he raised it with me. So I thought that was an incorrect point in the report that stood out to me.

35

Other than the fact that in your view it was an incorrect recollection of the facts, did it matter to you otherwise that it was incorrect? Did it have some sort of - - -?---Of course it is. It's unnecessary for these things to occur. I was very upset - at the time I remember thinking, well, here's another, however many people, number nine's coming to my head, another nine people that I've been defamed to. I've already gone through a pretty torrid time with a lot of allegations being put to me, this was another one

40

[3.45 pm]

45

What do you mean "another nine people"?---I was conscious of the partners at Freehills, I know some of them and I was like, oh my God.

I understand. So you're saying the way the allegation was framed with the suggestion that you brought it up with Mr Fini, conveyed a poor imputation about you - - -?---Correct.

5 - - - to these nine people including partners of Freehills?---And Martin. I mean - - -

Is that what you meant?---Absolutely.

10 Did you have any involvement - you understand a review was undertaken of the process and the report that - the process that led to?---Yes, the McLeods desktop chronology, is that the one you're talking about?

The review by Mr Douglas?---Yes.

15

Did you have any involvement with that process?---No.

Did Mr Douglas speak with you at all about it as part of his review?---I don't recall him speaking to me, I just recall him being at the 16 February CEO Performance Review Committee meeting.

20

The 16 February meeting?---M'mm.

But he, to your recollection, didn't interview you for the purposes of his review, those kinds of things ?---I don't recall

25

Can I ask you now some questions about the Special Council Meeting on 27 February?---Yes.

30 Madam Associate, if we can swap now to brief 11 and if I can ask you to bring up the document at 533. Is that large enough on the screen for you to read, Ms Scaffidi?---Yes, thank you.

You will see there that these are - can you confirm for me that these are the Special Council Meeting minutes, or they appear to be, of the meeting on 27 February?---Correct.

35

Is that Mr Mileham's signature in that signature?---It is.

40 Madam Associate, if I could ask you to go forward two pages, please. You will be more familiar with these types of documents than I will be, Ms Scaffidi. Can you confirm that that page records at the top half who was in attendance, both on behalf of the Council and on behalf of the Administration?---Correct.

45 If I can ask you just to cast your eye down that list of people and confirm or otherwise that those are the people to your recollection that were in the room?---Yes.

Madam Associate, if I could ask you now to go to 539, just a couple of pages into the minutes. Do you recall, Ms Scaffidi, that the motion that was put up had two parts to it?---I recall there being an amendment. Are you saying this is the original  
5 motion, but there is an amended motion that was put.

Yes. So the motion that was put and carried, do you recall that having two parts, one part being about amendment to the Council Policy?---Yes.

10 And the other part being about the appointment of a person?---Yes.

The material on the screen in front of you, does that, if you can read that to yourself?---I can read it.

15 Let me know when you are done and we will go over to the next page?---Okay. Yes.

Madam Associate, if we go to the next page, please. If I can just ask you to read until the end of the dark, the bold italics?---M'mm. Yes.

20 This is obviously the motion as moved and put contained in the minutes and having read it, is it your recollection that the motion was in those terms?---Yes.

25 And you will see underneath it says, "The motion was put and carried and the votes are recorded as follows" and then there are the fors and againsts?---Yes.

Can you explain to the Inquiry why you voted against the motion?---I didn't support it.

30 Why did you not support the motion, and just so I'm very clear, I'm asking why you didn't support this part about the amendment to the Council Policy?---Yes, because I didn't believe it was warranted.

35 Why not?---Despite the extraordinary situation of Mr Mileham going on stress leave, I didn't believe it was going to be an indefinite period of time that he would be away and I thought the acting arrangements that were in place were suitable and I just didn't think this was necessary.

40 Is it the case that as at the time at which this motion was put, voted on and carried, the Acting CEO, Mr Mianich, was on leave?---Yes. Okay, at the time - yes. So at the time it was put and carried, Mr Mianich had become unwell, I think on the Sunday night.

45 With that in mind, is it correct then that the City was without a CEO in an operational sense? There was no-one actually at work, is that right?---Correct.

Notwithstanding that, did you still feel that this motion to amend the policy should

not be supported?---The feeling was that there was more to it. We didn't know what the more to it was at that point.

Who is "we"?---Myself and Jim Adamos and Councillor Davidson.

5

Did you speak with Councillor Davidson about this motion?---Councillor Davidson, I recall was in Melbourne, so she was a apology for this meeting. She was curious about what was going on so there would have - we had conversations.

10 When you say you thought there was more to it, didn't you have suspicions as to what that more to it was at the time?---Yes.

What was that?---That - contextually, just a little of background, since my return -  
--

15

Yes, please?---Is that okay for me to say?

20 Yes. I was just thinking about your answer. Go on, please?---Background really, that since my return - in fairness to Martin, he had indicated to me that he did feel, and his exact words to me were "that an executive had gone rogue" which was a word that stayed with me and in fairness to Mr Mileham, he didn't tell me who.

25 Did you understand that to be a reference to a singular person?---To a senior person?

25

Sorry, a singular. When you executive, you don't mean that as a body?---Yes, one person.

You mean one person?---M'mm.

30

Thank you. Please go on?---Keep going?

35 Yes. So my question was notwithstanding there's the absence of the Acting CEO, you'd held the view that this wasn't necessary or appropriate, this motion and that you thought there was something more going on and I was asking you what that more going on was?---Yes, okay.

40 And what was that?---Okay. So bearing in mind that we had had the CEO Performance Review Committee meeting on 16 February, I started to become aware of, my words, a potential plan.

When you say become aware, what did you mean?---So the CEO Performance Review Committee was awful, in that we all turned up to that CEO Performance Review Committee - - -

45

Can I interrupt you again, sorry?---Yes.

When you say "we all", was that all of Council?---Yes.

5 Sorry, please go on?---And it was par for the course that the Lord Mayor would Chair so I nominated to be Chair. I didn't get Chair, it didn't worry me but I understand politics, it didn't worry me and I move off to the side. Jemma Green became Chair. The meeting commenced. I don't need - are you happy for me to continue to talk?

10 As long as your explanation explains how you came up with this idea that there was a plan in the works and how that feeds into, more to it?---There were a number of things that occurred in that CEO Performance Review Committee that started to concern me greatly.

15 What were they?---The first item was there were two shortlisted companies, Portland Broome and I forget the second one, Syme-someone or other, who had tendered to undertake CEO Performance Review Committee work. The comment from, I believe, the Chair was, she wasn't satisfied with them, that one of them had a lot of spelling and typing errors in in their submission and she spoke to Mark Ridgwell and said, "I thought I asked you to give me a list of WALGA law firms"  
20 and he brought them up on his screen. He read them off as being Freehills, HHG, and a few others and knowing what I knew at that point, but I wasn't going to bring it up until general business I said, "Does anyone have any conflicts with any of these law firms?" Mr Limnios said HHG, that the family business deals with them, and no-one replied. So I said a second time, "Does anyone have any conflicts with  
25 these law firms?" No-one said anything more, the meeting continued.

30 Can I interrupt you there? What's the significance of that passage in your evidence to how you formed the view that there was a plan going on?---Because I knew under general business I was going to bring up the Project Percy Report which had been undertaken by Freehills and at that stage I knew that it had been started by Dr Green.

So were you expecting her to declare an interest at this point?---Absolutely.

35 Why does lead you to the view that there was a plan?---Because if I may continue with reference to the meeting?

40 Yes, as long as it answers that question?---Okay. So the meeting was about KPIs of Mr Mileham's contract and talking about need for 360 degree feedback and I said, "But we didn't put this in his contract so how can we add it now", and I started to appreciate that there was clearly a connection with Project Percy and potentially 360 feedback.

45 What connection?---Outside stakeholder contribution to Mr Mileham's performance.

Which outside stakeholder contribution - who are you talking about when you

refer to that?---Mr Fini.

So you had thought that the 360 Review would incorporate Mr Fini's views on Mr Mileham?---Correct.

5

All right?---There was a lot of discussion at that CEO Performance Review Committee and Mr Harley was contributing a lot with very assertive views.

10 Yes, but is that unexpected at a Performance Review Committee, for the Councillor who is in essentially, by statute, a position of employer of the CEO, would have some strong views about how that CEO's performance should be reviewed?---I would reply by saying okay, but to be holding the floor more than the Chair and asserting views that were particularly very strong, it was very noticeable.

15

From all of this, if I can shortcut the evidence, you formed the view that there was a plan. What was the plan that you formed a view was afoot?---I'm sorry, but by way of answering that, if I could just move to the general business item because I think that will explain it.

20

Can you just tell me what the plan was that you thought was afoot?---I thought the plan was to put Martin on suspension at that stage.

25 Did you think that's what was going on in the background when you had the Special Council Meeting on the 27th?---I came to that view, yes.

When you said you and Mr Adamos were concerned there was more to it, more to the motion, is what you're talking about?---Yes.

30 That you were concerned there was a broader plan to remove Mr Mileham?---Yes.

And other than the things that occurred at that committee meeting and other than the Project Percy investigation and report, was there anything else?---Yes.

35 Particular, discrete, that you can point to that supported that view or that led to that view?---My view is that under general business, when it came to that item in the agenda, I said that I had two items of general business.

40 Yes?---And the two items that I put forward were that it is - I don't recall when he came into the room but Mr Douglas was in the room at that point and I don't recall when he came into the room but he was in the room and I said, "I need to let you all know that Mr Mileham has gone on stress leave citing breach of contract", and I said, "I apologise for not forwarding the email to you earlier but I was in the SAT" and I was a bit exhausted from that day.

45

[4.00 pm]

So that's something you conveyed to the rest of the committee meeting?---Correct, to everyone in the room.

5 As part of general business?---Yes, and then secondly - so then I said, "I will allow" - I said, "I will defer now to Mr Douglas to explain why Mr Mileham's gone on stress leave. It's got something to do with Project Percy" and I looked at Dr Green and then let - - -

10 Mr Douglas speak?---Him speak.

Why was it necessary to bring up Project Percy and Mr Mileham's leave at a CEO Performance Review meeting, what did it have to do with his performance?---Because - I think it had everything to do with it. I mean, clearly I had just become aware of it - I had only read it the day before. I was upset and  
15 stunned about it and when Mr Mileham gave me the first news on Project Percy - - -  
-

Sorry to interrupt you again, sorry, Ms Scaffidi. I appreciate that, the investigation report's impact on Mr Mileham, Mr Douglas' advice, all of that is important, I  
20 appreciate that. What I'm trying to understand is how is all of that relevant to what you had to deal with as a CEO Performance Review Committee?---I see it as all tied into the CEO's position.

But does it have anything to do with his performance? I can't see the connection particularly clearly and I'm just wondering if you could help me understand that  
25 connection?---It was definitely a criticism of his performance that had occurred in the last - since November, in the last few months.

The report, as I understand it, said that it was no basis - I'm paraphrasing - to the  
30 allegation against Mr Mileham?---I agree.

Is it right then to say then that it was critical of his performance if the report reached that view?---Yes, I accept that.

35 So other than what happened at that committee meeting, and the things we have discussed, did anything else happened in the lead-up to this motion that made you think that something more was going on?---So in the lead-up to the motion, so I got texts from Rob Mianich to tell me that he was unwell, on the weekend I believe, on the Sunday or the Monday, and then on the Monday I don't recall very  
40 much. My next strong recollection would be Rebecca Moore sitting next to me at this meeting.

I think you had this Performance Review meeting on the 16th?---Yes.

45 Was there another one following that before the Special Council Meeting?---What date?

I'm asking you if you remember any?---No, I don't remember anything at the moment but if you give me a date, I might. I just - sorry.

5 19 February, the Monday, Mr Mianich's first day?---Yes, there was a meeting on the 19th and - so there are two meetings that are coming to my mind with the dates. There was a meeting with Mr Douglas, verbally going through the chronology of the McLeods' report and there was also a meeting - so Rob wasn't there, Rebecca there and Jemma was sitting near the door. There was another meeting.

10 What was that about?---Maybe it was the same meeting actually.

15 You're not sure if there's one meeting or two?---I'm not entirely sure now. I can see the room, the Briefing Room 1.

I imagine you've had a lot of meetings, Ms Scaffidi?---I can see Briefing Room 1, I can see Jemma coming in late, we were all there and - - -

20 Coming back then to - sorry, I will just close that out. Do you recall another CEO Performance Committee meeting in particular?---May I just say one thing? I had a book that I've written all this into chronologically. I just can't recall the dates right now in front of you.

25 I understand that, but do you recall another CEO Performance Review Committee meeting?---No, not right now.

If we can turn back to the 27th then, the Special Council Meeting?---M'mm.

30 That vote to amend the policy was put and carried?---Yes.

And we can see from the record on the screen what the votes were?---Yes.

35 And you will see then a bit further down on that page under point 2, the reference to, "Councillor Barton nominating Ms Battista to the role of Acting CEO"?---Right.

And Mr Adamos nominating Ms Moore?---Right.

40 Do you recollect those things happening?---Only just being reminded of it then. I recall Councillor Barton nominating Ms Battista, I didn't recall Councillor Adamos nominating Rebecca Moore until I just re-read it.

45 Do you recall supporting Ms Moore in that nomination at all?---I would have. Yes, I did.

You would have and you did?---I did.

Madam Associate, if we could go to the last page of the minutes at 544. You will see there, halfway down the page - - -?---It's a procedural motion, yes.

5 So you will see the procedural motion, re-opening the meeting?---Yes.

And then underneath that, "Primary motion with amendment"?---Sorry, just let me take this in. Yes, I see it now.

10 And you will see that the motion was put that Ms Battista be appointed to the role of Acting CEO?---Yes.

And there's the votes that are recorded?---Correct.

15 And does that reflect your recollection of the votes went on the evening?---It is.

And you voted against the appointment of Ms Battista?---I did.

20 Why did you vote against the appointment of Ms Battista?---Okay. So I returned from my period of suspension on 8 January 2018. The first couple of weeks were just pretty usual but during that time I started to pick up on Ms Battista's inability to look me in the eye. I also picked up on - - -

25 Can I - I will let you finish that and then I'll come back. You also picked up on something else?---I also picked up from - because the conversation with Martin was later on. I remember one day, it was a strategic planning discussion, very strongly that Annaliese was very indifferent towards me and I remember another conversation with her where I did speak to her about feedback that had come back to me about rude comments that had been made about me by Councillor Linnios. Martin spoke to me about that. I just generally picked up this pattern of a changed  
30 behaviour from Annaliese.

Can I explore that with you a little bit, Ms Scaffidi?---Yes.

35 I can do it in reverse order?---Okay.

40 My note of your evidence is that you spoke with Ms Battista about rude comments made about you by Mr Linnios?---Yes. I bumped into her in the car park one day, I can't recall the date and I took the opportunity, because we'd always, I thought, spoken well to each other, that I'd had some, you know, rumour or comments come back to me that rude comments had been made about me.

45 By Mr Linnios?---Correct, and she really kind of brushed them off and didn't want to speak to me about it, which was not how she would normally deal with me. So I really picked up a change there in her behaviour towards me and if you don't mind me saying, this is come from somebody who, in the beginning had spoken to me in front of many people and independently to myself, complimenting me on my vision for Perth, telling me how much she loved my vision for Perth, what I'd

achieved for the City, how much she wanted to work with me, how she had looked from afar at Subiaco in previous employment and respected my work, and that's how I felt we had a good relationship in the beginning but over time, it changed.

5 And this is an example you're talking about, when you had this exchange about Mr Linnios?---M'mm.

An example of where her behaviour went from the way you've just described to sort of a cooling off?---Very dismissive demeanour.

10

And you also described Ms Battista as indifferent to you in a strategic planning meeting, is that similar type of behaviour you're talking about?---Absolutely.

15 And you also described - you used the language of "Ms Battista's inability to look you in the eye"?---Absolutely.

Do you have an example of that? Is that something that actually happened?---I'm very good with eye contact, and I take it in and I notice it.

20 But is there a specific example where you were speaking with Ms Battista or where you noticed that she was - - -?---Her behaviour was notably changed toward me upon my return from 8 January, very noticeably.

25 Why did all of those things and that change in behaviour lead you to not support her appointment as Act Chief Executive Officer? Did you just not like her at that stage?---I'd liked her a lot. I had no reason not to and I was one of the strong proponents of her for the position.

30 Was there anything - there doesn't seem to be in my reading of what you've told the Commission today, anything about that behaviour that indicates that she would be an unfit CEO, would you agree with me about that?---Well, I don't agree with you.

35 Why not?---Because I realise that it was shared around for people to gain experience but whilst she presents well and speaks well, et cetera, she was fairly newly appointed in a Director's position.

40 Sorry, Ms Scaffidi, my question is, I suggested to you that the things you've told us about Ms Battista's inability to meet your eye, her dismissive behaviour towards you in the car park and those kinds of things, don't appear to suggest she was unfit to carry out the duties of a CEO and I think - - -?---No, I accept that.

You accept that, do you?---Yes, I accept that.

45 So why did you vote against her as CEO if those matters don't affect her ability to carry out that role?---Because, as I have mentioned before, there was a growing awareness of some kind of plan being hatched to - - -

Did you think Ms Battista was in on the plan?---Yes, I do.

Do you have a basis for that view other than your suspicion?---Yes.

5 Which is?---Mr Dylan Fernando, and that's been the subject of a private hearing, had told me that he had seen Ms Battista coming up to level 10 many days to talk with Councillor Limnios while he was Deputy Lord Mayor and then when Dr Green became Deputy Lord Mayor, to meet with her, several days in a week.

10 What's the significance of that? To those of us who aren't enmeshed in your politics of the City of Perth, what is the significance of that?---That it's unusual.

To meet with the Deputy Lord Mayor?---Unusual for a Director to be coming up and having one-on-one meetings with a Councillor or a Deputy Lord Mayor.

15

So as I understand the evidence, this is something Mr Fernando told you rather than something you observed yourself, yes?---I couldn't have observed it because I'm on a different floor.

20 Mr Fernando told you this?---Yes, he did.

And based on that, you reached the view - - -?---Not just based on that.

But that was one of the things, was it that informed your view?---Yes.

25

On the 27th that she was in on the plan?---Well, it was drawn to my attention that Ms Battista had become very close to Mr Limnios. It had also been informed to me that her husband had gone to primary school with Mr Limnios and additionally, I was aware - I don't know now with the timeframe whether it was during my time on suspension or just before, that Ms Battista had also become an ex officio member on Activate Perth, which is a committee, and yes, there were a lot of issues swirling around and information that was coming to me, not information I could prove so I don't know that you want to hear it because I can't prove it, but there was lots of information coming to me that was leading me to this view connected to the Project Percy and connected to my own observations

30  
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[4.15 pm]

40 And all of those things in sum, taken as a whole, led you to the view to two things, if I understand your evidence right, that there was this plan afoot and that Ms Battista was involved in it?---Yes.

Did you think it curious when this motion was moved?---Yes.

45 That Ms Battista was nominated by the Councillors who supported the motion?---Well, the timing of the - it was a Special Council Meeting.

Yes, but did you - you had this suspicion about Ms Battista being involved in the plan?---Yes.

5 When Ms Battista's name was put up and supported by the five people who moved the motion?---Yes.

Did that feed into your suspicion or otherwise did that affect your thinking at all?---Yes.

10 How?---So my recollection from that meeting is that we had to stop the meeting two or three times to call her.

15 Yes. Ms Battista was on leave at the time, do you recall that?---That's right, she was on leave in Margaret River, I think, and we have never had to do that in a meeting, ever before and yes, my recollection was that Jim and I went out to the left of the Chamber and everyone else went out to the right of the Chamber and there were attempts at phone calling Ms Battista. We could see that was occurring.

20 Yes. So you didn't support Ms Battista on the evening but you did support Ms Moore?---Yes.

25 Why did you support Ms Moore?---So Rob Mianich had texted me to say that he was unwell and I think his text said something about, he didn't feel the workplace was safe and those texts would be available to you, they were on my phone, and I don't know that it was sort of obvious to me that Rebecca was acting in the role but Rebecca ended up sitting next to me in the Council Chamber.

30 Yes. So is that why you supported Ms Moore, because - - -?---No, that wasn't why I supported her.

35 So why did you support her?---Because she'd had more experience than Ms Battista and also, I feel at that point that we were at right there and then, Rebecca's role is more day to day operational than Annaliese's and Annaliese's role, she would not have had any experience in the operational aspects of the City and if I can just go back to Rebecca, Rebecca is overseeing the car parking operation, the ranger operation, many of the operational staff which I think would have the bigger day to day demand on the operations per se, so in that regard I saw her as an adequate next person.

40 You think she was the better fit for those reasons than Ms Battista?---It was only going to be for a short timeframe so I really was perplexed at why the intensity of interest.

45 If it was only going to be for a short frame, was there any problem with Ms Battista having the role?---Yes, because there was this view, awareness, consciousness - I'm trying to use the right word for you - that there was a bigger plan afoot.

5 If I suggested to you that the reason you supported Ms Moore rather than Ms Battista was really because you could see that the five Councillors who supported Ms Battista were in control of Council and you didn't want to support that, would you agree with that as one of the reasons?---No, I don't agree with that at all and I can see why you might put it but I could also put it back another way and say that in fact, the numbers thing didn't worry me, I mean, not at all. It was clearly more - deeper than that.

10 Did you feel at this stage as far as the numbers went on Council, the numbers were, to use the vernacular, against you at this stage?---They were, I didn't have to feel it.

15 Not only in relation to this motion but just generally at this time on Council?---Absolutely, not a problem. When I came on to Council I didn't have the numbers, for many years. Having the numbers is not an issue because I would say 98 per cent of Council decisions tended to be unanimous. It was only when the Council decisions started to favour the State member for Perth and the motions that he wanted brought to Council that we started to see an issue and I'd never, in  
20 my 20 years, observed that politicisation.

Thank you for that, Ms Scaffidi. After the meeting you gave a statement to the press out the front of Council House?---Yes.

25 Do you remember that?---Yes.

Madam Associate, if I could ask you to - whether I've got this reference right - bring up the document at 11.0576. Could I ask you, Madam Associate, to expand that, thank you Madam Associate, the bottom portion of words there, and I can tell  
30 you and I can show you if you would like, Ms Scaffidi, that this is a report - this section comes out of a report called a Crisis Communications Team report?---Right.

35 Prepared by the Crisis Communications Team?---Yes.

During the course of the 27th and the morning of the 28th and you will see there on that page there's, in quotations, a statement attributed to you?---Yes.

40 If you read that to yourself, do you recognise that as a statement that you gave?---I do.

What I'm interested in asking you about, Ms Scaffidi, is, you will see towards the bottom of the statement you say these words?---Yes.

45 :

*Tonight's resolution may well aggravate the already difficult and*

*disappointing position in which the City finds itself. In this regard I would have hoped there would have been consideration to defer the matter this evening in view of the fact we had enacted the Crisis Management Plan.*

5

?--- Right.

Do you see those words?---I believe I did. Now - - -

10

We will step through it one at a time. Do you see the words I'm referring to in the document?---Yes.

15

And do you recall saying those things on that day?---I don't recall, I'm happy to accept that I said them based on what I read here. I don't recall verbatim what I said on that day.

20

Would you agree with me that the words "I would have hoped there would have been consideration to defer the matter this evening in view of the fact we had enacted the Crisis Management Plan"?---Yes.

Reflects a view that you were supportive of the enactment of the Crisis Management Plan?---Yes.

25

And are you able to - I will go back one step and indicate to you, Ms Scaffidi, that that's not a view that's shared amongst your co-Councillors, so can you, for the benefit of the commission, explain why you were supportive of the enactment of the Crisis Management Plan?---I have to say now, I thought I became more aware of the Crisis Management Plan on the Wednesday morning than on the Tuesday night but I must have been at that point, from what I've said, and it was only on the Wednesday morning - sorry, I know I'm not answering your question. Ask the question again.

30

You were supportive of the Crisis Management Plan?---Yes.

35

Why?---Why? It was an extraordinary situation to have lost Martin and then to have lost Rob, it was unprecedented and to be broadly aware of everything else that had just played out in the former two weeks was extraordinary.

40

So you thought in those circumstances the enactment of the Crisis Management Plan was an appropriate and reasonable thing for the Executive to do?---It wasn't my idea and I wasn't canvassed about it first but they chose to do it and I respected them.

45

And you respected the decision they had made?---Yes.

Did you have any involvement in the lead-up to the activation of the Crisis Management Plan?---No.

Has it been a plan that had been suggested to you for use in the past?---No.

5 Did any of the members of the Executive who enacted the plan, which are Mr Crosetta, Ms Barrenger and Ms Moore?---Right.

Did they seek your views on the enactment of the plan?---No, they did not.

10 Had you ever discussed the plan with Mr Mileham?---No.

Had you ever discussed the plan with anybody else to your recollection in the period of early 2018?---No.

15 Have you seen the plan?---A physical copy, no.

Are you aware that, and I'm paraphrasing, if there's an objection I will take you to the document, that it deals with things like - - -?---Yes.

20 Bomb threats, terrorist attacks, fires, floods, those kinds of things?---I am aware of that because I made a tongue in cheek comment about it on the Wednesday morning.

The Wednesday following?---The 27th, so the 28th.

25 So knowing those things and it seems like you knew them then, you still thought the enactment of the Management Plan was - - -?---I didn't know them before. It was only when Reece Harley read out those points and I think from memory, he said in a question to Rebecca Moore, "Why was this plan enacted" - I can see him now saying, "Why was this plan enacted? I read that it's for terrorism, earthquake, 30 fire or sabotage" and my tongue in cheek comment was, "Well, there you have it, sabotage." It was tongue in cheek but I was trying to make sense of what seemed a really weird situation.

35 When was this meeting?---That was Wednesday, the 28th at 11 am.

So when you made this statement in the afternoon or the evening of the 27th, you hadn't seen the Crisis Management Plan?---No, I hadn't.

40 How did you form the view that the enactment of that plan was a reasonable thing?---I had faith in the Directors that in view of the extraordinary loss of a CEO and an Acting CEO, that they were enacting something that they felt was the right thing to do and I have faith in in the Directors.

45 The following day, Ms Scaffidi, you and the other Councillors, other than Ms Davidson who attended by phone, had a meeting with the Minister for Local Government?---We did at 3 o'clock.

Do you have a recollection of that meeting?---I do.

5 At that meeting - we have heard conflicting evidence about that meeting, so is it your recollection that the Minister told you at that meeting that the Council was going to be suspended or did the Minister say to you, "I might give you a show cause notice or suspend you" or did he do a combination of both things?---The Minister walked in, I can remember exactly where everyone was sitting, and he said, "Suspension."

10 .

15 The Minister said the Council was going to be suspended?---He said his - my recollection is, he was very disappointed with everything that had occurred and that he needed to draw a line in the sand and whilst the mechanism was still going to be decided and announced on Friday, whether it was 8.15 or 8.- whatever it is, that he was of the view it was going to be suspension.

20 Did you have a view at that time about whether suspension was necessary, appropriate, good, bad?---I was just, you know, experiencing this like anybody else. It was all just an absolute roller coaster. I recall after that, he deferred to Reece - - -

Sorry, Ms Scaffidi, if you could just come back to the question?---M'mm.

25 Did you have a view about whether the suspension of Council was appropriate, inappropriate, good, bad?---I don't recall what my view was specifically.

30 Do you recall expressing any view to the Minister or the assembled people about the suspension?---I recall saying, in view of what I'd become aware of in the last few weeks, that it was sad but I wasn't surprised. I don't know if they are the exact words but they would be a summation of what I said.

35 If I was to suggest to you that you said something to the effect of you were pleased with the Minister's decision or intention to suspend Council, would you agree or disagree with that?---I don't agree that I would be pleased. Why would I want to all of a sudden, after serving four months suspension and going through the terrible time that I'd gone through for what my barrister assured me was not a sackable offence, why would I want to come back and find myself suspended? No, I was as upset and as concerned and as shell-shocked by everything that was playing out as anybody.

40 One suggestion, a cynical person, Ms Scaffidi, might suggest that the reason you'd be pleased that Council would be suspended is because you had realised you no longer controlled the Council because the numbers were against you, as we have discussed?---Right, okay.

So if you couldn't control Council, no-one could control Council; is that a

view?---No. That's got a political tone to it. No, I don't accept that but you said a cynical person, so I could think of a few.

That's not a view that you held?---No.

5

At the time of the suspension of Council?---Correct

[4.30 pm]

10 Mr Parkinson's reminded me of one more matter, sir, which won't take very long, but with your leave.

COMMISSIONER: Take as long as you need.

15 MR BEETHAM: We have heard some evidence, Ms Scaffidi, that following the Special Council Meeting on the 27th, and by following, I mean immediately following it after it adjourned, and when you gave the press statement that we are looking at there?---That one, yes.

20 There was another informal meeting between yourself and some of the Executive?---Okay.

Do you have any recollection of that?---I thought we chatted on the way down to this. I don't recall anything afterwards.

25

Do you have any recollection of a meeting itself, standing in a room, or sitting in a room with these people having, rather than a walking talk, an actual more normal meeting?---It could have been before or after. I do recall the people you see in that photograph there expressing their great concern at what had played out and there  
30 dismay.

You recall that in a room or on the way downstairs?---No, I don't recall it being in a room. I recall us talking more in the hallway that overlooks the front of Council House.

35

I don't wish to embarrass you with this next question, Ms Scaffidi, but the evidence that we have heard suggests that in this period between the Special Council Meeting and the press conference downstairs, that there was this informal meeting and at this meeting, I think the evidence is to the effect of, you burst into or broke  
40 down into tears, do you recall that?---I don't recall that. I might well have. I was, you know, pretty overwhelmed by everything that was playing out.

You don't have a recollection of that?---I don't.

45 Those are my questions, sir.

COMMISSIONER: Thank you. Thank you, I will hear applications. Ms Young?

MS YOUNG: I have no application, Commissioner.

COMMISSIONER: Thank you, Ms Young. Mr Houweling?

5

MR HOUWELING: I do have an application, Mr Commissioner.

COMMISSIONER: Very well. In that case, Ms Scaffidi, I'm very sorry to have to ask you to do this again, I'm going to have to ask you to excuse yourself from the room?---I should know that by now.

10

Thank you.

**WITNESS WITHDREW.**

15

COMMISSIONER: Mr Houweling, before you begin your application, I will just indicate to everyone at the Bar table that what I propose to do is complete Ms Scaffidi's evidence today, even if it means we sit a little bit later. Mr Houweling.

20

MR HOUWELING: Thank you, Mr Commissioner. Mr Commissioner, it was the evidence of Ms Barton that she considered, on an objective basis, that Ms Battista was best placed to fill the role of Acting CEO. The witness today and this afternoon said, "Since my return" and then she said, "In fairness to Mr Mileham an executive had gone rogue" and then she continued to say a little later on that she came back and she described Ms Battista as having the inability to look at her in the eye and then she, in contemplation but orally and loudly said, "There was a conversation with Martin later on" which I think was the conversation in respect of one of the Councillors or sorry, one of the Executive having gone rogue, and she's also a person who is listening to corridor talk, in the car park albeit, with Ms Battista, corridor talk with Mr Dylan Fernando and the matter of - the point is that there was a proper basis on which the support for Ms Battista was given by Ms Barton.

25

30

35 She explained that and that evidence is now - there seems to be an attempt to erode that by what is being given by this witness.

40

The second point that I would wish to cover is a suggestion that the Member of Perth was somehow having some influence and control in whatever resolutions were being put to the Council and then decided. There's really (a) and (b) in that respect. Firstly, I would doubt that this witness would know of the political persuasions of anybody if they were at all relevant, but what the basis to that particular view that she had given expression actually was.

45

COMMISSIONER: Is there a third topic?

MR HOUWELING: No, sorry, Mr Commissioner. Those are the only two topics.

COMMISSIONER: Just coming back to the first of those topics, how is your examination on that topic going to advance the purposes of the Inquiry?

5 MR HOUWELING: Yes, thank you, Mr Commissioner. It will advance the purpose of the Inquiry in respect of the questions of good governance and the manner in which, particularly Councillor Barton had made a decision - sorry, the Executive Member Battista was an appropriate person to fill the acting role by carefully considering her as a person with evidence of acting in an efficient  
10 manner, acting in that manner which she described as being a person who would be appropriate to fulfil that role, as opposed to a suggestion that she was a person within the Executive who had gone rogue, who was acting in the manner which was being suggested, which was less than professional and less than capable.

15 COMMISSIONER: So is the point of your questioning of Ms Scaffidi going to be to test the reliability of her evidence that Ms Battista had gone rogue?

MR HOUWELING: The point of the evidence ultimately, and I believe she is referring to Ms Battista, that Ms Battista was a person who was not only well  
20 placed to fulfil that acting role, but was also a person who could be properly relied upon in respect of her position and was a person who had, in effect, gone rogue.

COMMISSIONER: So am I right?

25 MR HOUWELING: Yes, you are right.

COMMISSIONER: Given that you act for Ms Barton, on what basis do you say you have an entitlement, and I use that term not precisely, to test the proposition that the Member for Perth had an influence that Ms Scaffidi alleges.

30 MR HOUWELING: The inference or the suggestion is that Council had and was becoming somehow politically partisan and that appears to have been what the suggestion was in the answer given, but in my submission, it was never the subject of any question, particularly of Ms Barton, as to whether she had any political  
35 persuasion at all.

COMMISSIONER: So your interest in the matter is to show that the Member for Perth did not have any influence over your client?

40 MR HOUWELING: That is so, yes.

COMMISSIONER: All right. Mr Beetham, what do you say about those two matters?

45 MR BEETHAM: In relation to the first matter, sir, my submission is that it wouldn't advance the interests of the Inquiry to undertake the line of questioning in respect of Ms Battista and the Lord Mayor's views about Ms Battista. I don't think

the Lord Mayor gave evidence that Ms Battista was this executive said to have gone rogue. She said Mr Mileham didn't tell her who that was and my friend and others may draw the inference that they are talking about Ms Battista.

5 COMMISSIONER: He has in the submission he's put to me, even though he's not the connection and I did.

MR BEETHAM: Indeed, sir, and it seems to me simply to be a matter for the Commission to weigh the evidence of the Lord Mayor and the evidence it hears  
10 from other witnesses as to the appropriateness of Ms Battista to fulfil that role and it's simply the fact that the Lord Mayor obviously held a different view about Ms Battista and that, with respect, sir, is quite obvious from the fact of the minutes of the meeting where the Lord Mayor didn't vote for Ms Battista.

15 In relation to the second point - - -

COMMISSIONER: Just in relation to the first point, it's obviously a matter for Mr Houweling to press me on if he wishes to do so, but there might indeed be a danger for him in choosing that path.

20 MR BEETHAM: Certainly, sir, of course.

COMMISSIONER: I will come back to Mr Houweling on that in a moment. And the second?

25 MR BEETHAM: Just bear with me one moment, sir. I recognise the area of evidence that my friend is referring to. My recollection of it, and I thought about it at the time, is that Ms Scaffidi was talking to a recent but in the past period in Council's history, not current - when I say current, I mean a period within January,  
30 February, 2018. I don't have a very clear recollection of the evidence on that point though, sir, so if the questions commence from the basis of trying to ascertain the period of time, then I don't have an objection to that being considered.

COMMISSIONER: As I recall the evidence and as I have noted it, it was a highly  
35 generalised statement, so there would immediately arise a question as to what weight one could give it anyway, but - - -

MR BEETHAM: Certainly, sir, and - - -

40 COMMISSIONER: Mr Houweling - sorry, I didn't mean to speak over you.

MR BEETHAM: Sorry, sir, I interrupted. I can indicate for the benefit of the commission, that is why the matter was not pursued during questioning.

45 COMMISSIONER: Yes. Again, I understand that the interest that Mr Houweling has in pursuing that and I'm inclined at this stage to let him do that, even though at the end it may have a limited value. Thank you very much, Mr Beetham.

MR BEETHAM: If it please, sir.

5 COMMISSIONER: Mr Houweling, you've heard what I've had to say, I'm inclined to let you examine on the second point. Do you still want to press the first?

10 MR HOUWELING: Yes, the lights are on in respect of the first point. I'm aware of it but I nevertheless think it's a point. The submission ultimately that we would hope to make in respect of this election is that at least Ms Barton, with her eyes open, chose to support a senior member of the Executive to the position of Acting CEO, being aware of her capabilities and that, in effect, is being undermined. So with lights on and being aware of, and attuned to what you raise, Member, I nevertheless would wish to ask some brief questions on that.

15 COMMISSIONER: Mr Houweling, I'm not strongly persuaded by your submissions on the first point but I will give you leave on both points.

20 MR HOUWELING: Thank you.

COMMISSIONER: Mr Mariotto, do you have an application?

MR MARIOTTO: No application, Commissioner.

25 COMMISSIONER: Mr Wyatt?

MR WYATT: No application, Commissioner.

30 COMMISSIONER: Thank you. Ms Siavelis, do you have an application?

MS SIAVELIS: Possibly, Commissioner.

COMMISSIONER: It's a bit late in the day for possibly.

35 MS SIAVELIS: It may involve taking the witness to some documents which is my concern and it may run a longer than perhaps allowed but I would be happy to confer with Counsel Assisting.

40 COMMISSIONER: Do you know which documents you wish to take the witness to?

MS SIAVELIS: I do, but I don't know the reference within the bundles and whether they form part of the court brief.

45 COMMISSIONER: Perhaps you can just have a quick conferral with Mr Beetham at the Bar table.

MS SIAVELIS: Perhaps, Commissioner, to save time, you could go around the room and see whether anyone else has any applications and I will just consider the matter further. The documents are not in the brief before Counsel Assisting so it may take some time to retrieve them. I will consider whether it's necessary to make that application.

COMMISSIONER: Yes, of course. Mr Hart, do you have an application?

MR HART: I can happily add that I don't, Commissioner.

COMMISSIONER: Thank you.

MS FORD: No application, Commissioner.

[4.30 pm]

COMMISSIONER: Thank you. Mr Harris?

MR HARRIS: No application, sir.

COMMISSIONER: Ms Randall?

MS RANDALL: No application, sir.

COMMISSIONER: Ms Saraceni?

MS SARACENI: No application, thank you, sir.

COMMISSIONER: Mr van der Zanden?

MR van der ZANDEN: Yes, I do, Commissioner.

COMMISSIONER: Yes.

MR van der ZANDEN: It's only one point and it arises out of the examination of Ms Scaffidi. She was asked some questions in relation to her suspicions about, I think it was described as a plan being afoot and she gave some evidence about one of the bases for her suspicions being the contents or the events of the CEO Performance Review Committee meeting of 16 February.

COMMISSIONER: Yes.

MR van der ZANDEN: And she gave some detailed evidence in that report, but she got to a point where she said that there was two items that she raised in general business and she described one of those and then my friend asked her some other questions and the second point, as I understand it from the evidence, wasn't ventilated or she wasn't asked about that and I seek to ask her about what that

second point was that she raised in general business and why that created this suspicion.

COMMISSIONER: Is that the only matter?

5

MR van der ZANDEN: Yes, it is.

COMMISSIONER: Thank you. Mr Beetham?

10 MR BEETHAM: No objection, sir.

COMMISSIONER: No, I wouldn't have thought so. You have leave.

15 MR van der ZANDEN: I will just say, that is subject, Commissioner - obviously if something arises out of the - - -

COMMISSIONER: I've adopted a practice, of course, of coming back to counsel representing the witness.

20 MR van der ZANDEN: I appreciate that.

COMMISSIONER: Because I appreciate there's a need to do that. Mr van Hattem?

25 MR van HATTEM: No application, Commissioner.

COMMISSIONER: Thank you. Ms Siavelis, it's like the waiter going around the table, I have to come back to you now to take your order.

30 MS SIAVELIS: Thank you, sir. I do think it is relevant and my friend, solicitor assisting has been able to find the document reference. Ms Scaffidi gave evidence of a couple of matters concerning my client, Ms Battista, firstly regarding the fact that she couldn't meet her eye upon her return in early January and also suggested some sort of alignment with Councillor Green and also, I believe, Councillor  
35 Limnios. The document that I wish to take Ms Scaffidi to is a letter from my client to Mr Mileham of 23 December 2017, so a couple of weeks prior to Ms Scaffidi's return.

COMMISSIONER: If you can give me the number, we will just bring it up.

40

MS SIAVELIS: Yes. It's TRIM number 15392.

COMMISSIONER: Mr Beetham, do you know if this has a Bates number?

45 MR BEETHAM: No, as I understand it, sir, it's not in the brief. I'm sure Mr Parkinson will hit me if I'm wrong about that. That's a TRIM number, sir.

COMMISSIONER: No, I realise it's a TRIM number, that's why I asked if it has a Bates number. It doesn't.

MR BEETHAM: No, sir.

5

COMMISSIONER: Just give me that TRIM number again, please?

MS SIAVELIS: 15392.

10 COMMISSIONER: Thank you. The second topic?

MS SIAVELIS: I'm sorry, it's all regarding that letter, sir. In that letter Ms Battista raises concerns about the workplace health and safety situation at the City of Perth and in paraphrasing or summarising the letter, urges Mr Mileham to  
15 take action before the Lord Mayor's return. My suggestion, or what I would like to put to Ms Scaffidi is that these were concerns properly raised and may account for Ms Battista's change in demeanour upon the Lord Mayor's return early in the year. I would like to ask Mrs Scaffidi when she became aware of those concerns and whether it was prior to the Special Council Meeting on the 24th of February, and  
20 may be a reason why she did not support Ms Battista's appointment as Acting CEO.

COMMISSIONER: I see.

25 MS SIAVELIS: In respect of the alignment with the Councillors, there is also a reference in that letter to some complaints or some emails regarding the behaviour of some of the other Councillors which include concerns about Councillors Limnios and Harley. I should add, Commissioner, that this letter was reported in the press the day after the Special Council Meeting on the 27th, so it became  
30 public knowledge at that time, Ms Battista's concerns.

COMMISSIONER: So this letter may be something that Mr van der Zanden would want to have a close look at too. Mr Beetham, you want to say something?

35 MR BEETHAM: Yes, sir, just to indicate that during the exchange, Mr Parkinson has managed to obtain the Bates number for it from the investigators.

COMMISSIONER: Right.

40 MR BEETHAM: And if I can decipher Mr Parkinson's handwriting, the Bates number is 19.6820.

COMMISSIONER: Madam Associate, would you bring that up, please.

45 MR BEETHAM: Yes, it looks like that's the document, sir.

COMMISSIONER: Is this the document you're thinking of, Ms Siavelis?

MS SIAVELIS: It is, Commissioner.

5 COMMISSIONER: Madam Associate, would you just go through all of the documents so I can see how many pages there are. Two and a half pages, thank you. If you could just direct my attention to the paragraphs you want to deal with and the pages they are on, please.

10 MS SIAVELIS: Commissioner, I think it would only be necessary to refer the witness to the first page and in particular, I think the first couple of paragraphs summarise Ms Battista's concern and the paragraph, "It is particularly critical to address these conduct issues prior to the Lord Mayor's return."

15 COMMISSIONER: So the first, second and fourth, is that right?

MS SIAVELIS: Yes.

COMMISSIONER: Have you had a chance to look through this letter recently?

20 MS SIAVELIS: Yes.

COMMISSIONER: Just take a seat for a moment. Mr van der Zanden, what about you, have you had a chance to look through this letter?

25 MR van der ZANDEN: No, I haven't, Commissioner. I would be grateful to.

30 COMMISSIONER: I had hoped to complete Ms Scaffidi's evidence today but that does not look possible. I'm afraid I have to adjourn at 5 o'clock to deal with another commitment. So what I'm going to do is have Ms Scaffidi brought back into the room to explain the position to her. Is there any reason, Mr Beetham, why we cannot begin early tomorrow and complete Ms Scaffidi's evidence starting at 9.30?

35 MR BEETHAM: No, sir.

COMMISSIONER: Do any other counsel have a difficulty with that? Silence is acquiescence on this occasion. What I'm going to do, Mr van der Zanden, is give you a proper opportunity to look at this letter overnight.

40 MR van der ZANDEN: Yes. Thank you, Commissioner.

COMMISSIONER: That's only fair. Madam Associate, would you please have Ms Scaffidi brought back into the hearing room.

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

COMMISSIONER: Madam Associate, I will have you take the letter down, thank

5 you. Ms Scaffidi, in your absence I've heard some applications to examine you and I've given leave to Mr Houweling who appears for Ms Barton, leave to examine you on two matters. I have also given Ms Siavelis, or I'm going to give Ms Siavelis leave to examine you on a matter which concerns a rather lengthy letter. Your counsel has also been given leave to examine you on a matter but he has not seen the letter on which Ms Siavelis wishes to examine you so it's only fair to give him the opportunity to look at that overnight?---Me, or - - -

10 No, him, not you?---Right. Okay.

So I was desperately hoping to complete your evidence today?---Okay.

15 Which is why I was sitting late today but that's not going to be possible, nor would it be fair?---Okay.

So I'm going to adjourn the Inquiry shortly to 9.30 am tomorrow morning?---Right.

20 So that we can complete your evidence early in the day and you can get about your other business?---Okay.

Mr Beetham, I know I have not heard from you on that application but it is only proper that questions be allowed on that matter.

25 MR BEETHAM: Yes. There's no objection, sir.

COMMISSIONER: Ms Siavelis, I'm going to give you leave.

30 MS SIAVELIS: Thank you, Commissioner.

COMMISSIONER: Are there any other housekeeping matters before I adjourn?

MR BEETHAM: No, sir.

35 COMMISSIONER: I adjourn to 9.30 tomorrow morning.

**AT 4.57 PM THE MATTER WAS ADJOURNED  
UNTIL FRIDAY, 20 SEPTEMBER 2019**

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45