

# **EPIQ AUSTRALIA PTY LTD**

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## **INQUIRY INTO THE CITY OF PERTH**

### **PUBLIC HEARING - DAY 113**

**FRIDAY, 20 SEPTEMBER 2019**

#### **INQUIRY PANEL:**

**COMMISSIONER ANTHONY (TONY) POWER**

#### **COUNSEL ASSISTING:**

**MR CHEYNE BEETHAM**

#### **COUNSEL APPEARING:**

**MR GEOFF BOURHILL (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 PETER van der ZANDEN (MS Lisa SCAFFIDI)**

**MR MICHAEL HARRIS (MS Erica BARRENGER)**

**MR MATTHEW HOWARD SC and MS PENELOPE FORD (DR Jemma GREEN)**

**MR TIM RUSSELL (MR Paul CROSETTA)**

**MR ALAN SKINNER and MR PETER MARIOTTO (MR Dimitrios LIMNIOS)**

**MS JUSTINE SIAVELIS (MS Annaliese BATTISTA)**

**MR JONATHAN WYATT (MS Rebecca MOORE)**

**MS RACHAEL YOUNG (MR Stephen HASLUCK)**

**MR TIM HOUWELING and MS BROWYN WAUGH(MS Lexi BARTON)**

HEARING COMMENCED AT 09.34 AM:

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

10 Mr Beetham, do you recall Ms Scaffidi?

MR BEETHAM: I do, sir, I recall Ms Lisa-Michelle Scaffidi.

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

**MS Lisa-Michelle SCAFFIDI, recalled on former oath:**

20 COMMISSIONER: Ms Scaffidi, you remain on your oath from yesterday?---Yes.

I will hear applications and take applications. Mr Bourhill.

25 MR BOURHILL: With your leave, Commissioner, I would ask to appear for Robert Mianich.

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

30 MR BEETHAM: No, sir, and I will adopt the same course as previously, there will be no objections to the other applications to be made either, sir.

COMMISSIONER: That's very helpful, thank you.

MR BEETHAM: If it please.

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

MS SARACENI: Correct, thank you, sir.

40 COMMISSIONER: Thank you. Mr Malone, you appear for Mr Harley?

MR MALONE: I do, thank you, Commissioner.

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

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

COMMISSIONER: Mr Harris, you appear for Ms Barrenger?

MR HARRIS: Yes, sir.

5 COMMISSIONER: Ms Ford, you appear for Dr Green?

MS FORD: Yes, sir.

COMMISSIONER: Thank you. Mr Russell, you appear for Mr Crosetta?

10 MR RUSSELL: Yes, sir.

COMMISSIONER: Ms Siavelis, you appear for Ms Battista?

15 MS SIAVELIS: I do, Commissioner.

COMMISSIONER: Thank you. Mr Wyatt, you appear for Ms Moore?

MR WYATT: Yes, Commissioner.

20 COMMISSIONER: Thank you. Mr Mariotto, you appear for Mr Limnios?

MR MARIOTTO: If the Commission pleases.

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

MR HOUWELING: I do, Commissioner.

COMMISSIONER: Ms Young, you appear for Mr Hasluck?

30 MS YOUNG: Yes, Commissioner.

COMMISSIONER: Thank you. Mr Houweling, are you in a position to proceed with your questions?

35 MR HOUWELING: I am, Commissioner.

COMMISSIONER: Thank you, please do.

40 MR HOUWELING: Thank you

#### EXAMINATION BY MR HOUWELING

45 Ms Scuffidi, yesterday in evidence you said that upon returning to the Council you were, in effect, in my words, finding your feet again?---Yes.

And you were somewhat shell-shocked about the circumstances surrounding you

upon return?---Yes.

And the circumstances within which the Executive may otherwise have supported you was not something you were aware of or you didn't know whether they gave you absolute support at that point?---I don't recall saying that.

In respect of Ms Battista, you accept that she was a highly efficient operator?---Not entirely.

10 She was good at her job?---I found initially that to be the case, but later on I would have described her as questioning me a lot more.

15 That was the problem, wasn't it, Ms Scaffidi, just simply that she was questioning you?---No, not in that. I welcome enquiries. It was more in strong disagreement with some Council views that there was disagreement or questioning expressed by her.

She didn't look at you in the eye?---Correct.

20 She was, you would describe as yesterday, indifferent?---Yes.

And she made some comments to you about another Councillor at some point?---There was a discussion, yes.

25 And you described her as somewhat dismissive?---Yes.

You also remember telling the Inquiry that Mr Dylan Fernando was coming up and talking to you about the fact that Ms Battista had come upstairs on floor 10 on a number of occasions?---He didn't come up and tell me, he told me twice, as I recall, that he had seen Ms Battista a number - well, regularly on level 10 visiting the then DLM Limnios and after that, DLM Green.

35 Ms Battista, you said that there was somebody who went - in the senior Administration, you were told by the Chief Executive Officer that one of the senior Administration had gone rogue?---Yes.

Were you told who that person was?---No, I respected his not naming the person and I didn't push him, but I later on worked it out for myself.

40 That was on the basis that - you then suspected Ms Battista?---Yes.

And really it was simply on the basis that if one of the senior Executive weren't for you, they were considered by you to be against you?---Okay, no, they are your words. It had nothing to do with being for me. It was very much a case of showing a decidedly rude behaviour, unprofessional to be that obvious about, you know, the way she was engaging with me.

Ms Scaffidi, you would accept that was largely on the basis of rumour and gossip?---No, I do not.

5 And your view at the very least, but not based on her work that she was doing?---Sorry, say that again?

It was based on your view of matters, but not based on the work that she was doing?---I could hark to some work that concerned me greatly, if I am able to.

10 Ms Scaffidi, you didn't tell the Inquiry initially, you were saying that she was effective and efficient but there was some work that you were concerned about?---In the beginning, there was great keenness and desire to be successful in the role, but then latterly, from probably late 16 onwards, I observed things that concerned me and I did contact the CEO about it. One that comes to my mind  
15 right now was the Winter Arts Festival where many events that I believe were paid for and scheduled did not materialise and when I tried to enquire and probe into the detail of that, I met with some dissatisfactory responses as to why they had fallen over.

20 But you would agree that wasn't foremost on your mind when you decided that she wouldn't be a person suitable to be in the acting role?---I explained what was on my mind at that time and on my mind at that time was the very clear view that Annaliese did not have the prerequisite experience to be able to handle a lot of day to day operational issues because her role is not as directly operational as, say, that  
25 of Rebecca Moore or given the experience of Rob Mianich, albeit I accept he had also gone on stress leave.

And you would accept that Councillors would reasonably differ in mind from your view?---Of course, absolutely.

30 And that there would be a reasonable basis on which they may differ on mind?---Absolutely, that's the democratic process.

35 In respect of your suggestion yesterday that certain Councillors were doing things because they were being told effectively to do certain things by the Member of Perth?---M'mm.

You've got no basis on which you form that view, do you?---I do.

40 Ms Scaffidi, you don't anybody's political persuasions on Council?---No, but I can hark to an email that I received in mid 15 - 17 from Daniel Emerson who was a then journalist with The West Australian, now working for the Attorney-General, that actually very clearly stated that in parliament, under privilege the day before, Mr Carey had expressed great concern about City vibrancy and in particular,  
45 questioned why alfresco fees wouldn't be abolished, talked about media gags, talked about a number of other issues. Then, of course, I can go on, there were aspects where Mr Carey was speaking to the press about the same issues, staunchly

supporting Historic Heart, talking about the need for skateboard parks and all of the things that we then started to see motions coming through on at Council.

Ms Scaffidi, all of those things are based on gossip and rumour, weren't

5 they?---No, not at all. I can point you to - - -

You did not see any direct evidence of a suggestion that any motion was being put to Council sponsored by Mr Carey?---I can hark to audio at Council meetings where Mr Carey was referenced in relation to being supportive of these things or 10 the Council supportive of his views, and I can also hark to a number of notices of motion which were extraordinary to be raised as they were. We had never seen notices of motion in the numbers in my 20 years on City of Perth that were coming through at the volume that they were coming through in that last year in particular.

15 Ms Scaffidi, that's your view of things but it's not with a proper basis? That was your view, that was your belief, your understanding but there was no - no-one told you that these motions were being put forward because Mr Carey was suggesting that they ought to be put forward?---Well, it's not just my view. I could point you to several articles in the local Voice and others that showed a strong alignment of 20 views and it is my opinion that there was connection.

That's precisely the problem, Ms Scaffidi, that you were running the Council based on what other people told you and what you thought was going on rather than based on the competent, efficient persons that were feeding you or giving you 25 correct information?---I would respond to that by saying there's a Hansard, page 28, June 17 that might be relevant to that response.

[9.45 am]

30 Thank you, Mr Commissioner, no further questions.

COMMISSIONER: Thank you, Mr Houweling. Ms Siavelis, are you ready to proceed?

35 MS SIAVELIS: I am, Commissioner.

COMMISSIONER: Thank you

EXAMINATION BY MS SIAVELIS.

40 Ms Scaffidi, you gave evidence yesterday about why you voted the way you did at the Special Council Meeting on 27 February 2018 and in relation to the two motions, and when asked why you voted against the motion for amendment to the Council Policy regarding the appointment of an Acting CEO, my recollection of 45 your evidence was that you said the acting arrangements were suitable, but then when probed further, you said that there was a feeling there was more to it than just the amendment of the policy, is that correct?---Yes.

- Then when asked specifically why you voted against the motion for Ms Battista to become Acting CEO, you referred to a growing awareness of the plan. Am I correct in saying that the nature of that plan was to suspend Mr Mileham and
- 5 install Ms Battista as the CEO?---I can't recall if that was my full view at that date. It was my fuller view later on, I just can't pinpoint the timeline for the fuller view, but I did feel there was a plan hatching, I don't know if the suspension part was in my mind at that point.
- 10 And this was a plan, is it correct, Ms Scuffidi, contrived in your mind by the five Councillors who had put up the motion before the Special Council Meeting?---Sorry, can you just repeat that in another way? Contrived in my mind, I don't get that bit.
- 15 I'm sorry, I will repeat the question. Was that plan something that you understood had been formulated by the five Councillors who put up the motion before the Special Council Meeting on the 27th?---Right, okay. I think my answer would be, from 16 February at that CEO Performance Review Committee, and remember that was just after me finding out about Project Percy, I started to realise
- 20 Councillor Green and Councillor Harley were very, very vocal at that CEO Performance Review Committee, about contact they'd had with a stakeholder, about their views on KPIs that were needed that weren't in the contract and so from the 16th through to when the Special Council Meeting was called, I was back and having discussions with people and people - you're going to say who - other
- 25 Councillors were proffering views and I have a recollection of even other Directors making comments in passing about what they felt could be occurring. So my awareness of this, because I told you Mr Martin didn't tell me the name of the person, I was on, you know, alert to be looking out for pointers that I felt were confirming the views that were being formed.
- 30 I'm a little confused as to what the view was at that particular point in time. You've referred a couple of times to a plan but I'm just not sure what the plan that you had in mind at that particular point was?---It wasn't my plan but the plan that I became aware of - - -
- 35 Not became aware of at that particular in time, what did you think the plan was?---I can't remember the exact point, as I've said. Martin went on stress leave on the night of 13 February and citing breach of contract. The Councillors became aware on the 16th, at that meeting, of what had transpired and that was a surprise to them and then you've got the issue of the Local Government standards complaints and then the calling of the Special Council Meeting within a very close timeframe and it was just, you know, a rolling out of some interesting behaviour that was apparent.
- 40 45 So is it accurate to say at that time you did not believe there was a plan as such, rather something going on in the background?---Yes, something going on.

And you mentioned yesterday in your evidence that Ms Battista, in your view, was in on this plan or involved somehow in that; do you maintain that position today?---I do.

- 5 As Mr Houweling's referred you to, you gave some evidence regarding some change in behaviour that you said you observed in Ms Battista upon your return from 8 January onwards, 2018, including that she had an inability to look you in the eye, you generally picked up a pattern of change in behaviour and she was very indifferent towards you. You described her demeanour as dismissive and you
- 10 referred to bumping into her in the car park and having an exchange, I believe at that time about Councillor Limnios and you described that she brushed you off; is that an accurate summary of the evidence that you gave regarding the changes you perceived in Ms Battista's behaviour?---Yes.
- 15 There are other matters that you referred to, however, I would like to focus my questions on the behaviours that you observed and what you saw of my client at that time. Just before I move on, regarding that exchange in the car park, do you recall anybody else being present with Ms Battista at the time you had that exchange?---I recall very clearly I had driven myself to Council House that day in
- 20 my own vehicle and I parked in my normal bay and she was standing about three bays away and in the dimness of the car park, I didn't recognise her. She was wearing some trendy jeans and she looked amazing and when - I said, "Oh, you look fantastic, I didn't realise it was you, Annaliese, I'm sorry" and she didn't say very much and I said, "Look, while we are just here together", I said "I'm really
- 25 concerned to hear that there has been some commentary on me from the Deputy Lord Mayor" and she just said, "Lord Mayor, I'd rather not discuss it." So I left it at that and I went into the building.

- 30 Do you recall anybody else being present for that conversation?---No, because she was waiting for somebody to pick her up, I recall, to do a fireworks reconnaissance.

- 35 Did you think it was appropriate at that time to be discussing concerns regarding another Elected Member?---Because of the feedback that had come to me about what was said, I thought it was appropriate.

And this exchange took place some time between 8 January and the Special Council Meeting on the 27?---8 January and probably Australia Day.

- 40 You've described a change in Ms Battista's behaviour and your evidence yesterday, if I am correct, was that change in behaviour led you to believe that Ms Battista was involved in some sort of plan, non-specific as I understand your evidence today at that point, is that correct?---I think my best way of answering that question is to say that I realised that a lot of people weren't satisfied that I had returned. I hope people understand it was equally a test for me too, but under my legal advice, I had served four months and I was returning to work and I knew that there could be a mixed reception with me coming back because of the huge

amount of publicity around my travel breach matter, and I think it's fair to say that at that point in time I knew of alignments that had been created and I was seeing them in action.

5 Ms Scaffidi, I'm not so much concerned with the alignments within Council as I am perhaps Ms Battista's alignment?---I mean with her and Councillors as well.

With her and any particular Councillors?---Predominantly the former DLM and the current DLM.

10 The evidence you're giving today, Ms Scaffidi, is slightly different to how I understood your evidence yesterday and that was to the effect that these behaviours of Ms Battista led you to believe that she was part of a grander plan with some of these Councillors; is that correct?---Yes.

15 I would like to put to you an alternative version of events and perhaps why her behaviours would have changed to some of those you've perhaps touched on today?---Okay.

20 I wonder, Madam Associate, if you could bring up a document, TRIM number 15392. One moment sir, and Ms Scaffidi?---That's okay.

Thank you. It's volume number 19.6821. Ms Scaffidi, this is a letter of 23 December 2017 which begins, "Hello Martin" and then is headed, "Private and confidential"; perhaps I will just let you consider this letter briefly at this point?---Sure.

And tell me whether you recognise this letter?---I've never seen it.

30 You've never seen this letter at all?---Can I read it?

Perhaps I will just ask you to note that?---Right.

35 The introduction and, Madam Associate, if you could go forward two pages to the conclusion of the letter, and you will see that it's signed or at least the sign-off is Ms Battista's as the Director of Economic Development and Activation?---Yes.

40 Madam Associate, if we can go back to the first page. Just looking at those couple of things, Ms Scaffidi, do you accept that this appears to be a communication between Ms Battista and Mr Mileham?---Of course.

On or about 23 December 2017?---Yes.

45 And that was some two weeks or two and a half weeks before you were scheduled to return to Council?---Right. Interesting timing.

Yes, and I would ask you just quietly in your head, and not aloud, to read the first

couple of paragraphs of the letter to get a sense of what - - -?---Sorry, to read it?

To read in your head the first, say, four paragraphs of the letter?---Okay.

5 Ms Scaffidi, do you see in the first paragraph Ms Battista describes the purpose of her letter as formalisation of some concerns that she describes as "the sustained and persistent poor conduct of the City of Perth Elected Members in general and the Lord Mayor, Lisa Scaffidi specifically"?---Yes.

10 "And its ongoing impacts on the Executive and myself and the Directorate staff"?---Yes.

In the second paragraph, Ms Battista characterised the working environment at the City at that time as unsafe "for the Administration and particularly those with a 15 high degree of exposure" to yourself and the Elected Members. In the third paragraph, Ms Battista refers to a meeting with Deputy Lord Mayor Jemma Green on 7 December 2017 and I believe that Dr Green was also acting in your position at that time?---Yes.

20 Where "Mr Mileham and all five Executives reconfirmed their position that the City of Perth workplace was unsafe"?---Mm hmm.

And in the fourth paragraph down she urges Mr Mileham to "address these 25 conduct issues prior to your return on 8 January 2018." I won't ask you to read on but the letter goes on for some pages there. Whether or not you agree with Ms Battista's specific concerns and I don't expect that you do, you would agree, wouldn't you, that it was appropriate for a Director of the City to raise with the then CEO Mr Mileham, her concerns about the safety and well-being of the staff of the City and particularly those in her Directorate?---My answer is no, I don't agree 30 because my understanding is that Mr Mileham had invited all Directors to share with him emails that he felt showed instructing or control coming from all Councillors and I believe Annaliese took this as an opportunity to sharpen her pencil against me and again, in any workplace, it's very easy to fire these missiles and put all these allegations towards somebody and that person isn't able to 35 respond or even be made aware of this complaint. My response would be, in direct relation to that complaint, that I never mistreated the staff - - -

[10.00 am]

40 I'm not asking that, Ms Scaffidi?---Okay.

I'm asking you whether it was appropriate for a Director at the City to send a private and confidential communication to the then CEO setting out her concerns about the safety and well-being of the staff of the City?---I don't have an opinion 45 on that, I'm sorry. I don't know if it would have been done before or - - -

It doesn't matter when it was done, I'm asking in the general sense, as an employer

or as a manager of staff who has concerns about the well-being of the staff, it would be proper to formalise - - -?---I have no problem with it.

5 Thank you. I will take you perhaps, Madam Associate, to the second page and I will ask you, Ms Scaffidi, just to read the final paragraph of that?---Sorry, the last?

Yes, there's one bullet point and just the preamble to that?---Okay.

10 It goes over onto the next page if you could indicate when you're ready to read on?---Okay.

You just need only read to the end of the bullet points there?---Right.

15 So in that paragraph, do you agree Ms Battista is outlining her proposed response to what she perceived as work health and safety issues at that point in time in the City?---Yes.

And that was to follow a directive which had been issued by Mr Mileham on 11 December 2017?---Yes.

20 And not have any direct contact with you and to "direct all communications on operational matters to and from yourself will be via the Chief Executive Inbox, Council Hub or through Mr Mileham as Chief Executive Officer"?---Three points, if I may?

25 I'm just asking you whether that's what Ms Battista is saying in this letter that she proposed - - -?---I accept it but I find it appalling.

I'm not asking you for an opinion on it?---Okay.

30 I'm asking you whether that is what she proposed to do?---Clearly.

35 Madam Associate, I think the document can be taken down now. Ms Scaffidi, having read that letter, in particular the last paragraph that I've referred you to, does that not shed more light on perhaps Ms Battista's behaviour in early 2018 when you described her as dismissive, distant and - sorry, indifferent to your concerns?---It sheds a lot of light. It shows that she was building a case in her mind and in her position to undermine me and the role.

40 But not necessarily that she was part of some broader plan with the Elected Members to displace Mr Mileham?---I still hold that very strong view.

45 I understand that's a view you hold but might another interpretation of an objective observer having read this letter, interpret Ms Battista's behaviour as her response to her perceived - to the perceived workplace health and safety issues that were occurring at the City at that time?---No, I see it was complete fanning of flames or sparks - - -

I understand what you see it as, I'm asking whether it would be reasonable for whether a person looking objectively at this might interpret her behaviour as in response to those health and safety issues that she raised in that letter?---There's no objectivity in her behaviour.

5 I'm not asking about - - -?---It's impossible.

10 --- her behaviour, I'm talking about - - -?---I don't think that's a reasonable question, respectfully, because if you know what you know and you know the background, it's very hard to respond.

15 You've said yourself, haven't you, Ms Scaffidi, that some of the Administration - I'm wary of misquoting you here - or the Executive may have felt mixed feelings about your return to work and that may have influenced their behaviour in early 2018, is that correct?---Only from the point of view that wrongly or rightly and even with the media portrayal, that my position - I should have been terminated or sacked. They were not sackable offences and - - -

20 I'm not asking you to comment on the offences, I'm asking you how the staff of the City may react to your return and why it may not be unusual for Ms Battista to have behaved in the manner she did in early 2018?---I can respond by saying that upon my return, I had so many staff in the lift and in other places welcoming me back warmly, telling me how proud they were that I had stood strongly, and those comments were just as apparent to me as other comments.

25 And that may well be the case but I'm asking about the others which you referred to before may feel slightly uncomfortable?---More the Councillors.

30 Particularly if they had raised concerns internally about behaviours they may have felt uncomfortable in your presence?---So the question is?

35 May that have been an explanation for, in particular, Ms Battista's behaviour in early 2018, that she had raised concerns about your behaviour - - -

COMMISSIONER: Yes, Mr Beetham. Just hold on a moment, Ms Siavelis. Yes, Mr Beetham.

40 MR BEETHAM: Sir, I hesitate to interrupt. The questions and the evidence that's coming from the witness, in my respectful submission is straying a bit too far into speculative evidence and has, in my submission, almost no probative value for the purposes of the Inquiry.

45 COMMISSIONER: Ms Siavelis, what do you say about that?

MS SIAVELIS: I say we can move on.

COMMISSIONER: Thank you

MS SIAVELIS: Ms Scaffidi, you said before, the letter that I showed you, that you had not read it before. Was that your evidence, that you have not read the letter before?---I've never seen it before.

Have you, prior to today, been aware of its contents?---Never seen it before.

I'm not asking you whether you've seen it before?---Sorry, the content, no.

Aware of its content?---No.

You're not aware at all at any stage prior to today that Ms Battista had raised these concerns?---Sorry, I haven't really read the letter that fully, I've only looked at a couple of paragraphs.

If you'd like the opportunity to do so, we are happy to do that?---I don't need it. Specifically the question is what?

Is, were you aware at any time prior to today's hearing when you viewed that letter, that Ms Battista had raised these concerns about your behaviour?---I don't recall.

And if it helps, just those four paragraphs, even the description of the behaviour in those four paragraphs that I took you to?---The thought that comes to my mind is, I have a recollection she told my PA she thought I was cheeky. She - obviously the Dylan Fernando comment and there were some unprofessional comments that had come to me about comments she was making about me in the workplace.

Were you aware she had made a complaint to Mr Mileham regarding your behaviour - - -?---No.

- - - prior to today?---But as I said to you before, I was aware Mr Mileham had asked Directors to compile a list of emails that he thought were instructional from Councillors.

Ms Scaffidi, do you remember an article from the ABC News of Wednesday, 28 February 2018, and I can refer to the TRIM number if it will assist to bring up that article, TRIM number 24824. Can you just have a read of that, Ms Scaffidi.

COMMISSIONER: Just enlarge that, please, Madam Associate, so everyone can read it.

WITNESS: I don't remember the article.

MS SIAVELIS: Perhaps just read the first page for now?---I've read as far as I can read.

COMMISSIONER: Please bring it up, Madam Associate, to the bottom of the screen.

WITNESS: Okay.

5

MS SIAVELIS: Do you note, Ms Scaffidi, the reference in the second paragraph of the article?---Yes.

10 To a letter from Ms Battista to the Chief Executive, Martin Mileham, dated 23 December 2017?---Correct.

Reading the excerpts in that newspaper article, do you recognise some of those comments as being from the letter I just showed you?---Yes.

15 Do you accept that this is a newspaper article regarding Ms Battista's communication of 23 December 2017 to Mr Mileham?---Clearly, yes.

COMMISSIONER: Yes, please confer

20 MS SIAVELIS: I'm grateful to my learned friend. He's pointed out that perhaps it is not a newspaper article but an online article?---Okay, that's fine.

From ABC News. I'm grateful for that. Did the ABC contact you, Ms Scaffidi, prior to going to print with this article?---I don't recall and I would say I don't recall ever reading this article until now and my answer would be that if I had read the article, I would have asked Martin for the letter of 23 December 17. I didn't know about the letter of the 23rd of 17 then or now, until about 20 minutes ago.

And you didn't know about the content of the letter, was your evidence?---No.

30

And you weren't aware that Ms Battista had made a complaint regarding your conduct at this point?---No.

35 Madam Associate, could you page down to the second page of that article. I will just allow you to read that page?---Yes, I'm fine with that.

There's quotes again in the boxes?---In the boxes, yes.

And then there's a heading, "Scaffidi unaware of issues"?---Yes.

40

And a quotation, it directly cites you?---Yes, it does.

Commenting on the letter or the allegations in the letter of - - -?---It might have been via media officer, I don't recall, and I don't recall if I spoke to the media directly for this article.

45 This article says:

*Mrs Scaffidi said the allegations put to her in an email by the ABC regarding Ms Battista's letter were the first she had seen of any specifics.*

5

?---Am I able to see my email?

I have requested the Inquiry attempt to locate that email and I understand they are doing so?---Okay.

10

But does this article now cause you to change your evidence that perhaps you were aware of the letter prior to today?---It would seem that I was aware - no, I wasn't aware of the letter. I've never been aware of the letter, I maintain that vehemently. It might have been mentioned but I wasn't aware of the letter, I'd never seen the letter until today.

15 But you were aware of the specifics outlined in the letter before today?---No, I don't believe I was aware of the specifics. I don't have any recollection of a conversation between myself and Martin about specifics

20

[10.15 am]

So this newspaper article may have misquoted you in saying that you weren't aware of the specifics until they contacted you?---Well, yes. As I say, I don't have any - there have been so many articles and I really don't put as much focus on them perhaps as others do. Whether that's resilience or what, I don't know but the reality is, I just don't recall that and I've never seen that letter until today.

25

I will take you to the paragraph below the photograph and you say, and this is cited as a direct quotation from you:

*I'd only heard a rumour of an alleged complaint.*

?--- yes, I accept that.

30

You accept that you said it or you accept that prior to this date, you were aware of a rumour that Ms Battista had made a complaint?---Yes, I'm aware of an alleged complaint.

35

Were you aware of the nature of the complaint?---No, I was not.

When did you become aware of that complaint?---I think the night of the 27th or the morning of 28 February.

40

Was that before or after the Special Council Meeting?---After.

This article is dated the day after the Special Council Meeting?---Right.

And a quote from you refers to contact from the ABC regarding this. If I was to tell you that Ms Battista was contacted by the Media Team at the City of Perth at 10 past 7 on 27 February 2018, regarding - by the ABC regarding the leak of this letter to the ABC, would that prompt any recollection about when you became aware that the ABC had this particular letter?---No.

I put it to you, Ms Scuffidi, that you were in fact aware of the complaint that Ms Battista had made on or before 27 February 2018?---I don't believe I was. If I can expand on my recollection, the morning of 28 February, myself and Councillor Adamos were at the City of Perth Council House fairly early and I texted Annaliese to have a meeting. She advised she was in a meeting and she would get to me. She didn't get back to me and I realised that there was going to be an ELG meeting at 9 o'clock, so Jim and I walked down to Level 8 and met with her and that's when she told me.

On the 28th?---Yes, the morning of, it would be about 8.45.

But this article refers to you being aware of a rumour of a complaint earlier and in fairness to you, Ms Scuffidi, I put to you that when you voted against Ms Battista being the new Acting CEO of the City of Perth, that it was not with regard to her performance issues relative to Ms Moore or anyone else, but was because she had made a complaint about your conduct to the CEO, Martin Mileham and you had an awareness of that complaint?---No, I disagree with that.

Do you understand how an objective observer, having read this article, and having heard your evidence, may form the view - - -?---Of course I do.

And that would be a reasonable view?---Well, it would also be reasonable for me to state why I - - -

I'm asking about this view, not your view?---I'm happy to accept an objective view, but I don't agree with it.

Thank you. I have no further questions for the witness.

COMMISSIONER: Thank you. Do you want that document taken down?

MS SIAVELIS: Thank you, Commissioner.

COMMISSIONER: Mr van der Zanden, are you ready?

MR van der ZANDEN: If I could just have a moment to look at that article, please, Commissioner?

COMMISSIONER: Of course. Take as long as you need.

MR van der ZANDEN: Yes, thank you, Commissioner. I don't seek to ask the witness any questions arising out of the examination by Mr Houweling or - - -

COMMISSIONER: Ms Siavelis?

5

MR van der ZANDEN: Yes.

COMMISSIONER: Thank you.

10 MR van der ZANDEN: But I do seek to ask some questions on the topic that I mentioned yesterday afternoon.

COMMISSIONER: Yes, of course. When you're ready.

15 EXAMINATION BY MR van der ZANDEN

Ms Scaffidi, yesterday afternoon and also this morning you've been asked some questions arising out of the vote at the Special Council Meeting on 27 February 2018. You voted against the proposed motions and as I understand your evidence, 20 you said you thought there was more to it, I think were your words, and you also said that the events of the CEO Performance Review Committee meeting on 16 February was one of the reasons for your belief, is that correct?---Yes.

25 During that evidence you said that you raised two items under general business at that meeting?---Yes.

You also said that - you then said Mr Douglas was in the room?---Yes.

30 And you said to the meeting, "I need to let you know Mr Mileham is going on stress leave citing breach of contract", is that correct?---Correct.

And you then gave evidence that you deferred to Mr Douglas and he said something about Project Percy, if I've correctly recalled your evidence?---Yes, he did.

35

I think that was the last of what you said about the meeting in your evidence yesterday. Was there anything else that happened in the meeting that led to your belief that there was more to the proposed motions on 27 February meeting?---Just let me think for a second. Once the meeting got to general business, the behaviour 40 kind of spiralled downwards pretty quickly because - - -

What happened when it got to general business?---So when it got to general business and I raised the point about, you know, Mr Douglas will explain why Martin's citing breach of contract and he started to explain the Project Percy matter 45 - - -

What did he say?---He gave a brief overview of the fact that there had been an

allegation against Martin and myself and explained cursorily Project Percy, and I remember exactly the word Dr Green used, she accused him of being smug and the behaviour spiralled downwards at that point. I then said at that point to Jemma that I felt she not only hadn't declared a conflict of interest on the potential use of

- 5 Freehills as one of the CEO Performance Review law firms, which she should have - she knew that she had been working with them on Project Percy and yet when I asked twice for a clarification on, if any Councillor had a conflict of interest, she ignored me, yet to his credit, Councillor Limnios had mentioned HHG and that their family business uses them, so the question had been understood by everyone  
10 in the room. I also then said to Dr Green that I think she had a conflict to be the Chair of the CEO Performance Review Committee knowing that she'd been involved in the Project Percy situation.

15 And is there anything else you can recall about that meeting?---Yes.  
That you say gave rise to a suspicion?---Yes.

That you haven't already told the Inquiry about?---I might have already told the Inquiry so you just feel, you know, Reece and her were really a tag team in their  
20 conversations there and it was very apparent that they knew everything that was going on in the background and had a very clear view of what they needed to do in terms of CEO Performance Appraisal and I'm sure the announcement of Martin going on stress leave kind of blind-sided them.

25 I'm just interested in what perhaps was said or done at the meeting?---The meeting pretty well finished soon after. It just broke up and there were just, you know, a few jibes being made at that point.

Was there anything said about Project Percy that gave reason - that you recall that  
30 gave you reason for suspicion?---So I can't recall now whether it was on 16 February or another day, and I can't remember if it was the 22nd when there was a meeting where Mr Douglas came back and we had a meeting with Jemma Green and it was supposedly to give a verbal overview of the McLeods' chronology. It was very clear that there was an intent there to - my words - get Martin and I  
35 caught up in a saga.

Ms Scaffidi, did you take a note or have you made any notes about that meeting?---Yes, I have.

40 When did you do that?---I did them contemporaneously at the meeting and then I also put them into a book that I was keeping at the time. Some rough notes on the agenda papers and then I, you know, transcribed all my thoughts into a black book which I handed into the Inquiry, which had been a work book I was using at that time.

45 Did you prepare a typed note of that meeting?---Yes, I did prepare a typed note of that meeting and I called it a file note.

When did you do that?---Immediately after, on my computer in the office.

5 Commissioner, I would seek to have the witness refresh her memory, I think that will be the case, in relation to her typed file note.

COMMISSIONER: I will just hear from Mr Beetham on that. Mr Beetham?

10 MR BEETHAM: I'm not sure the witness has indicated that she has a difficulty remembering the meeting, sir, but having regard to the fact that this is an Inquiry, I don't have a strong objection to the witness being shown the document.

COMMISSIONER: Is the document available?

15 MR BEETHAM: It is, sir, and I've given the Bates reference to Mr van der Zanden.

COMMISSIONER: Thank you. Yes, Mr van der Zanden, please proceed.

20 MR van der ZANDEN: Thank you, Commissioner. Madam Associate, could you bring up document 12.0735?---Right.

[10.30 am]

25 Ms Scaffidi, could you just read that file note to yourself, please, and then let me know when you've done that?---Yes.

Having read that, is there anything else that you recall that you haven't told the Inquiry that you recall provided a, or led you to have this belief that you've given evidence about?---Yes. The very clear fact that Green, Harley, to a lesser extent Limnios, were controlling the meeting and Hasluck and Barton to a lesser extent happy to go along, I don't remember Adamos speaking very much. I was seated with Janet to my left but I do remember very clearly that there was just a plan and the fact that I brought up under general business what I did about Martin Mileham, it skittled - it surprised them. It came out of left field.

I'm just interested - - -?---Yes, sorry.

40 - - - in what was said or done. Does this refresh your memory on anything else that was said or done that you haven't given evidence to the Inquiry about, that led - provided a basis for your belief?---There were conversations about - there was mention of a conversation with Adrian Fini as being potentially one of the 360 degree feedback stakeholders but as I've said before, I don't think that was in his contract KPI.

45

So who said that?---Jemma.

Anything else said that's relevant to this question?---There was a lot of discussion coming from Councillor Harley about what he felt needed to be a process of, you know, interview and 360 feedback and stakeholder feedback and all of that. It was very clear to see that they had, in my view, discussed it previously and they were elaborating to us in the room their views of how this CEO Performance Appraisal needed to be undertaken. There was also - is it mentioned there? Yes, the comments that the Chair didn't feel that Portland Broome and the other one were acceptable - - -

10 MR BEETHAM: Sorry, sir, if I can just rise. I apologise for interrupting. In my submission the evidence is simply covering over material that was either addressed yesterday, this is the 360 Review in relation to Mr Fini, Mr Harley's involvement in the meeting and matters Ms Scaffidi's giving evidence about at the moment. Unless the evidence raises anything additional to those matters as my friend  
15 continues to ask Ms Scaffidi to focus on, I'm not sure the questioning is of any further utility to the Inquiry, sir.

COMMISSIONER: Thank you, Mr Beetham. Mr van der Zanden, what do you say about that?

20 MR van der ZANDEN: Yes, I accept that. I will ask one more question and ask the witness if there's anything else that she hasn't already mentioned. If there isn't, then - - -?---I can't recall at this time.

25 Under those circumstances, I have no further questions, Commissioner.

COMMISSIONER: Thank you. Madam Associate, take the document down, please. Mr Beetham? I'm just hesitating, Mr Beetham, is there a further application at the back of the hearing room?

30 MR HOWARD: There is, Commissioner.

COMMISSIONER: Yes, Mr Howard.

35 MR HOWARD: It's two-fold - - -

COMMISSIONER: Can I just record for the transcript first of all, Mr Howard, that you were not at the Bar table at the commencement.

40 MR HOWARD: I wasn't.

COMMISSIONER: And that's why you're making the application now.

MR HOWARD: I am.

45 COMMISSIONER: Thank you.

MR HOWARD: So there are two applications I seek. The first is, Ms Ford's been appearing for Dr Green on this part of the Inquiry. I seek leave to appear to make this application and if the application's granted, then to carry it forward. There's a matter that arose out of the evidence that Ms Scaffidi just gave that I seek leave to ask some short questions in relation to. I'm happy to articulate those in the absence of the witness if that's of assistance.

5 COMMISSIONER: Yes, that might well be because it may be that Mr van der Zanden has something to say about that as well. Thank you.

10 10 Ms Scaffidi, I'm going to ask you to be excused from the hearing room while I hear this application, so would you leave the hearing room, please?---Yes.

Thank you.

15 **WITNESS WITHDREW.**

COMMISSIONER: Mr Howard, I will deal with those applications in the order in which you've raised them. I can't imagine objection to the first of them. Mr Beetham?

20 20 MR BEETHAM: No, sir.

COMMISSIONER: Mr Howard, in relation to the second of those applications, I will hear from you on that but in view of the fact that when Ms Ford was asked 25 earlier whether she had any application to make and she said no, it is only fair that after I hear your application and any questions you may be allowed to ask, that I of course give Mr van der Zanden another opportunity if he wishes to ask further questions.

30 30 MR HOWARD: Yes, may it please the Commission. The witness, in response to questions that Mr van der Zanden asked, articulated or gave evidence to the position of conflict which she apprehended Dr Green was in. The Commission, of course, has documents which show that the engagement of Herbert Smith Freehills was done by the City and through the offices of Mr Ridgeway - - -

35 COMMISSIONER: Ridgwell.

40 40 MR HOWARD: Ridgwell, my apologies, and I want to ask Ms Scaffidi in fairness, given she seems to be proceeding on a misapprehension, matters to do with that, but short questions in that line.

COMMISSIONER: I will hear from Mr Beetham but I'm inclined to allow that application. Mr Beetham?

45 45 MR BEETHAM: There's no objection, sir.

COMMISSIONER: Thank you. Very well, you have leave to ask those

questions. Mr van der Zanden, what I will do is I will allow those questions to be asked of Ms Scaffidi.

MR van der ZANDEN: Yes.

5

COMMISSIONER: And then I will come back to you to see if you have any further application.

MR van der ZANDEN: Yes, thank you.

10

COMMISSIONER: Are you content with that?

MR van der ZANDEN: Yes, I am.

15 COMMISSIONER: Is there anything else, Mr Howard?

MR HOWARD: No, I'm sorry, Commissioner.

20 COMMISSIONER: I was just aware there was a conferral and I thought there might be something arising out of it.

MR HOWARD: There was with Counsel Assisting which I found helpful, thank you.

25 COMMISSIONER: Thank you, Mr Howard. Madam Associate, would you please bring Ms Scaffidi back into the hearing room.

MR HOWARD: I'm sorry, sir, I didn't realise I was holding you up further.

30 COMMISSIONER: No, you weren't. I was just unsure about whether you wanted to say any more.

MR HOWARD: Thank you.

35 COMMISSIONER: Ms Scaffidi, please resume your seat in the witness box.

**MS Lisa-Michelle SCAFFIDI, recalled on former oath:**

40 COMMISSIONER: Let me explain what's happened in your absence to you?---Yes.

In your absence, Mr Howard, who appears for Dr Green, made an application to ask you some questions. I've heard the application and I've granted him leave to ask you some questions. After he's finished with his questions, I will turn to your 45 counsel, Mr van der Zanden, to see if he has anything arising out of that?---No problem.

And then I will turn to Mr Beetham, to see if he has any questions for you. Your exclusion from the hearing room just a moment ago is no reflection on you?---I understand.

5 Mr Howard.

MR HOWARD: Thank you, Commissioner

EXAMINATION BY MR HOWARD

10 Ms Scaffidi, I understand your evidence to be that you were told about the Project Percy report on about 13 February?---Correct.

And that you were given a copy of it on about the 15th?---Correct.

15 The note that was put up by your counsel was of a Performance Review meeting on 16 February 2018?---Yes.

So you'd had the Project Percy report for a day?---For about 12 hours.

20 And you had read it before that meeting?---Yes.

25 And you were aware that Herbert Smith Freehills had said they had been engaged by the City of Perth?---I don't recall right now whether they said City of Perth. I will believe you if that's your reading much it.

I'm not sure I can readily bring it up - - -?---That's okay, I'm happy to accept that.

I think everyone at the Bar table probably has a copy?---Yes.

30 COMMISSIONER: If you would like it brought up, Mr Howard, that can be done.

35 MR HOWARD: Thank you, Commissioner. I'm just not aware of the TRIM number.

MR BEETHAM: The Bates reference, Commissioner, is 12.0631.

40 COMMISSIONER: Thank you. Madam Associate, please bring that up, 12.0631.

MR BEETHAM: I'm very hopeful that's the first page of the document. You might need to go back one or two pages, Madam Associate. Perfect, thank you, Madam Associate.

45 MR HOWARD: I'm much obliged to my learned friend?---Yes.

Ms Scaffidi, do you see the second entry on the left is, "Context"?---Yes, I see it.

And if you go to the right-hand side of that?---Yes, thank you.

5 By the time of the Performance Review meeting, had you made enquiries as to how Herbert Smith Freehills had been engaged by the City?---No, because my recollection is that I only read the report that evening, the Thursday, the 15th, and the meeting with the CEO Performance Review Committee was early the next morning, so I didn't have time or ability to speak to anyone in between.

10 Did you ask Mr Mileham about it?---No, he was on leave at that point.

Did you ask Mr Ridgwell about it?---I don't recall.

15 So is it the case now that your best evidence is that the meeting of the Performance Review meeting, your best understanding was that the City, in a way that you didn't understand or know, had engaged Herbert Smith Freehills?---Well, the City allowed Ms Green the opportunity to make a legal enquiry.

16 Let me ask the question again. At the Performance Review meeting on 16 February, your best evidence to this commission is that you knew the City of Perth had engaged Herbert Smith Freehills?---Correct.

But you didn't know how that had been done?---I can't recall if I knew how it had been done at that point or not.

25 You had it the night before, you went to the meeting the next morning. Your evidence before is that you didn't have a chance to speak to anyone about it so can I ask you again, your best evidence to this Commission is that at the Performance Review meeting, you knew Herbert Smith Freehills had been retained by the City but you didn't know how?---I knew - yes, I'm happy to accept that.

30 So any suggestion that Dr Green had engaged Herbert Smith Freehills on your part at that meeting on the Performance Review meeting, was not consistent with the Herbert Smith Freehills' report, do you accept that?---No, because within that report there are a lot more examples and examples of scripts for Ms Green to use in - - -

[10.45 am]

40 I'm asking about the engagement, Ms Scaffidi. You knew, didn't you - you've engaged lawyers, you knew that Herbert Smith Freehills said they had been engaged by the City, you knew that?---Well, yes, on the face of it is says the City of Perth, but - - -

45 Did you have any reason to think that a first tier reputable firm, Herbert Smith Freehills, would have misrepresented that?---Would have?

Misrepresented their engagement?---My view is that their engagement got carried away and that - - -

But the question - - -

5

COMMISSIONER: Ms Scaffidi, just - I'm sorry to interrupt you, Mr Mileham - I'm sorry, Mr Howard.

MR HOWARD: It's a lack of hair thingy, Commissioner. Apologies.

10

COMMISSIONER: Mr Howard, it's a case of way too many names in way too short a time, but anyway, Mr Howard, I apologise for the interruption.

Ms Scaffidi, what I would like you to do is to just listen to the question that you're being asked, which is not what you are answering at the moment?---I'll try.

15

Mr Howard.

MR HOWARD: The question I asked you was that you had no reason to think that Herbert Smith Freehills was misrepresenting their engagement by the City?---No, at that point, no.

At no point?---I don't agree.

25

But at the meeting of 16 February 2018, the engagement by the City of Herbert Smith Freehills was what had been told to you by this report?---Well, I have a recollection also of a conversation with Mr Ridgwell and I can't put a timeframe on it - - -

30

Well, you've told us before it didn't happen between reading the report on the 15th and the meeting on the 16th?---Look, I can't be sure.

35

Is this a new recollection you're now advancing?---The recollection I have, and then I'm trying to timeframe it, is that Mr Ridgwell said to me that he had been asked by Dr Green to be able to ask a legal question and she'd been given leave to do so and a couple of thousand dollars - - -

40

I don't think you're answering the question, are you, Ms Scaffidi?---I'm trying to recall it and I just can't put a timeframe to whether it was before that CEO Performance Review Committee or immediately after, when I would have had more time to ask about the report that I had just received and read.

Yes, but do you accept that in the position of Dr Green, you would have sought the City engage lawyers to investigate the matters?---No.

45

You don't accept it was appropriate for the City to engage external advisors to deal with the allegations?---No.

Is that because you were in the firing line of the allegations?---No. It should have gone to the CCC.

5 And this report deals with whether there was a reportable event to the CCC, doesn't it?---Look, I haven't read it for a long time.

You can take it from me that this deals with whether there was a reportable event to the CCC?---Yes.

10 And that was appropriate, to seek advice on that?---Yes.

Your assertions as to Dr Green having a conflict was really about the turf war going on for control of this committee, rather than the engagement by the City of Herbert Smith Freehills?---No.

15 Nothing further, Commissioner.

COMMISSIONER: Thank you, Mr Howard. Mr van der Zanden, I said I would come back to you, do you have any application, Mr van der Zanden?

20 MR van der ZANDEN: Yes, I do, perhaps it might be better in the absence of - - -

COMMISSIONER: I will hear it in the absence of Ms Scaffidi?---Okay.

25 Thank you, Ms Scaffidi.

#### **WITNESS WITHDREW.**

COMMISSIONER: Yes, Mr van der Zanden.

30 MR van der ZANDEN: Commissioner, I would simply seek to take the witness to the - I believe it's the next page of the - - -

35 COMMISSIONER: I will have Madam Associate bring up 12.0631. Is that the page that you're thinking of?

MR van der ZANDEN: Can we keep going? It starts with, "Background", I think. Maybe it's the very first page, sorry. Can we just go through the document again, please, Madam Associate? Sorry, Commissioner.

40 COMMISSIONER: That's all right, Mr van der Zanden. Mr Beetham, do you want to say something?

45 MR BEETHAM: Sir, I want to say two things. The first is just to explain, sir, that there's, I think, some confusion about this document which I will confer with Mr van der Zanden about and I'm wondering if it might be appropriate for you to adjourn for just a couple of moments, sir, so that you don't have to sit there while

the conferral continues, but I'm in your hands on that point, sir.

COMMISSIONER: I infer from that submission the conferral's going to take a while, in which case I will adjourn. I will adjourn for a short time, thank you.

5

(Short adjournment).

HEARING RECOMMENCED AT 11.09 AM

10 COMMISSIONER: Mr van Hattem, you are now here in place of Mr Malone?

MR van HATTEM: I am, sir.

COMMISSIONER: Thank you.

15

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

COMMISSIONER: Yes, of course, Mr Skinner.

20

MR SKINNER: Thank you very much, sir.

COMMISSIONER: Mr van der Zanden, have you had enough time to do what you needed?

25

MR van der ZANDEN: Yes, I have. Thank you, Commissioner, for the time.

COMMISSIONER: That's no trouble at all. In that case, we will have Ms Scaffidi back in the hearing room, thank you, Madam Associate.

30

MR BEETHAM: Sorry, sir, if I can just interrupt. I'm not sure if Mr van der Zanden's yet articulated precisely what the application is about. I may be confused about that and misremembered but I don't think he has, sir.

35

MR van der ZANDEN: That's correct, I haven't.

COMMISSIONER: I've got a fair inkling about where you're going, but go on.

40 MR van der ZANDEN: Yes. The application is to take the witness, Commissioner, to a paragraph in this Project Percy report and also an attachment, and then just ask her about her understanding of Ms Green's involvement in the process of instructing Freehills.

45 COMMISSIONER: That's where I imagined you were heading and I wouldn't imagine there was any difficulty with that.

MR BEETHAM: No, sir.

COMMISSIONER: Thank you. You have leave. Madam Associate, thank you. Thank you, Ms Scaffidi. Please resume your seat in the witness box.

5     **MS Lisa-Michelle SCAFFIDI, recalled on former oath:**

COMMISSIONER: Ms Scaffidi, I apologise for your extended exclusion from the hearing room. It's no reflection on you. In your absence your counsel made an application to further examine you as a result of the examination of Mr Howard and then needed some time to review some documents. He's done that now and he's now in a position to examine you?---Thanks.

Mr van der Zanden.

15    MR van der ZANDEN: Thank you, Commissioner.

Ms Scaffidi, you were asked by my learned friend Mr Howard about your understanding as to how the firm Herbert Smith Freehills was engaged to prepare the Project Percy report?---Yes.

20    You gave some evidence that you received the report on 15 February?---Yes.

And you read it that night?---Yes.

25    And then the CEO Performance Review Committee meeting was the next morning?---Yes.

Madam Associate, can you bring up document 12.0630? That's the first page of that report, Ms Scaffidi. You were taken to that before the break?---Yes.

30    Madam Associate, if you could bring up the next page, 12.0631?---Yes.

That's the introduction and scope and could you just read out paragraph 1, subparagraph (a)?

35    COMMISSIONER: Did you want Ms Scaffidi to read it out aloud or to herself?

MR van der ZANDEN: Sorry, sir, to the Inquiry. If you could just read that out?---Okay:

40    *On 9 November 2017 HSF met with the City of Perth's then Acting Lord Mayor, Jemma Green. Councillor Green instructed HSF that Mr Adrian Fini, Director of FGM Property had provided information to her about alleged possible misconduct by the City's CEO, Martin Mileham, arising out of an alleged meeting between Mr Fini and Mr Mileham. Councillor Green requested HSF's advice about how to respond to the receipt of this information.*

Then you will see in subparagraphs (b) there's reference to an investigation plan?---Yes.

- 5 And that's attachment 1. Madam Associate, could you bring up, please, document 12.0493. Could you just perhaps read the first paragraph to yourself, Ms Scaffidi, under the heading, "Background"?---To myself?

10 MR BEETHAM: Sorry, sir. If I can interrupt, it might be that Mr van der Zanden might first need to ask Ms Scaffidi if she's seen this document before, before he proposes to ask her questions about it.

MR van der ZANDEN: Yes.

- 15 [11.15 am]

Ms Scaffidi, did you receive this document with the Project Percy report?---Yes, I did.

- 20 Did you read it at any time?---In its entirety upon my receipt that evening.

Could you please read the first paragraph under the heading, "Background"?---"Herbert Smith Freehills" - - -

- 25 Just to yourself?---Okay. Yes.

And perhaps if you could read the second sentence out loud?---:

30 *Councillor Green has instructed HSF to investigate Mr Fini's allegations and to advise the City about its response to the allegations.*

MR van der ZANDEN: Ms Scaffidi, aside from who may have formally engaged Freehills, as at the time of the CEO Performance Review Committee, what did you understand Ms Green's involvement, if any, was in the process?---Quite extensive. 35 Her involvement was quite extensive.

What did you understand that it was in particular?---That Jemma had been told by Mr Fini of a view he had. I also recall - - -

- 40 Her involvement - - -?---Yes, her involvement.

- - - in relation to the engagement of Herbert Smith Freehills, if at all?---Sorry, yes. Sorry, the question is - I was told - I read of her involvement here.

- 45 So was that as at the meeting when you raised the issue of the conflict?---Yes.

Is that what you had in mind?---Yes.

COMMISSIONER: Yes, Mr Howard.

5 MR HOWARD: Mr Commissioner, if my friend's going to give the evidence from the Bar table, it can't be of any assistance to the Commission later and I just rise because that's the submission that we are going to be making. May it please the Commission.

10 COMMISSIONER: Thank you, Mr Howard. I have indicated on many occasions now to many counsel who make applications to examine witnesses that when they lead on certain topics, then that evidence will be given much less weight and probative value at the end of the day.

15 MR van der ZANDEN: May it please the Commission. The documents speak for themselves, Commissioner.

COMMISSIONER: Mr van der Zanden, may I just indicate to you and others who are interested in this topic that the Inquiry has studied all of those documents very carefully and so it already knows quite a bit about the subject matter.

20 MR van der ZANDEN: I don't have any further questions, Commissioner.

COMMISSIONER: Thank you. Mr Beetham, do you have any questions?

25 MR BEETHAM: I do not, sir.

COMMISSIONER: Thank you. Are there any other housekeeping matters before I excuse Ms Scaffidi?

30 MR BEETHAM: No, sir, not that I'm aware of, sir.

COMMISSIONER: Thank you. Ms Scaffidi, in that case I excuse you from further attendance today and I want to thank you for your assistance to the work of the Inquiry?---Thank you.

35 I will now adjourn shortly so that the arrangements can be made for the next witness. Will five minutes be sufficient time?

MR BEETHAM: It will certainly be sufficient for me, sir.

40 COMMISSIONER: Thank you. I will adjourn for five minutes.

#### **WITNESS WITHDREW**

45 (Short adjournment)

HEARING RECOMMENCED AT 11.28 AM

COMMISSIONER: Yes, Mr Beetham.

5 MR BEETHAM: Sir, I now call suspended Councillor, Dr Jemma Green.

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

10 DR GREEN: An oath, thank you.

**DR Jemma Marie GREEN, sworn:**

15 COMMISSIONER: Thank you. I will hear applications and take appearances now. Mr Howard.

MR HOWARD: May it please the Commission, with Ms Ford we appear for Dr Green.

20 COMMISSIONER: Thank you. Is there any objection?

MR BEETHAM: No, sir, and there's no objection to any, what I imagine will be the numerous other applications to be made.

25 COMMISSIONER: Thank you very much, Mr Beetham. Leave is granted. Ms Saraceni?

MS SARACENI: Commissioner, together with my instructor, Mr Tuohy, we seek leave to represent Mr Mileham's interests when this witness gives evidence.

30 COMMISSIONER: Thank you. Leave it granted. Mr Bourhill?

MR BOURHILL: If it please you, sir, I seek leave to appear for Mr Mianich.

35 COMMISSIONER: Thank you. Leave is granted, Mr Bourhill. Mr van Hattem?

MR van HATTEM: May it please you, sir, I seek leave to appear for Mr Harley.

40 COMMISSIONER: Thank you, leave is granted, Mr van Hattem. Mr Harris?

MR HARRIS: Yes, sir. I seek leave to appear on behalf of Ms Barrenger.

COMMISSIONER: Thank you, Mr Harris, leave is granted. Mr van der Zanden, you're not in your usual seat.

45 MR van der ZANDEN: I like to mix it up a bit, Commissioner.

COMMISSIONER: Nice to hear that.

[11.30 am]

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

COMMISSIONER: Thank you. Leave is granted, Mr van der Zanden. Mr Russell?

10 MR RUSSELL: May it please you, sir, I seek leave to appear for Mr Crosetta.

COMMISSIONER: Yes, of course. Leave is granted, Mr Russell. Ms Siavelis?

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

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

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

20 COMMISSIONER: Thank you, Mr Wyatt, leave is granted. Mr Skinner?

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

25 COMMISSIONER: Thank you, leave is granted. Mr Houweling?

MR HOUWELING: May it please it please the Commissioner, I appear together with my learned friend, Ms Waugh, for Councillor Lexi Barton.

30 COMMISSIONER: Thank you, Mr Houweling, leave is granted. Ms Young?

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

35 COMMISSIONER: Thank you. Leave is granted, Ms Young. Mr Beetham.

MR BEETHAM: Thank you, sir.

40 Dr Green, my name, as you've heard, is Mr Beetham, and I want to ask you some questions essentially around two topics. The first topic is Project Percy or the investigation and the report that's now become to be known as that. Do you know what I'm talking about?---I do.

45 The second topic is around the Special Council Meeting that was held on 27 February 2018?---Yes.

At which Ms Battista was appointed Acting CEO?---Mm hmm.

And you know what I'm talking about there as well?---I do.

- 5 Just for the sake of the transcript, can you please state again your name and address, please?---Certainly. Jemma Marie Green, [REDACTED].

What do you do for a living? What's your occupation when you're not a Councillor, Dr Green?---I run a software company.

- 10 Am I right that you were elected to be a City of Perth Councillor in October of 2015?---Yes.

- 15 And in October 2017, you were elected to the position of Deputy Lord Mayor?---Yes.

And that's a position that you held at the City, is it, until the Council was suspended in March of last year?---Correct.

- 20 At that time, when you were elected to the office of Deputy Lord Mayor, am I also correct that you assumed the role or the responsibilities of the Lord Mayor in Ms Scaffidi's absence?---That is correct.

- 25 And you carried out those responsibilities until Ms Scaffidi's return on 8 January 2018?---Yes.

When you joined the City as a Councillor, were you provided with any induction material to explain to you your roles and obligations as a Councillor?---I was.

- 30 Can you tell the Commission what that material was, to your recollection?---It was a lever arch folder, quite like thick, maybe 3 or 4 inches in size.

And did it contain within it the City of Perth Council Policies?---I don't know if it was a comprehensive set, but it certainly did contain a lot of policies, yes.

- 35 Do you recall whether it contained the City of Perth's Code of Conduct of Councillors?---Yes.

- 40 Is that a document with which you are familiar from your time on the Council?---I am, yes.

Was there any information in that pack about your roles, responsibilities and obligations under the Local Government Act?---Yes.

- 45 And under what I will call the subsidiary legislation under that Act, the Rules of Conduct Regulations?---Yes.

And you are familiar with those things?---I am.

Are you aware then under the Local Government Act, of the, if I can use this phrase, limited role given to Councillors under that Act?---Yes.

5

Are you aware that - you may not be aware of the particular regulation but perhaps you are, are you aware of the particular regulation, section 2.10 about the role of Councillors?---Yes, I am.

10 And you're aware that that sets out a number of things that a Councillor can do?---Yes.

Would you agree with me, and I can show you that document and those regulations and sections if you would like to see them, but would you agree with me that 15 there's nothing in that provision that permits Councillors to expend funds on behalf of the City of Perth?---Yes.

Would you agree with me that there's nothing in those provisions that permits Councillors to engage external consultants?---Yes.

20

Would you agree with me there's nothing in those provisions that permits Councillors to direct or instruct external consultants that have been engaged by the City?---Individually, yes.

25 When you say individually?---By a resolution of Council it would be possible to instruct the Administration to do that on their behalf.

I understand. So Council could do it en bloc but a Councillor itself could not, is what you mean?---Individually, yes.

30

And it's also the case, is it, that there's no power within those provisions to contract for a singular Councillor, to contract on behalf of the City, is that right?---That's my understanding.

35 You mentioned that you were familiar with or aware of what's formally called Council Policy 10.1, Code of Conduct?---(No audible response).

And that was provided to you - your recollection is it was provided to you as part of this induction pack?---(No audible response).

40

And you're aware that within that policy or that Code of Conduct there are guidelines as to what the role of a Councillor is?---Yes.

And what the role of a Councillor is not?---Yes.

45

Again, I can take you to the document if you like but is it your recollection or would you agree with me that the policy - I will rephrase that, the Code of Conduct

specifies that the role of a Councillor is one of leadership and not management?---Yes.

5 And that Councillors don't have authority to direct or instruct staff of the City?---Yes.

And that Councillors are not permitted to undertake tasks that contribute to the administration of the City?---Yes.

10 Were you aware of all of those things on your election as Councillor once you had seen this induction pack?---I was aware of them and I became more aware over time.

As your time on the City progressed?---Mm hmm.

15 Are you also aware that under that Code of Conduct there's a clause explaining that Councillors and others within the City may report misconduct to the CCC if are of the view that there is misconduct?---Yes.

20 And that's something you were aware of as well when you joined the City and became more aware of?---I wouldn't say that I was immediately aware of it at the time but I did come to understand that provision in the legislation, that we were able do that, yes.

25 Are you able to put on a timeframe on when you became aware of that?---It was probably around October 2017 when I became aware that that provision existed in the legislation but there was also a policy within the City of Perth that said that "Elected Members must report" issues to the Chief Executive Officer, and so I became aware of the difference of what the Act said and what the internal policy said.

So you saw there was a tension between those two things?---Yes.

I think you said that was in October 2017?---Yes.

35 Which was about the time when you were elected to the role of Deputy Lord Mayor and assumed the obligations and duties of the Lord Mayor?---Yes.

40 Is it that tension that you speak of that caused you to seek or speak to Mr Ridgwell about obtaining some advice in respect of your reporting obligations?---It was part of it, but it was also that I didn't know whether there were any other specific requirements given my new responsibilities as a Deputy Lord Mayor, or just more broadly that I was unaware of and I was wanting to understand if there were any reporting obligations that I had to discharge.

45 I appreciate for some people in the room I might have jumped through some facts there, but it is the case then, isn't it that in about October 2017, you spoke with

Mr Ridgwell about obtaining some advice?---Yes.

And as I understand the evidence just given, that advice relating to a reporting obligation?---Yes.

5

And you wanted to know, did you, what your reporting obligations were specifically as Deputy Lord Mayor?---Yes.

10 And was it also the case that you wanted to know what they were, having assumed the role and responsibilities of the Lord Mayor?---Yes, in both roles.

15 In both roles. The Inquiry's heard some conflicting evidence about who you first spoke to when it came to obtaining this advice. Can you recall who within the Administration you first approached about wanting to seek this advice?---I recall that I asked Mr Mileham initially.

20 Can you recall the meeting itself or the conversation?---Yes. I was in the Lord Mayor's office and we were sat at the - like a long dining room-type able. I was at the top end, he was on the side and I said that I was wanting to obtain some advice on my roles and responsibilities in my capacity as Deputy Lord Mayor.

Did you mention to Mr Mileham at that time that you wanted to seek advice in particular, as I understand your evidence, about a reporting obligation?---No, I did not.

25

Had you at that stage formed a view that's what you wanted to seek advice about?---Yes. I wanted to understand if there were any reporting obligations that I needed to discharge in my role as Deputy Lord Mayor.

30 Is there a reason why you didn't disclose that part of your seeking advice for to Mr Mileham?---Because the matter related to him.

35 So at this stage when you spoke with Mr Mileham, and this is in - if I suggested to you it was in late October, shortly following your election, would you agree with that?---I would.

So at this stage you were aware of or cognisant of this allegation about Mr Mileham?---Yes.

40 What did Mr Mileham say in response to your request?---He said he would speak to Governance about that.

Did you understand him to mean anyone in particular in Governance?---Yes.

45 Who was that?---Mr Ridgwell.

Did you contact Mr Ridgwell or did he then contact you? Perhaps I will put it

another way, Dr Green: did you have any further contact with Mr Mileham about your request at or around October 2017?---Yes. I recall a conversation with Mr Mileham and I do also recall a conversation with Mr Ridgwell in relation to this matter.

5

When you say you recall a conversation with Mr Mileham, is that a different conversation to the one we have just been talking about, and what can you tell the Commission about that conversation?---I asked him for an update as to how it was progressing in terms of finding an appropriate person that could provide me what 10 with the advice that I had sought.

And that's a request you made of Mr Mileham?---Yes.

So did you understand - I will go back one step. I'd understood your evidence to 15 be, in the first conversation with Mr Mileham, that he said he would speak to Governance?---M'mm.

Is it the case that he said, to your recollection, he would speak to Governance in order to find somebody?---M'mm.

20

And is that why you were asking Mr Mileham for the update?---Yes.

And what did Mr Mileham say?---He said that he had asked Mr Ridgwell to look 25 into it for me.

25

Did you have any other conversations with Mr Mileham after that around that time in relation to that topic?---I can't recall discussing the matter with Mr Mileham further, subsequent to that.

30

Did you then, at some point following that conversation with Mr Mileham, have any interaction with Mr Ridgwell about this topic?---I did.

35

What was the first interaction you had?---After I came to understand from Mr Mileham that Mr Ridgwell was procuring me this advice or a person that could assist with this advice, I followed up with Mr Ridgwell and he said he was looking into it. I think in relation to what I'd asked for, I had asked that the solicitor be somebody that was not currently representing the City and Mr Ridgwell told me that he was trying to find somebody that was on the WALGA panel that we weren't currently using at that time.

40

Why did you want somebody who - I've forgotten the word you used, but why did you want somebody other than the usual lawyers to the City?---Because I wanted someone that would provide fearless and frank advice and that was not commercially tied to the City, so as to ensure the advice would be independent.

45

Did you have a general concern about the lawyers engaged by the City or was it because of the particular topic you wanted to seek advice about?---I would say both of those things.

- 5     Can you expand upon why it was you had a general concern about lawyers engaged by the City at this time, October 2017?---I had some concerns about the quality of the advice that was being presented and just generally as to whether the advice was being given to the CEO or given to the organisation

10    [11.45 am]

It's the CEO, as I understand it, that has the primary function of contracting with external providers like a legal firm?---Yes.

- 15    So there's nothing unusual, is there, about a CEO obtaining or seeking that advice?---No, but I think that there's been situations that have occurred that I'm aware of where law firms have provided advice to the CEO specifically as opposed to advice for the organisation.

- 20    So that I understand that evidence, are you suggesting that the advice that was provided to the CEO was for the CEO, him or herself, whoever the identity of the CEO was at the time, not for the benefit of the broader City of Perth?---That was a concern that I had.

- 25    What was the basis of that concern?---Just more broadly, just to provide some context, it appeared to me that some of the advice was really centred around shutting Elected Members out in their ability to perform their duties, as opposed to looking at the roles of Councillors and how they could be facilitated and it occurred to me that the Administration did not really want to facilitate or enable  
30    the Elected Members, that they were trying to use the legislation to limit their ability to do their job, or allow it to occur in the minimum possible way, as opposed to facilitate it and enable it.

- 35    So just to close out on this topic, so that I understand clearly what you're saying, it's not the fact, is it, that the CEO would get advice, as I understand you, and keep it to him or herself?---No.

And not share it?---No.

- 40    Your concern is that the advice would be obtained, from your point of view, for the purposes of, if I can use what might be a controversial term, an agenda of the CEO or the Administration rather than looking at the City holistically?---Yes.

Is that right?---Yes.

- 45    If I can return to the interactions you had with Mr Ridgwell, can you recall whether all of your interactions with him at this time were in person or by email or

telephone?---I certainly received by email from Mr Ridgwell the details of the person that I could speak with and I believe that I had a conversation with him in person at the City where he said he was looking into this and he was following up on it.

5

When you say he was following up on it, is that in relation to who the identity of the person would be to provide the advice?---To find an appropriate firm and then to find an appropriate person.

- 10 Thank you, I understand. Madam Associate, if we could turn up the document, please, at 12.0483. You're about to see a chain of emails, Dr Green, and if I can just ask you to look at the one towards the bottom, in the first instance. So Madam Associate, if we could enlarge the bottom in that chain. Thank you, Madam Associate. Dr Green, you will see there an email from Mr Ridgwell, 27 October  
15 2017 at 12.08 am?---Yes.

And you will see that Mr Ridgwell writes, "Hello DLM", and do I understand that to be Deputy Lord Mayor?---Yes.

- 20 And he set out a list of eligible suppliers?---Yes.

Madam Associate, if you could go over to the next page, please. This is the remainder of Mr Ridgwell's email, if you could just read that to yourself?---Yes.

- 25 Is that reflective, particularly the top part of this page where Mr Ridgwell writes, "We do not currently use HHG and Herbert Smith Freehills" and recommends that "advice be sought from Herbert Smith Freehills", of your concern to use somebody who's not ordinarily used?---Yes.

- 30 You will see Mr Ridgwell goes on to say, "They are expensive, hence deferring to others but we are talking about a time limited advice"?---Yes.

Would you accept that at that stage, on 27 October, Mr Ridgwell was indicating to you his understanding that the advice would be limited in time?---M'mm.

35

And therefore, can I suggest limited in scope?---Yes.

Madam Associate, if we go back to 483, the first page of the chain, you will see your response to Mr Ridgwell's email, Ms Green?---Yes.

40

Asking for an "in person meeting", I understand that's an in person meeting with the representative from Freehills?---Yes.

45

Madam Associate, if you could scroll up on Mr Ridgwell's reply. Just take a moment to read Mr Ridgwell's reply in the first instance, please, Dr Green?---Yes.

You will see Mr Ridgwell suggests "attending to coordinate and do introductions"

and that he says, "Like all advice provided to the City of Perth, this advice needs to be appropriately recorded in our City systems"?---Yes.

Your response is above that?---Yes.

5

And you write:

*Thanks, Mark, I wish to have the meeting alone and will abide by all processes.*

10

?---Yes.

:

15

*Please just let me know what you need from my side.*

Then there's the sign-off. That sentence or that phrase "will abide by all processes", in the context of this email, would you agree with me is an indication by you that you would abide by what Mr Ridgwell suggests is normal for advice provided to the City of Perth to be appropriately recorded in the City's systems?---Yes.

20

Did you understand - when you were writing that, were you conveying to Mr Ridgwell that when you had this meeting on the Friday at 3.30 pm, assuming that meeting went ahead then, that you would provide to the City as an organisation, a note of that advice so it could be appropriately recorded in the City's systems?---I understood that the advice would need to be provided to the City, whether it be via myself or directly from the firm, I would have presumed actually the firm would have provided it to the City.

30

So when you say in your email "I will abide by all processes", are you not suggesting there that you will provide to Mr Ridgwell or the City a note of the advice that you would have been receiving at that Friday meeting?---No. I understood that the advice that Freehills would provide would need to be recorded in the system.

35

I see. Your understanding was that could be, as I understand your evidence, provided to the City for recording by either yourself or by Freehills directly?---Yes.

40

I think to be fair to you, your evidence went further and said your expectation was Freehills would provide the advice?---Yes.

45

What do you base that expectation on?---Freehills was engaged by the City of Perth and they would therefore provide the advice to the City of Perth.

Madam Associate, if we could - sorry, sir, the TRIM reference for that document is

19314.

COMMISSIONER: Thank you.

5 MR BEETHAM: Madam Associate, could we now go to, please, the email at 12.0485, TRIM reference 19315, sir.

COMMISSIONER: Thank you.

10 MR BEETHAM: Is that large enough on the screen for you to read, Dr Green?---Yes, I can see it.

15 Could I ask you just to enlarge it for the benefit of others, please, Madam Associate. We will start with Mr Ridgwell's email. You will see that's an email from Mr Ridgwell on 6 November 2017 at 3.24?---Yes.

Just a few days, maybe a week after the email we just looked at on 27 October?---Yes.

20 If I can ask you just to read that to yourself and let me know when you've done that?---Yes.

Do you recall receiving that email?---I do.

25 Would you agree with me that that email from Mr Ridgwell indicates to you a number of things, including first that Herbert Smith Freehills had been engaged by the City?---Yes.

30 In order for you to obtain some advice of the type that we have just been discussing?---Yes.

That a strictly confidential summary of that advice needs to be provided to the City of Perth for record keeping purposes, yes?---Yes.

35 That the content of the advice would be limited to him but if you had concerns with that, it could be given to Mr Mianich, do you agree with that?---Yes.

Sorry, I don't mean to press you, it's just the transcript can't record your nodding, which is why I ask for an audible response?---I understand. Got it.

40 Would you also agree in that email, in the sentence towards the bottom commences, "Once you have had", Mr Ridgwell is indicating to you that his understanding is that you would be having an initial discussion?---M'mm.

45 And then after that, a longer meeting can be arranged and do you understand that, as I do, to mean a longer meeting could be arranged by him for you?---Yes.

And either he could do it or it could, as he puts in the alternative "be done through the Lord Mayor's office". Then at the bottom he says, "Please keep me in the loop"?---Yes.

- 5     "As to what stage of advice you are at." So you agree with me, do you, that email conveyed all of those things to you?---Yes.

Then in your response to Mr Ridgwell, which is at the top of the page, you write, "Thanks, Mark, I will keep you posted"?---Yes.

- 10    If I suggested to you, by that response you were indicating to Mr Ridgwell you agreed with what was in, or the process set out in his email?---Yes.

- 15    And you agreed specifically that you would, to use his words, keep him in the loop?---Yes.

Is it the case, Dr Green, that notwithstanding that you wrote to Mr Ridgwell "I will keep you posted", as a matter of fact you did not keep Mr Ridgwell posted in the time that followed in relation to this advice?---No, I don't agree with that

20    characterisation.

Your suggestion is that you did keep Mr Ridgwell posted as to what stage of the advice you were at?---Yes. I said that - I spoke to him on a number of occasions between this date and when the advice was provided to the City.

- 25    Just so I can be clear on those dates, are you talking about the advice provided to you at your initial meeting or are you talking about the report that was finally prepared and provided?---I'm talking about the report that was finally provided on 6 February.

- 30    And you say you had a number of conversations with Mr Ridgwell?---Yes.

In between those dates?---Yes.

- 35    And if I was to suggest to you that none of those conversations took place between 6 November 2017 and 15 December 2017, would you disagree with that?---I remember talking to him at the Christmas party about it, and I can't remember what date that was on.

- 40    So you can't say whether that's before or after 15 December?---(No audible response).

- 45    Would you agree with me that you didn't speak to him following the meeting that you did have with - this initial meeting that you had with Freehills?---I can't say definitively. He did - actually, he did ask me whether I had had the initial conversation and I had and he said that he - he asked if I had received the advice and I said, "Not yet", and at the Christmas party he said that he was chasing them

down, trying to get the advice and asked if I had received it from them and I said I hadn't

[12 noon]

5

So your evidence is that following that initial meeting with Freehills, you had the interaction with Mr Ridgwell. He asked you if you'd received the advice and you said "Not yet"?---That's correct.

10 Mr Ridgwell's recollection of that interaction is that you told him you had received the advice, you were happy with it?---No.

You disagree with that?---Yes, I do disagree with that. I hadn't received any advice from Freehills until February.

15

So at the initial meeting that you had with Freehills - - -

MS SARACENI: Excuse me, Commissioner. I hate to jump up, just could there be some clarity if we are talking written or verbal advice?

20

MR BEETHAM: Certainly.

Dr Green, I understand the advice that you're referring to is the advice received in January/February of 2018, the written advice?---(No audible response).

25

And the advice I'm referring to or suggesting to you that you received is an oral, verbal advice given by Freehills at your initial meeting. Do you have any recollection of receiving oral or verbal advice from Freehills?---We certainly discussed the issue that I brought to their attention and they said that they needed information to provide any initial views or a considered view.

30 So they told you they needed further information?---(No audible response).

Did you undertake to obtain that information?---Yes.

35

My recollection of your evidence a moment ago when you were speaking with Mr Ridgwell is that you simply told him you'd not received the advice?---Yes.

40

Your evidence was not, as I understand it - did not extend to telling Mr Ridgwell that you needed to provide Freehills with further information, is that right?---At that stage I don't know - I don't think that I needed to provide them with further information. I think that they at that point were in liaison with someone at HR and trying to get information from the City.

45

I'm a little confused by that evidence, Dr Green, because I had thought that at the initial meeting you had with Freehills, you discussed that they needed some further information?---Mm hmm.

And you undertook to obtain that further information?---M'mm.

COMMISSIONER: Sorry, is that a yes?---Yes, sorry.

5

It's all right.

MR BEETHAM: And that your conversation with Mr Ridgwell followed that meeting, perhaps not immediately after that meeting but shortly thereafter that meeting?---Would you like me to recount the series of events? Would that - - -

We will step through them one at a time?---Sure.

15 And I will come in particular to the meeting with Freehills. I'm just trying to understand your evidence, that you told Mr Ridgwell shortly following the meeting only that you'd not received the advice, is that right?---That's correct, yes.

20 So you didn't mention to him at that stage that Freehills had indicated to you at the initial meeting, and you had indicated to them at the initial meeting that further advice needed to be and would be obtained? I can break that question down if it's a little bit prolix?---Sorry.

25 You didn't indicate to Mr Ridgwell when you spoke with him on that occasion that Freehills had said they needed further information - sorry, you're going to need to answer verbally for the transcript?---No, I don't believe that I said that to Mr Ridgwell.

30 And it's also the case that you didn't tell him, on your evidence, that you were going to be obtaining that information?---I said to Mr Ridgwell that I was yet to receive the advice from Freehills and he said to me that he was trying to get hold of them and they weren't responding to his calls or emails.

35 So Mr Ridgwell's evidence is that he was trying to get hold of them but he was trying to get hold of them to obtain a note of the advice that you had told him you had received verbally from Freehills; you're saying that's not what you conveyed to Mr Ridgwell?---I don't - I did not say that to Mr Ridgwell because as far as I was concerned, I had not received the advice that I sought from Freehills, until February.

40 Madam Associate, could I just ask you to bring up a document now, please, at 12.0487. I just want to ask you if you've seen this document before, Dr Green?---I have not seen this before.

45 I will just tell you that this is the purchase order for the initial meeting with Freehills and knowing that, looking at the document, you don't remember ever seeing this before?---No, I've never seen this document.

Can I ask you to tell the Commission about that meeting, the initial meeting with Freehills, and if I was to suggest to you that it did happen on 9 November 2017, would you be happy to accept that?---I would.

5 Can you tell the Commissioner where the meeting was held?---At their office.

And do you recall if it was in the morning or in the afternoon?---I'm sorry, I can't recall the time of day.

10 Can you recall who was there?---I was there, Elizabeth Macknay was there, Daniel Zador was there and there was another lawyer, I can't recall their name.

So those two other people you mentioned, for the benefit of the others in the room, are lawyers at Herbert Smith Freehills?---That's correct.

15 You began to, I think, give an explanation as to what the discussion was. I'm not sure if I cut you off before when you were giving that explanation but as I understand it, you had a discussion and there was an indication from them that they needed further information and an indication from you that that would be obtained. Was anything else discussed?---They said that they would write something up for me to help me to obtain that information.

20 What was the information that they were interested in obtaining?---They wanted to have a conversation with Mr Fini and they said they would write me some notes on which I could have the conversation with him.

25 As I understand it, Dr Green, you wanted this advice about reporting obligations?---(No audible response).

30 COMMISSIONER: Sorry. Dr Green, you're doing something very normal, when counsel's asking you to agree with a proposition, you nod, but we need that on the transcript so we need a yes or a no or a maybe or something verbal?---Understood.

Thank you.

35 MR BEETHAM: As I've understood your evidence, the advice you wanted was about your reporting obligations in the role of Deputy Lord Mayor and the assumed role of Lord Mayor?---Yes.

40 Was it indicated to you why it was that that further information and that discussion with Mr Fini needed to be obtained or had in order for Freehills to advise you on what your reporting obligations were?---They said that they needed information to provide an initial view on that.

45 Did they provide you with any indication at all, or a general summary of what your reporting obligations were?---Not at that point, as far as I can recall.

So they didn't say anything to you to the effect of, "Anybody may report misconduct to, for example, the CCC or the Public Sector Commission"?---I think that there were a couple of things. One of the lawyers there was an employment lawyer, one of them was a CCC lawyer and then I can't remember the area of

5 specialisation. So what they said was they were going to have a look at the policies - there was a Local Government specialist, a CCC specialist, and an employment specialist and they were going to look at the relevant legislation in terms of Local Government, in terms of the specific policies at the City of Perth and then in terms of, like, general provisions such as the crime and corruption legislation.

10

Did they indicate why they were going to look at those things?---Because they said that they could all be potentially relevant.

15 But did any of the lawyers present give you generic advice to the effect of, "Anybody may report misconduct if it's suspected to the CCC or the Public Sector Commission, or other bodies"?---I can't recall.

20 Did this conversation with Freehills happen in November? Your evidence - - -?---Actually, I just remembered something.

In relation to that question?---M'mm.

25 Yes, please?---So in the conversation we discussed that given the sensitive nature of this, just making reports to the CCC without doing some fact finding wasn't an appropriate course of action. You shouldn't just be kind of frivolous in making reports to the CCC, that we should exercise care and diligence in ascertaining whether that was an appropriate course of action.

30 Did they say why, why it was that you needed to do that rather than simply - we will come back to this proposition later, but why not simply report it to the CCC and let the CCC do what the CCC does?---Because - we did discuss that anyone can make any report to the CCC, I remember now, but the fact that this was an employment matter as well and that there may be specific things that are relevant in terms of employment contracts, and just generally in terms of the fact that it was a very high profile person that had brought this to my attention and it related to a very senior person in the Administration, that there may be - yes, that more care and attention should be exercised in evaluating whether a report should be made.

35

40 Your evidence a little earlier this afternoon, possibly morning, as I recall it, was that you were aware of the guidance in the City's Code of Conduct to the effect that you may report misconduct?---Actually, it says you must report misconduct to the CEO.

45 I will take you to the provision that I'm thinking about and I will ask you if you're referring to that one?---Sure.

I thought you'd agreed with me earlier that it indicates that "anyone may" - - -?---You said policy, which I took to mean the City of Perth's internal policy.

I am talking about a Council Policy?---Yes.

5

10.1, Code of Conduct?---May I see it?

Yes. Madam Associate, could we please go to the first page of that document which is at 12.0397, TRIM, sir, 19298.

10

COMMISSIONER: Thank you.

MR BEETHAM: I can indicate to my friend that this is a document dated 6 June 2017.

15

COMMISSIONER: Thank you.

MR BEETHAM: Dr Green, do you recognise that document as a version of the Council Policy Manual?---Yes

20

[12.15 pm]

And you recognise the particular page in front of you as the commencement page of the Council Policy 10.1, Code of Conduct?---Yes.

25

Madam Associate, could I now ask you to go forward, please, to 426 in the document. Madam Associate, if I could ask you just to zoom in on clause 8.4 at the bottom of the document. This is the clause I'm talking about, Dr Green, if you could just read that?---Yes. I was referring to a different clause.

30

Are you referring to a clause dealing with reporting something to the CEO?---Yes, that we must report to the CEO.

35

But would you agree with me, however, that, as I thought you had agreed with me earlier?---Yes.

That under this clause, it indicates that you have the option to report a matter of misconduct directly to the CCC?---Yes.

40

And I had understood your evidence earlier to be that you were aware of that in October of 2017?---Yes.

45

So that's prior to having this meeting with Freehills?---I wouldn't say that this was actually front and centre of my mind and just more generally, I didn't know whether there were any other regulations that were relevant or whether there were any other things that required me to do something, as opposed to, you know - this obviously provides a pathway to do something but whether it's the appropriate

course of action or - and to what extent - one should rely on hearsay or people's views expressed casually in a conversation, versus being provided with formal allegation in writing.

5 Your knowledge of this clause, as I understand it, was October 2017 and you agree with me that that is before the meeting you had with Freehills on 9 November 2017?---I was - this was not something that was - - -

Sorry, Dr Green, I don't mean to interrupt you but do you agree with me - - -

10 COMMISSIONER: Yes, Mr Howard.

MR HOWARD: I'm sure my friend's not intending to do it of course, but he did ask that series of questions without the document being in front of the witness, so 15 I'm sure he's not trying to slice it too finely in terms of time, but - - -

COMMISSIONER: Yes, Mr Beetham.

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

20 Just out of fairness to you, Dr Green, can I ask you, Madam Associate, to go back a page to 425 and could I ask you to enlarge 8.3, please, in the centre of the page. Dr Green, is this the clause you're talking about when you talk about a sort of mandatory report?---Yes.

25 If I could just ask you to read the first sentence?---Yes.

See there at the end of the sentence it says "he or she should report the matter to the CEO"?---Yes.

30 Having seen that, is it still your evidence that your recollection at the time was that you thought there was a mandatory rather than optional reporting obligation?---Yes, my understanding of this policy was that I was required to report misconduct to the CEO.

35 Would you agree with me that the way that first sentence at least is phrased is that it's an optional reporting obligation?---Are you saying that the word "should" means that it's optional?

40 Yes, I am?---I think it's certainly softer than "must" but "should" sort of does, from my reading of that, imply that I should do that.

You recall I took you to an email, Dr Green dated 6 November 2017?---Yes.

45 In which Mr Ridgwell said a series of things, including that once you've had the initial discussion with a lawyers, then a subsequent longer meeting can be arranged or "we can do so through the Lord Mayor's office", do you remember that?---(No

audible response).

And you agreed with me that Mr Ridgwell was conveying to you that after your meeting, an additional meeting could be arranged through him?---Would you mind 5 bringing me back to the letter?

Not at all. That's at 12.0485, Madam Associate. If I could ask you, Madam Associate, to enlarge the larger email in the middle of the page. You will see it there, the sentence I'm referring to, just a little bit above the link at the bottom?---M'mm - yes.

10 My recollection of your evidence is that you agreed with me that Mr Ridgwell was conveying to you that after your initial meeting, a subsequent longer meeting could be arranged either through him or through the Lord Mayor's office?---I'm sorry if I 15 gave that impression, but my reading of that and my understanding was that I needed to call Daniel for a quick chat so he could prepare for the longer meeting that I would inevitably have with him and that I wasn't required to arrange that via the Lord Mayor's office.

20 I understand, so you're saying that the initial discussion was the telephone call?---(No audible response).

And that the subsequent longer meeting was the meeting that he then did have?---Mm hmm.

25 That's how you understand this?---Yes.

You also agreed with me, I think, in relation to this email that you indicated that you would keep Mr Ridgwell in the loop as to what stage the advice was at, is that 30 right?---Yes.

Having indicated that to Mr Ridgwell, is there any reason why, when you spoke with him on the occasion you've talked about, you didn't tell him that Freehills had told you that you shouldn't simply make a frivolous, I think was your word, 35 complaint to the CCC and that given it was a high profile matter, given the personalities involved, some further work needed to be done; is there a reason you didn't tell Mr Ridgwell those things?---Yes.

What is that?---Because it was a very sensitive matter and I wanted to receive the 40 advice from Freehills, and I knew that Mr Ridgwell was going to get a copy of that but I didn't want to talk with him about what was happening. I didn't want to talk about the initial views shared. I knew I needed to provide the considered advice to him and I accepted that and he accepted that I was going to be speaking with them in private on the understanding that he would get the final advice at the end.

45 Why is it that you didn't want to tell Mr Ridgwell those things? He's the Manager of Governance, isn't he?---Yes. He reported into the CEO and I felt that the nature

of the matter was sensitive and that it would be better for Freehills to decide who to speak to in relation to providing the considered advice and I did discuss that with them.

- 5     What's the significance of Mr Ridgwell reporting, I think you said into the CEO?---So in discussion with Mr Zador, he was trying to ascertain who would be the appropriate people within the City to - - -

10    Sorry to interrupt you, is this a discussion that you had with Mr Zador on that 9 November meeting?---Yes.

Can you explain why you didn't mention this part of the discussion when I asked you what else was discuss order the previous occasion?---I did offer to unpack the whole thing because I wanted to tell you that bit.

- 15    All right, so please go on?---So he said - actually, I think this might have been - the initial conversation was that he wanted to speak with Mr Fini and then Elizabeth Macknay called me up on the phone and said, "We have spoken with Mr Fini and we didn't - we weren't able to surmise that there had been any
- 20    misconduct but that does not mean that you should do nothing further. We would like to speak with some people at the City of Perth in the Administration to find some more information about this matter", and then we discussed who would be the appropriate people to do that, and I think we also did discuss it in the initial meeting as well, but who - in that initial meeting with Mr Zador and then also on
- 25    the phone with Elizabeth Macknay. So we discussed - - -

Can I interrupt you there, just because I want to make sure that we are clear about what happened when?---M'mm.

- 30    Even if the same thing happened on a number of occasions?---M'mm.

At that first meeting with Mr Zador, is it your evidence that Mr Zador and you and others in the room discussed who would be the appropriate person at the City to contact about the matters?---Yes. We did discuss who, if they did need to talk to anyone at the City of Perth, who would be the appropriate people to speak with.

As I understand your evidence, you also had a subsequent conversation with Ms Macknay about the same topic?---(No audible response).

- 40    Can you remember when that conversation was?---I can't remember exactly but I think it would have been in November of 2017.

Some time in that month?---Yes.

- 45    I may be able to help you with that date, if you'd just bear with me. If I suggested there was a call - was it a phone call, I think you said?---With Elizabeth, yes.

A call between you and Elizabeth on 28 November, do you think it could be at that conversation?---Yes, I do.

5 So in the conversation with Mr Zador on the 9th, was there discussion about whether or not to involve Mr Ridgwell?---Yes, I think, because I had another meeting with them at their office as well and in attendance at that meeting was the Manager of Human Resources and so at the initial meeting we discussed who would be the appropriate person at the City for them to liaise with.

10 Was there a particular discussion about whether Mr Ridgwell was appropriate?---Yes.

And that was a particular discussion you had with Mr Zador?---I believe it was with all three solicitors present in the meeting.

15 On 9 November?---As far as I can recall.

Can you tell the Commissioner about that conversation about Mr Ridgwell?---Sure. They had asked me who Mr Ridgwell reported into and I explained that he reported into the CEO and then they had asked me who else in the City did I think would be an appropriate person to - for them to speak with who would be objective and impartial and would maintain a confidentiality of the situation and then I explained to them that there was a HR person who I believed was appropriate, but they were leaving the City in one week's time and that there was a new person joining, and then we discussed that we would - that that person, I can't remember - I think their name was Alison, that they would try and liaise with that person instead of Mr Ridgwell.

Was there a discussion about whether Mr Ridgwell was inappropriate to be involved?---No, I don't believe so. I think it was more that there was a concern about his ability to be impartial given the direct reporting line.

Was that a concern expressed by you in this conversation?---It wasn't an explicit concern. I don't recall saying, "I have a particular issue with Mr Ridgwell", like around his conduct specifically, it was more by virtue of the reporting lines than - just the nature of the organisational structure.

I'm interested to understand what your view was about Mr Ridgwell because it might be suggested that you didn't tell Mr Ridgwell certain things because of concerns for his propriety or his ability to convey things to the CEO and I'm interested to know whether that was as a matter of fact something that was in your mind?---No. In that conversation we discussed who would be most likely to ensure that the enquiries that they would make would be - wouldn't be compromised in any way and that they - subsequent to that I think I spoke to Mr Zador on the phone and he said to me that he had been avoiding Mr Ridgwell and he said that he needed to return his calls and that he needed to bring him into his confidence and explain what had been occurring in the background.

[12.30 pm]

- 5 As the Manager of Governance, it seems to me that Mr Ridgwell would have been the ideal person to have been contacted about this matter?---I think on the face of it I would agree with you but given he reported directly into the CEO and when I discussed that with Freehills, they felt that someone in HR would be more appropriate, that we concluded that that was a more appropriate course of action.
- 10 So did Freehills express a concern about that reporting line?---Yes.  
And the impact that might have on the security of what was then to be undertaken?---Yes.
- 15 Did they express a concern to you that, through that reporting line, Mr Mileham might find out about what was going on?---The first part of what you said, yes, but the second part, they didn't say that but I think that was implicit.
- 20 Did you yourself have an independent view about Mr Ridgwell and that reporting line?---I thought it presented a risk, but I didn't have specific concerns about Mr Ridgwell's trustworthiness at that point.
- 25 Did anybody in this meeting raise, or say, "Hold on a second, it's Mr Ridgwell who's engaged us on behalf of the City, we have to deal with Mr Ridgwell"?---They did say that they knew that they had to deal with Mr Ridgwell later more explicitly, but nobody in the meeting said, "We must do that." The conversation was centred around what was the best course of action given the sensitivity and how to manage this in a very confidential manner.
- 30 And then I think, as I understand your evidence, discussion turned to who else could be involved?---Yes.  
And this is where I think Alison was the name you mentioned?---I think so. I think that's her name.
- 35 Is Alison Egan a name that rings a bell?---It does.  
Who suggested Ms Egan or HR, if I can just use a composite expression?---I can't remember whether I suggested it or they suggested it but we certainly discussed it.
- 40 At this point, when there was discussion about involving other staff, did you give any consideration as to how, given the obligations that we went through at the start of your evidence, how that could actually occur, how you could actually get those staff involved?---They said that, could I just put them in touch with them, as in the HR person in touch with Freehills, and then they would handle matters from there.
- 45 Did you hesitate or pause or think maybe that's not something that you could do as

a Councillor?---I knew that it was - I knew that it was up to Freehills to liaise with the Administration and deal with matters concerning their engagements with each other, so I knew that - - -

5 They asked you, did they, to put them in touch with - - -

COMMISSIONER: Them?---Yes.

Put them in touch.

10 MR BEETHAM: With them - I will withdraw and put the question again. Freehills asked you to put Freehills in touch with the HR people?---That's correct.

15 Did you pause at that moment and consider whether or not that would constitute being involved in the administration of the City?---I did not think that facilitating a introduction between someone in Administration and a third party would constitute adding to the administrative burden in the sense defined in the Act, no.

20 So just to clarify, because I missed that first part of your response. Is it that you didn't give that consideration or you didn't consider it was?---I did not consider it was and I was cognisant of that and I therefore arranged a meeting, I think, and wrote an email putting them in touch with each other and I think I even said in there, "You'll need to deal with it - contractual matters between you, it's not my place to do that." I actually think I noted that in the correspondence.

25 This is an email that you sent?---Yes.

To whom?---As far as I can recall, it was Mr Zador and Ms Egan but it might have also included Ms Macknay. I can't recall exactly who was CCed on the 30 correspondence but I do remember articulating something along the lines of, "I'll leave it with you to follow up with each other because it's not my place to do that."

So this was an email, as I understand it, to simply put them in touch with each other?---(No audible response).

35 Other than Freehills indicating to you that they needed some further information, in particular to speak with Mr Fini, did they indicate that anything else needed to be done?---They said they wanted to gather some more information from the Administration and that was why they wanted to have a point of liaison into the 40 City to do that.

Correct me if I've got this wrong, there were two things at least: the first is gather some information from the Administration?---(No audible response).

45 And did they say what that information was?---They said that they were going to look at written correspondence. I think that was primarily it, and speak to the person in HR as well.

That's the first thing and the second thing was, speak with Mr Fini?---Mr Fini was the first thing and the second thing was subsequent to that, Elizabeth Macknay called me and said that they wanted to speak with the Administration to get more information to provide their considered view.

So is it the fact then that you were only told about speaking with Mr Fini at the first meeting and that the subsequent bit about obtaining information from the Administration came in the conversation with Ms Macknay?---Yes, that's correct.

10 At that point - that's an unclear question. At the point at which you were told that they wanted to speak with Mr Fini, did you give any consideration as to whether or not taking that step would take what was happening beyond what you understood Mr Ridgwell's understanding to be of a time limited and scope limited advice?---No.

You didn't give that consideration at the time?---No, I didn't think that that was - I took it as given that to be able to provide me any advice on this, that they may need some information.

20 So did you consider in particular whether it would take it outside of the description Mr Ridgwell had conveyed to you of a time limited advice?---No, I did not. I did think about that and I didn't think it was beyond that.

25 So you did think about it but you thought it was still within that phrase?---Yes.

Then you had this conversation with Ms Macknay?---Yes.

30 And I think we have established that looks like it was on about 28 November?---Yes.

And she was after some - she indicated that you needed to gather some more information from the Administration, including written correspondence?---Yes.

35 Did you at that stage, when that request was made, consider whether - this is now about three weeks later - that was now starting to creep outside of time limited advice?---It did occur to me that it could potentially be going beyond that. So when I put them in touch with the lady in HR, I did speak to her and say that, "I don't know what the procedures are in terms of procurement and what not, and I will hand that over to you to deal with" and I think I even referred to that in the email that I sent her.

I take it then that you didn't raise it or bring it back up with Mr Ridgwell?---No, I did not. Mr Zador did address that with me on the phone.

45 I'm sorry, there's some noise behind me and I missed that last part of your answer. Mr Zador addressed it with you on the phone?---Yes. He said to me on the phone

that he had been avoiding Mr Ridgwell - I think I said before - he had been avoiding Mr Ridgwell and he needed to call him and talk to him.

5 When was that conversation with Mr Zador?---That's a bit hard. It would have been after the Christmas party.

So if we can find out a date for that Christmas party, we can pin a bit of a better timeline down, do you think? Sorry, you're going to have to respond verbally?---Yes.

10 Thank you. Why did you think or how did you form the view that the HR people were the appropriate contact point for this matter?---In speaking with Freehills and the conversation that we had about the appropriate way to manage this situation, I formed the view that was the best course of action.

15 Can you expand upon the reasons why somebody in the HR role would be best placed to deal with an allegation of misconduct in relation to the CEO?---I don't think it's just about the role, the job title that the person had. I think that it needs to be looked at in context in terms of reporting lines and that was the main driver for 20 the advice that Freehills gave in that regard.

25 My understanding, and it's an imperfect understanding I will admit, that all roads lead to the CEO, so can you tell me how the reporting lines in respect of Human Resources matters then?---I don't know what the - I agree with you that all roads lead to the CEO but I think the direct reporting line was something that was flagged as an area of concern by Freehills and that Ms Egan did not report directly into the CEO. So it was felt that there was less of a risk as a result of that, and also because someone in HR would be dealing with these kinds of things as a matter of course as well. So it's not like, you know, if you'd gone to someone in parking, 30 that would be, or finance, that had no - it was not part of their core role in any way, shape or form, whereas with Mr Ridgwell, or Ms Egan, it did form the basis of their role and in the case of Ms Egan, she didn't have a direct reporting line to the CEO.

35 As I understand that evidence, there was a view reached that it shouldn't be Mr Ridgwell because of the reporting line and I take that view would have applied to anybody with a direct reporting line to the CEO?---Yes.

40 And then was there consideration as to - if you take out all of the people with a direct reporting route to the CEO, who would be an appropriate person?---Yes.

Is that effectively how it would arise?---Yes.

45 Did you give any consideration to the capacity of those people within Human Resources, Ms Egan I think is one of the names?---Yes.

To contract or instruct external consultants on behalf of the City?---I did. I would

have assumed that they would have had a budget and the ability to manage procurement services and that it would be in the remit in the ordinary course of their role to do that.

5 I think you used you "assumed" there?---Yes.

So is that something you weren't sure about at the time?---No, and I actually think in the email that I sent, I said something along the lines of "I'll hand that over to you to look into to" and I didn't think it was appropriate for me to look into the  
10 way the procurement processes needed to be handled by her. I thought it would be appropriate for her to look into that herself and make the determination herself without being directed by me.

15 The used word "directed" is an excellent segue, Dr Green, to my next question in relation to that topic, which is, I expect you would view the correspondence and conversation that you had with the Human Resources people to not constitute direction, is that right?---That's correct

[12.45 pm]

20

Would you be willing to accept that to a third party observer, they might be construed as directions?---A third party that has no understanding of Local Government or a third party - - -

25 Just any third party looking at that exchange, that set of facts?---I remember being cognisant of that when I wrote the correspondence to her. I would need to look at the email again to answer that question properly.

Sir, I think Mr Howard has - - -

30

COMMISSIONER: Sorry, Mr Howard.

35 MR HOWARD: I think my friend had the witness accept before that the email exchange was an introduction and my friend didn't put it any higher than that. He's now probing the witness about whether it's a direction. We don't have the document. I just wondered what use you're going to be able to make of it later.

COMMISSIONER: Yes. I think the time has come for the document, hasn't it?

40 MR HOWARD: Yes. May it please.

COMMISSIONER: Mr Beetham.

45 MR BEETHAM: Certainly, sir. If I can respond to the objection, however, I think the witness gave evidence that it was more than an introduction and it was things to the effect of, "You can look after the budget" and so forth, so I don't accept that characterisation.

COMMISSIONER: Notwithstanding that - - -

MR BEETHAM: I can certainly - - -

5

COMMISSIONER: - - - as this line of questioning was proceeding, it seemed to me that a lot of the answers to the questions were predicated on the document and it might be helpful to go to the document if it's convenient at this time.

10 MR BEETHAM: So the document that I think you may be speaking about, Dr Green, should be at 12.0527. Madam Associate, if I could ask you just to expand that. Dr Green, you will see this is an email from you to Mr Zador, copied to Ms Macknay and Mr Longland and an email address [REDACTED]. The reason I said to you I think this is the email you're referring to is because it's copied to Ms Moyser and not Ms Egan?---Sorry. I couldn't remember the person's - the name.

15 If you can take a moment to read the email though?---Yes.

20 Are you able to confirm, once you've read that email, that's the one we are talking about?---Yes, I've read it.

Is that the email we are talking about?---It is.

25 I've just been handed a note about that Christmas party, Dr Green, so I will interpose questions about this email. It's been suggested that the Christmas party was on 15 December and it was a party at which you might have given a speech?---Yes.

30 So do you recollect giving the speech?---I do.

Would you be happy to accept that the date of that was 15 December?---I would.

Thank you, Dr Green. If we can go back to this email. I think before my 35 interruption you did indicate this was the one we are talking about?---Yes.

You will see there in the first couple of lines you introduce Ms Moyser, Senior Employee Relations Advisor, to those solicitors at Freehills?---Yes.

40 And, in the next line, consistently with what you've told the Inquiry today, you indicate that you will leave it to her discretion to determine how best to communicate with Freehills?---Yes.

45 A couple of lines later you write, "Barbara is looking into whether the City has the capability to image text messages. She will revert"?---Yes.

If I was to suggest to you the only reason Ms Moyser would be doing that is

because you asked her to do that, would you agree with me?---No. I recall that Freehills said that they had potentially the ability to do that, to call upon third parties that could do that and they wanted to know whether the City had the ability to do that and that I had asked the HR person whether the City was able to do that.

5 So I was flagging that in the email.

So my question was, where you write "Barbara is looking into whether the City has the capability" to do those things, Barbara, Ms Moyser, was doing that because you had asked her to do that?---I asked her whether the City had that capability 10 and she said she didn't know, she was going to look into it.

Can you recall this interaction with Ms Moyser?---I think it was on the phone that - I think it was a telephone call.

15 Was it a telephone call that you initiated?---It would have been, yes.

Can you recall what you said to Ms Moyser on the call?---I can't remember the entirety of the conversation but the bits I can remember, I said to her that there was an allegation - I told her that there had been an allegation made by Mr Fini about 20 the CEO's conduct, that I was speaking with Freehills about that and they wanted to speak with her in relation to this matter and they had wanted to understand whether there was the ability for them to obtain information, specifically about the text messages here, and she said that she had only been in the role a short time and that she was going to look into whether that - she didn't know if that was possible 25 and that she was going to look into that. So then I think after that I sent this email and then I think we also had a meeting together as well.

On that call with Ms Moyser, did you ask her to be involved in this matter?---I asked her whether she would speak with Freehills in relation to this and she said 30 yes.

I think your evidence a moment ago was that you told her - you also told her that Freehills wanted to speak with her?---Yes.

35 In that context, would you accept the characterisation of that exchange to be something that might constitute or be considered - I will put in two parts: that might constitute a direction by you?---No.

40 Would you accept that Ms Moyser might have formed the view that you were telling her to do these things?---I can't speculate on what she might think.

Were you not able to accept whether that might be a possibility?---I don't accept that at all. In fact, I went to some effort in that email to - - -

45 Sorry, I'm not talking about the email, I'm talking about the telephone conversation?---No.

So you don't accept it was possible when Ms Moyser received a call from you in your capacity as Deputy Lord Mayor and at this stage having assumed the role and obligations of Lord Mayor, told her about this allegation and asked whether she was - told her that Freehills wanted to speak with her and asked her whether she

5 could speak to Freehills, you don't accept the possibility that Ms Moyser might have considered that to be a direct request from you?---Not in the - I did ask her if she would be willing to speak to Freehills and she said yes, that she would.

10 So do I take it from that answer that you don't accept that Ms Moyser could consider that could be a direction from you?---No.

You will see this email is sent to Ms Moyser's Hotmail account?---Yes.

15 Why was it sent to her Hotmail account and not her City of Perth account?---This was because the matter was very confidential and we were concerned that it may become known by the CEO if it was on the City of Perth email.

Where did that concern come from?---I think that was in conversation with Freehills in the first meeting that we had.

20 This conversation about the CEO potentially becoming aware of correspondence between other people at the City in their email accounts?---M'mm.

25 And what was the basis for that? Why did somebody think that was possible?---I don't know.

Did you express a view on it?---I don't recall expressing a view on it, no.

30 Are you aware - were you aware at the time of whether Mr Mileham, who was the CEO at the time, was actively monitoring other people's emails?---I do remember conversations being had about that, I think.

Sorry, my question, Dr Green, was whether you were aware yourself?---That my emails were being monitored?

35 No, that Mr Mileham was monitoring anyone's emails, were you aware first-hand that that was happening?---As in had Mr Mileham told me that he was doing that, or was I - - -

40 We can go in stages. Had Mr Mileham told you?---No.

Had anybody said to you, "Mr Mileham is monitoring my emails"?---Yes.

Who told you that?---I think the Lord Mayor had suggested it.

45 Ms Scaffidi?---M'mm.

Had suggested that Mr Mileham?---M'mm.

Was monitoring her emails?---M'mm.

5 COMMISSIONER: When you say "had suggested", when?---It's a bit hard for me to remember exactly when - I remember it being said on more than one occasion.

10 MR BEETHAM: To you by the Lord Mayor?---That's the - I think it might have been Mr Limnios that told me that, that the Lord Mayor had said to him that she thought that the CEO was monitoring emails.

So is it your evidence then - - -

15 COMMISSIONER: Sorry, can I just understand when that was said, please?---I'm sorry, I can't remember.

COMMISSIONER: Thank you.

20 MR BEETHAM: Just for clarity, I thought your evidence was the Lord Mayor had told you herself?---No, I came to know that the Lord Mayor had said that but I don't believe that she had told me that herself. I think that it was Mr Limnios and I think it was before I became - I think it was when he was the Deputy Lord Mayor, he came to know that, so it was prior to October 2017.

25 So your best recollection, and take the time that you need to reflect upon it, is that Councillor Limnios told you that the Lord Mayor had told him at a time when he was Deputy Lord Mayor that Mr Mileham was monitoring the Lord Mayor's emails?---It wasn't monitoring her emails, that he was monitoring emails, like at large.

30 By "at large", do you mean everyone's emails?---Anyone or everyone, yes.

Are you sure about that recollection, and the reason I ask, Dr Green, is because it changed a few times in the telling?---Yes, I agree. I agree with you on that but I just - I knew that I knew that and then I was trying to remember how I came to know that.

40 I think it also changed from monitoring just the Lord Mayor's emails to monitoring everyone's emails?---Yes. I think I read in a newspaper last week, and I was just clarifying that, that the Lord Mayor had made that statement. So then I was remembering that she had said that but then I also remembered that I was aware of that prior.

45 Did anybody else at the City, other than Councillor Limnios, mention to you that Mr Mileham was monitoring their or other people's emails?---Yes.

Who were they?---Ms Battista told me that Mr Ridgwell was surveilling emails

and mobile phones.

5        But Mr Ridgwell is not Mr Mileham. We are not talking about - - -?---But I thought your question was, did I know from anyone else that there was surveillance of emails, sorry.

10      I had understood the reason - your reason why you had used Ms Moyser's Hotmail account was because you had a concern about Mr Mileham's surveillance?---I just thought there was a potential risk that it could - he could come to know about this and if it was not on the City email, then the risk of that was reduced.

15      And I'm trying to understand how realistic that risk really was and what your bases was for it?---I actually didn't place it as a very high risk. It wasn't something that was front and centre in my mind but I thought it was a potential risk and in trying to deal with this matter in a way that was sensitive of the nature of it, I think it was just a sensible approach.

[1.00 pm]

20      Two more questions, sir, and then I think it might be a convenient time.

COMMISSIONER: Yes, of course.

25      MR BEETHAM: The first question, Dr Green, is did anybody at any time come to you with proof and show you that Mr Mileham was monitoring their emails?---No.

30      Your recollection about Councillor Limnios and the Lord Mayor that we have gone through, is it possible that you're mistaken about the identity of the CEO who was doing the surveilling and that the CEO that Mr Limnios may have been referring to was Mr Stevenson?---Oh. Yes, that's a good question. Maybe, possible.

It's possible you were mistaken on that?---Yes.

35      That might be a convenient moment, sir.

40      COMMISSIONER: Just before we leave this document on the screen, you will see that it's copied to Mr Anthony Longland with a Herbert Smith Freehills email address; was he the third lawyer in the first meeting that you spoke about?---I think so but I can't recall his name in the meeting, but I would presume so given that I've included him in this correspondence.

Thank you. I will adjourn now until 2.15.

45

**WITNESS WITHDREW**

**(Luncheon Adjournment)**

HEARING RECOMMENCED AT 2.17 PM

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

5 COMMISSIONER: Mr Malone, you are now here?

MR MALONE: Commissioner, with your leave, I seek to represent Councillor Harley in place of Mr van Hattem.

10 COMMISSIONER: Thank you. Mr Mariotto, you replace Mr Skinner?

MR MARIOTTO: Indeed.

COMMISSIONER: Thank you. Mr Beetham.

15 MR BEETHAM: Thank you.

Madam Associate, if we could just have the email we were looking at before the break back on the screen, please, which is at - my note at least is it's at 527,

20 12.0527. Thank you, Madam Associate. If I again, could ask you just to enlarge the large email in the centre of the page. I just want to clarify something with you Dr Green, you recall we started talking about this email in the abstract, but looking at it you gave some evidence that you thought the person you had involved - let me rephrase that, the person that was involved at the City was Ms Egan and then  
25 having seen this document, I think we had formed the view that it was actually Ms Moyser?---Yes.

Did you know what Ms Moyser's title was at the time?---It appears I did because I wrote it in the email.

30 Yes, so you knew she was the Senior Employee Relations Advisor?---I believe I would have known that at the time, hence writing it there.

35 The point I want to clarify with you is, when I asked you, and I can't remember the precise form of the question but when I asked you before the break about whether or not Ms Egan had authority to commit funds on behalf of the City and engage lawyers?---Yes.

40 I think your evidence was to the effect of, you understood HR had a budget for these types of things and it was within, is that a fair summation of your evidence?---Yes. So what I recall I said was that I couldn't quite remember her name and then you'd suggested a name and I said, "I think that's it", but prior to that there was another person in charge of HR. Her name was Kelly Pember.

45 Yes?---And I had actually initially liaised with her in relation to this matter and she had put me in touch with Ms Moyser. I believe she said that - actually, I think what had happened was that there was somebody else as well but they were not

there and so she - maybe it was Ms Egan, and she had put me in touch with Ms Moyser instead.

5 I understand. Let me see if I do understand that. Your initial conversation you think was with somebody called Ms Pember and that was a concern within Human Resources?---Yes.

And that person put you in contact with Ms Moyser?---I think she gave me the contact details for Ms Moyser.

10 And then you contacted Ms Moyser following that?---Yes.

15 Did you have any view as to whether or not Ms Moyser or did you know whether or not Ms Moyser was within the Human Resources area at the time or reported to Ms Pember, for example?---I did know that she was in HR, yes.

20 So your evidence about HR having a budget and those types of things applies equally to Ms Egan, Ms Pember and also Ms Moyser, is that right?---I was speaking more generally, that within HR I would have expected them to have a budget and an ability to procure services as required and that when I spoke to Ms Pember, I believe that she'd put me touch with the most senior person in that area.

25 And did you, just to follow that through, have an understanding that that person had authority to expend funds and contract and those types of things?---No, I was not aware of the extent to which they were or were not able to do that. My expectation was that they would ascertain what they were able do and obtain the necessary or requisite approvals to be able to do whatever it was that Freehills wanted them to do.

30 Do I take it from that answer that you didn't take any steps yourself to obtain authorisation for further expenditure, for example, from Mr Ridgwell, Mr Mileham or from Council?---No, I did not.

35 I note that in this email Mr Ridgwell is not copied to it, do you agree with that?---I do.

40 And is he not copied to that for the reasons that you've given earlier about the person about his reporting line?---Yes.

45 Madam Associate, can we now please go to the document at 12.0499, TRIM reference, sir, 19303.

COMMISSIONER: Thank you.

45 MR BEETHAM: Madam Associate, could I ask you just to go to the email at the bottom of that page and enlarge that section, please. Could I ask you, Dr Green,

just to read that email to yourself?---Yes.

You will see just above that, there's a response from you. So you did as a matter of fact receive and respond to that email?---Yes.

5

Do you have a recollection of doing that?---No, I don't.

You will see in the first line of the email from Mr Zador he refers to:

10           *Attached is a high level strategy note/investigation plan in relation to the allegations made against Mr Mileham.*

He's noting Mr Mileham there, isn't he, because at that stage your concern was only in relation to an allegation about Mr Mileham?---At all times that was the 15 only advice that I sought and that was the only person that I was seeking advice in relation to.

You say at all times, but particularly on this date, on the 14th, it was only in relation to Mr Mileham?---It was at this time and at all times.

20

Madam Associate, could I ask you now to bring up the document at 12.0493, TRIM reference, sir, 19302.

COMMISSIONER: Thank you.

25

MR BEETHAM: I will ask Madam Associate to enlarge that in just a moment but you will see at the top, Dr Green, it's described as a, "Investigation plan"; do you recognise that document?---Yes, I do.

30 You recall the email I just took you to referred to a "attached investigation plan"?---(No audible response).

And is this that investigation plan?---I believe so, yes.

35 Madam Associate, if I can get you to go forward to 12.0496. You will see, I hope there, Dr Green, the date, 14 November?---Yes.

Being the date of that email that we just looked at?---Yes.

40 Does that give you some comfort that this is the investigation plan?---It does.

Madam Associate, could we now go back to the first page of the document, please. You recall, Dr Green, your response to Mr Zador's email was, you will initiate the steps?---Yes.

45

Or words to that effect, yes?---Yes.

And those were the steps in this plan?---Yes.

It's the case, is it, that you had read this investigation plan when you received it?---Yes, I did - I would have read it. There was another document as well.

5

In addition to the investigation plan?---I think so. How many pages is this?

Can you recall what the document was?---It was like a script of things to say to Mr Fini.

10

Madam Associate, could you go forward to 12.0497. Is this the document you're talking about?---Yes.

15 We will come to that document in a moment. If I could ask you, Madam Associate, to go back to 493. So this document and the one that I just showed you, the script, these are materials you received from Herbert Smith Freehills?---Yes.

And which you read?---(No audible response).

20 And the steps described in them for you to take are the steps you were referring to when you said you would initiate the processes?---Yes.

You will see in the first paragraph of the investigation plan, it states:

25 *Herbert Smith Freehills met with the City of Perth's Acting Lord Mayor, Jemma Green, on 9 November 2017.*

That's consistent with what we have heard today?---(No audible response).

30 Then you will see it says:

*Councillor Green instructed Herbert Smith Freehills that she received information from Adrian Fini -*

35 and so on, do you see that?---I do.

Then in the next sentence below that you will see it says:

40 *Councillor Green has instructed Herbert Smith Freehills to investigate Mr Fini's investigations and to advise the City about its response to the allegations.*

?---I do.

45

Madam Associate, if we could go over to the next page, 494 - is that large enough for you to read on the screen, Dr Green?---Yes.

You will see the first block paragraph at the top of the screen, it's quite a large paragraph, but you will see the line commencing with Mr Ridgwell's last name, about halfway through, line number 4, do you see that?---Yes.

5

Just take a moment there to read the paragraph, Dr Green?---Yes, I've read it.

So in that line commencing with Mr Ridgwell's last name, it says:

10

*Ridgwell, Manager, Governance, that she -*

And that's a reference to you, Councillor Green?---Yes.

:

15

*Has directed Herbert Smith Freehills not to provide any written advice at this time.*

Do you see that?---Yes.

20

:

*Or to discuss the substance of the advice with the City.*

25

Do you see that?---Yes.

Then if I can ask you to look a bit further down the page at the paragraph just above 4.2, the bold 4.2?---Yes.

30

You will see it says there that, "Once the team has been assembled", and that's the team discussed in the preceding paragraphs "we", that's Herbert Smith Freehills, "can arrange a preliminary briefing with the team members. At first instance Councillor Green will explore the possibility of engaging with the HR Manager", do you see that?---Just one moment. Yes.

35

Would you agree with me that the passages I have taken to you, and if you need me to go back to them I can, indicate on the face of it that Freehills considered you had instructed them to do certain things, directed them to do other things and undertaken to explore the possibility of engaging with the HR Manager?

40

COMMISSIONER: Yes, Mr Howard.

MR HOWARD: The passage my friend read towards the top of that page, or asked the witness to read, started four lines up from the bottom in the line that started with "Ridgwell" - - -

45  
COMMISSIONER: Before you go any further, should I hear this in the absence

of Dr Green?

MR HOWARD: Perhaps.

5 MR BEETHAM: If the nature of the objection is to put the whole of the sentence in, I'm happy to do that.

MR HOWARD: I think it just - if you start from the, "We think that."

10 [2.30 pm]

MR BEETHAM: Yes, of course.

COMMISSIONER: Thank you.

15 MR BEETHAM: I will take you back to that sentence at the top of the page, Dr Green?---Yes.

20 The one that I asked you to read from the name, "Ridgwell", the whole sentence reads, "We think that", that's Herbert Smith Freehills?---M'mm.

:

25 *Given the nature of the allegations being investigated, it is appropriate that Councillor Green inform Mark Ridgwell, Manager Governance, that she has directed Herbert Smith Freehills not to provide any written advice at this time or to discuss the substance of the advice with the City, but that such advice will be provided to the City at an appropriate time.*

30 Do you see that?---Yes.

That passage and the passages on the first page that I took you to, indicate - would you agree with me that they indicate that Freehills at least took the view that you had instructed them to do certain things and directed them to do something else?---Well, no, I don't agree with that.

COMMISSIONER: Yes, Mr Howard.

40 MR HOWARD: It's a fundamentally unfair question, with respect, because - - -

COMMISSIONER: Yes, I think I will hear this in the absence of Dr Green?---Do you want me out?

45 I will ask you to leave the room. Thank you, Dr Green?---Okay

**WITNESS WITHDREW.**

COMMISSIONER: Mr Howard.

5 MR HOWARD: Thank you, Commissioner. Some observations, if it's of assistance. It's obviously a difference between who engages a solicitor and then who is the point of contact. A layperson may not understand the difference between what is being suggested by Counsel Assisting. The clear wording is that this advice, at the top of the page, that Herbert Smith Freehills are giving and that they, in a passage my friend hasn't taken the witness to, explain why their advice is 10 that and they say "ideally this should be done" in that first block - - -

COMMISSIONER: Are you looking at a hard copy in front of you at the moment?

15 MR HOWARD: I'm sorry, so - - -

COMMISSIONER: Is that the same page that you're looking at?

MR HOWARD: Yes, it is.

20 COMMISSIONER: All right.

MR HOWARD: You will see in the first block under the (c) paragraph, the last sentence says:

25 *Ideally this should be done following the preservation of documents described in section 4.2 below.*

COMMISSIONER: Yes.

30 MR HOWARD: There's an obvious reason for that and the question is presumably, the Freehills' file will show who the retainer agreement was with. Freehills say on the face repeatedly they have been engaged by the City and that they are advising the City and it seems, can I suggest with respect, it's a bit facile to be putting to this witness something about her giving the instructions as opposed to who's engaged the solicitors and who the solicitors in truth are advising.

COMMISSIONER: I understand the objection. Mr Beetham.

40 MR BEETHAM: Sir, it goes - the point of the questions is to explore more than simply the engagement of the solicitors but also to explore the involvement that Dr Green had with the solicitors over a period of time.

COMMISSIONER: Yes.

45 MR BEETHAM: And whether or not ultimately that involvement with the solicitors trespassed into areas that she may as a Councillor not have been

permitted do. I appreciate what my friend has to say about that paragraph on the top of that page. I'm happy to leave that paragraph but I would still like to take Dr Green to the references in this document where it is described that Councillor Green instructed Freehills to do certain things. That's out of fairness to Dr Green,  
5 in the event that a submission is made that Dr Green was involved ultimately in instructing Freehills along the way, but also to set the platform for the next question about what Dr Green did in response to this document.

10 COMMISSIONER: I suppose what lies beneath Mr Howard's submission is that at some time obviously in the near future, given the month, it will be necessary and appropriate to not only take account of this evidence but what might also be on the Freehills' file itself, because when you do that comparison, you will then be able to get a proper sense of perspective. I understand why you want to pursue this,  
15 Mr Beetham, but if it is to be pursued, then it really ought to be on the basis that there is a proper examination of the Freehills' file - I call it the Freehills' file, I mean the Herbert Smith Freehills' file, of course. Just take a seat for a moment, Mr Beetham.

20 On the basis that a proper examination of that kind is undertaken, Mr Howard, whilst I appreciate the point you are making to me, if a balanced and fair examination, thorough of course, is made of that file and then this evidence is read in the light of that, the risk of the kind of harm that you're contemplating at the moment would be much, much lower.

25 MR HOWARD: I accept that. The questions that my friend is putting, and he says, as one would expect, candidly that it may lead to a submission about trespassing on the part of the Councillor, is really, what is the counterfactual? In the circumstances, allegations of a serious - apparently serious nature come to the attention of the Councillor, what is that's posited that ought to have been done  
30 differently when she's, through the City, engaged a first tier law firm who give her advice, and the City advice which she then follows. What is it, one might ask rhetorically, that propriety would demand be done differently?

35 Without that being put fairly, can I suggest, with respect, this line of questioning misfires. It's a matter for you, obviously, Commissioner, but there is a latent suggestion, and my friend candidly says, may lead to a submission about trespassing, but what is it that ought to have been done differently?

40 COMMISSIONER: In one sense you would say, Mr Howard, the worth of these statements is perhaps capable of assessment on the strength of not only this letter, but also the balance of the Freehills' file?

45 MR HOWARD: And when one looks at the fact that the report comes - it's difficult for us to know whether what's really being put is there was, you know, some cost issue that wasn't kept in control, but frankly given the cost of people sitting here at the table, one might put that into a perspective, or is it that there is some serious trespassing and confusion of roles where the individual has - as I say,

the City has engaged this law firm. She has then dealt with that law firm, it seems in good faith and in an up-front manner and followed their advice; what is the counterfactual?

5 COMMISSIONER: Yes.

MR HOWARD: May it please.

10 COMMISSIONER: Thank you, Mr Howard. Mr Beetham, you're being called on to show your cards.

MR BEETHAM: I thought I had expressly exposed those cards, sir, when I indicated the nature of the submission that might be made.

15 COMMISSIONER: I don't think - yes, well, you've been called on to show more of your cards.

20 MR BEETHAM: The point of the question, sir, is to gain an appreciation of what Dr Green understood she was doing and to explore whether it was, she was engaging with Freehills following an engagement of the firm by the City and following Freehills' advice and then doing things appropriately according to that advice, or whether there's a knowledge or an awareness on the part of Dr Green that she was stepping somewhat outside of that boundary. One of the questions that I would like to ask Dr Green is how did she respond to this investigation plan 25 with its reference to instructing the firm, and then to talk to Dr Green about similar references in the report and an expansion or an apparent expansion of the scope.

30 COMMISSIONER: Yes. Thank you, Mr Beetham. Mr Howard, I'm very mindful of the submissions you've made and I understand what limitations might well apply to the evidence. I am going to permit the question and I'm going to permit questions along the lines that Mr Beetham has indicated. You, of course, are free to object as and when you see fit, of course, but I'm very mindful of what you've said and I'm sure you will appreciate from what I've said in response, that I am.

35 MR HOWARD: Yes, I do and I don't want to interrupt my friend unnecessarily, but it is an area of some concern when some of the concepts obviously about who has engaged this firm. If it's accepted that it's the City that's engaged the firm, then the question of how these serious allegations should properly have been dealt with 40 brings us back, that my friend has some latent suggestion that there's a problem with the way it's been dealt with. It's obviously very difficult for everybody, one can readily appreciate. It's incredibly delicate, it's confidential, how is it to be managed properly? A first tier law firm gives Dr Green as to how that is to be done. There's nothing to suggest she hasn't followed it. It's hard to see how it's 45 going to be put that she's departed from what she ought to have done, but I've heard what you've said.

COMMISSIONER: Mr Howard, I'm very conscious of that, having listened carefully to this morning's evidence and it has certainly put a particular complexion on those dealings, so I do understand the point you're making.

5 MR HOWARD: Thank you.

COMMISSIONER: But by the same token, the point that Mr Beetham wants to test in an Inquiry of this kind should be tested and I'm sure he will be mindful of the sensitivities when doing so.

10 MR HOWARD: Yes.

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

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

20 COMMISSIONER: Dr Green, in your absence, your counsel made an objection and the objection has been resolved. Your exclusion from the hearing room is no reflection on you. Mr Beetham will now continue with his questions.

MR BEETHAM: Thank you, sir.

25 Dr Green, perhaps a step I missed in asking you the previous question is this question: when you received this document in November of 2017, did you have an understanding of what the phrase "instructed" meant in the context of legal correspondence?---No.

30 Upon receiving this investigation plan, did you respond - I suspect I know the answer to this based on your previous answer, but did you respond to Freehills, quibbling with any of the language in the investigation plan?---No.

35 COMMISSIONER: May I just ask a question following on that, and interrupt you.

MR BEETHAM: Of course, sir.

40 COMMISSIONER: Dr Green, did you think you needed to respond and quibble with any of the language?---I don't - I know my attention has been drawn to this in this hearing, but I don't remember reading that bit of the document and it coming to my attention as something to discuss with Freehills.

45 Thank you for that but can I just draw you back to my question: did you think you needed to respond and quibble with any of the language?---No. I think I needed - what I did think I needed to do, I understand the things I needed to do specifically, the conversation with Fini, that was the bit that I did spend a bit of time on and I

was comfortable with what I needed to do in that respect

[2.45 pm]

- 5 Rather than leave that loose end lying there, can you tell me why?---I didn't feel the need to quibble with any of the language because I didn't notice that there was anything to quibble with.

Thank you.

- 10 MR BEETHAM: Thank you, sir.

Madam Associate, can I ask you now to go to 12.0647, TRIM reference, sir, 19353.

- 15 COMMISSIONER: Yes, thank you.

MR BEETHAM: Dr Green, you will see there the email from Mr Ridgwell to you attaching a copy of a document described as Project Percy advice?---Yes.

- 20 I think your evidence a little earlier today, that this is when you understand the advice is received?---Yes.

Do you recall this email, receiving this email and the advice?---I do.

- 25 Madam Associate, if we could go over to the next page, please. Do you recognise this as the first page of that advice, Dr Green?---I do.

- 30 If we could go over to the next page, please, Madam Associate, and if I could ask to you enlarge the portion under, "Introduction and scope". If I can ask you just to read item C to yourself, Dr Green?---Yes.

- 35 You will see there, Dr Green, a reference to a conversation that you had at Herbert Smith Freehills about a conversation, a further conversation you had had with Mr Fini?---Yes.

Do you recollect telling Freehills about that further conversation?---I do.

- 40 And they go on to describe how in that conversation Mr Fini had provided further information about "alleged possible misconduct by the Lord Mayor arising out of a meeting between Mr Fini and the Lord Mayor on 29 August 2017"?---Yes.

- 45 Is that reflective of what you understood Mr Fini to be telling you?---I documented what Mr Fini said in an attachment that I sent to Freehills and that is the extent of my understanding of what he said.

When you told Freehills this, did you ask them to also consider whether or not that

further information would constitute misconduct?---I did not.

Can you tell the Commission why it was that you provided that information to Freehills at all?---I was given a script, I procured information off that and I

5 provided it to Freehills and this was included in that batch of information.

Did Freehills say to you, to your recollection, that this conversation or other conversations that they were going to look into that allegation as well?---No.

10 Did you express to them a request for them to do so?---I did not.

Madam Associate, if we could go forward in the document, please, to 12.0654 - actually, Madam Associate, it might be more helpful if we start at 652. I start there, Dr Green, so I can show you the structure of the document. You will see at 15 the bottom, heading 4, "Investigation findings"? Just the heading, Dr Green, I just want to locate you in the document at the moment, do you see that?---Yes.

And then there's 4.1, and Madam Associate, if we go over the page, there's 4.2 and 4.3. So you can see here in the same section, "Investigation findings"?---Yes.

20 And then over the page, 4.4 and then there's a heading, "Was the conduct of the Lord Mayor or Mr Mileham serious misconduct or minor misconduct which should be reported to the CCC/PSC"?---Yes.

25 You will see underneath that heading, Dr Green, Freehills express the view that:

*On its own, Mr Fini's report does not - in their view - constitute reasonable grounds to suspect serious misconduct may have occurred.*

30 ?---Yes.

Would you agree with me that the serious misconduct they are talking about is in respect of both the Lord Mayor and Mr Mileham at that point?---Given the title of 35 the question above, yes.

So between the date on which you received the investigation plan on 14 November 2017, and receiving this report on 6 February, other than the conversation in which you told Freehills about the additional information about the Lord Mayor, other 40 than that, do you have any recollection of speaking with the firm about the allegation in respect of the Lord Mayor?---No. In fact, I have no recollection of having any other interactions with Freehills in relation to the allegations in any respect. The only other correspondence I had with them was to find out when the advice would be received.

45 So that I understand that correctly, your only recollection of involvement with Freehills following providing them with the information that Mr Fini had provided

you, was a follow-up about where the advice was?---Mm hmm.

And did you do that on more than one occasion?---I recall doing it on more than one occasion.

5

If I ask you to specify when that was, I assume you probably won't be able to do that?---I'm sorry, I won't but I would have called them and potentially emailed them.

10 With requests about where the advice was up to?---Yes.

And do you have any recollection from those calls or perhaps emails about asking about the allegation in particular with respect to the Lord Mayor?---(No audible response).

15

When you saw this report and read - did you read this report when you received it?---I did, yes.

20 Were you surprised to see there was a section of the report dealing with the conduct of the Lord Mayor?---I can't remember whether I was or not. I can tell you that if I had seen that they had put that in the advice at the front, that I had asked for advice on that, I would have been surprised if I had seen that because I certainly did not ask for it.

25 And your recollection is that you only asked for advice in relation to Mr Mileham?---Yes.

Just bear with me while I look for my documents, Dr Green.

30 COMMISSIONER: Take your time, Mr Beetham.

MR BEETHAM: Dr Green, I think you mentioned you had a conversation with Mr Fini following the script that Freehills provided you and that you made a note of that and provided that to Freehills?---(No audible response).

35

Madam Associate, could I ask you to go to the document at 12.0529, TRIM 19318.

COMMISSIONER: Thank you.

40 MR BEETHAM: Can I just ask you to look at that document, Dr Green?---Yes.

Is that the note that you made?---It is.

And this is the note that you provided to Freehills?---Yes.

45

And that, as I understand your evidence, is the last substantive discussion you had with Freehills in relation to the allegations?---Yes. So I had this conversation, I

handed that to Freehills. I then heard from Elizabeth Macknay that she wanted to look into it further in liaison with the City. I then spoke with HR and initiated the conversation to put them in touch with each other, and then I had no further correspondence with Freehills, with the exception of following up on the outcome  
5 of the report.

And during that period, when you didn't have any further correspondence or discussion with Freehills, other than following up on the report, did you have any discussions about the progress or what was going on with Ms Moyser who had  
10 been put in touch with Freehills?---Not as far as I can recall.

Do you have any recollection of Ms Moyser ever raising with you that Freehills wanted to obtain the email mailboxes of Martin Mileham?---I don't recall  
15 discussing with Ms Moyser anything at all, other than the initial conversation I had with her, the meeting that we had with them, and then the email to link them up and I have no recollection of any other interactions with her in relation to this matter.

And what about, did you have any other interactions with Ms Pember, the person  
20 you referred to before?---In relation to this matter?

Yes?---No.

And Ms Egan?---No.

25 Were you aware at any stage during this period that Freehills had requested access to Mr Mileham's inbox?---I had no knowledge of the interactions that Freehills had with the Administration following on from the email where I put them in touch with each other.

30 I understand that. I just want to be absolutely clear that you had no knowledge of the particular request?---Yes.

To access emails?---I had no knowledge of the particular request to access emails.

35 And that's in relation to Mr Mileham, yes?---Or anyone, for that matter.

Or anybody else. Madam Associate, could you please go to the document at 12.0663. You will see, Dr Green, that this is an invoice or the front cover sheet for  
40 an invoice?---Yes.

In relation to Project Percy and it's issued to Mr Ridgwell?---Yes.

Have you seen this before?---No.

45 Do I take it you've not seen the invoice that's then attached to it?---I have not.

Or the itemisation of work that Freehills has recorded against this matter?---I have not seen this document but I have had somebody talk to me about it before.

Who was that person?---Neil Douglas.

5

When did he talk to you about this?---On February the 16th.

[3.00 pm]

10 Was that at the CEO Performance Review Committee meeting?---It was.

When you say he spoke with you, did he speak with just you or was it a discussion in a group of people?---He was certainly directing most of his attention towards me.

15

But other people were in the room at the time?---Yes, there was an audience.

20 COMMISSIONER: Why do you say that? Why do you say there was an audience? It's a deliberate choice of words, I assume?---Absolutely, yes. It was clear to me that it was an attempt to ambush me and try and suggest that I had acted improperly in relation to this matter and that he said at that time that I had broken the law and that he was reporting me to the CCC.

25 MR BEETHAM: Can I explore that a little bit with you, Dr Green. You used the word "ambush" there?---M'mm.

Ambushed by whom?---By Mr Douglas.

What, Mr Douglas was trying to ambush you?---Yes.

30

And what gave you that impression?---We'd just had the first meeting of the CEO Performance Review Committee, meeting - I had been elected as the Chair. Then he appeared in the room with Mr Ridgwell and Mr Mianich and they said that there's another matter to discuss and the Lord Mayor started speaking and said that someone had conducted an unauthorised investigation into herself and the CEO and that that person was not fit to hold office or be the Chair of this committee meeting.

That's what the Lord Mayor said?---Yes.

40

Sorry, go on?---And Mr Douglas said that, "You've been instructing" - he said, "You'd procured this advice and you'd instructed Freehills" and I said, "That's not the case" and he lifted his hand in the air with a document folder and he said, "I've got it all here" and shook it at me.

45

Did you see what the documents were in the folder?---He was referring to this.

How do you know that?---He said, "I've got the itemised billing here", and then he said I'd broken the law, that he was reporting me to the CCC, the Public Sector Commission and the Standards Panel.

5 Mr Douglas said he was reporting you to these things?---He said that my conduct should be reported to those institutions and I think he said "would be", actually, he said "should and would be." He said that I had broken the law and I said to him, "In your opinion" and he said, "No, I've chosen my words carefully, that is in fact what you have done."

10 MR HOWARD: Mr Commissioner, I apologise, I've obviously not been here through the length so evidence might already have been given as to who Mr Douglas had been retained by and who he was acting for which might be relevant to the questions my friend's putting to Dr Green and if that's already been 15 in evidence, I apologise because I'm not aware of it.

COMMISSIONER: There's absolutely no need to apologise, Mr Howard.

MR BEETHAM: Sir, it is in evidence and I'm happy to just canvass that with 20 Dr Green for the benefit of Mr Howard.

MR HOWARD: Perhaps you can just tell us what the evidence was.

25 MR BEETHAM: Yes, I can record for the transcript that McLeods was engaged by the City to undertake a review into the investigation carried out by Freehills.

MR HOWARD: And who at the City?

MR BEETHAM: Mr Mianich.

30 COMMISSIONER: Sorry, let's not have the conversation across the Bar table.

MR HOWARD: I'm sorry, I apologise.

35 COMMISSIONER: That's all right, Mr Howard. First of all, may I just suggest this, that the two of you just confer at the Bar table rather than across the Bar table.

MR BEETHAM: Yes, sir.

40 MR HOWARD: Thank you.

COMMISSIONER: Was that satisfactory, Mr Howard?

MR HOWARD: I think so. I'll find out.

45 COMMISSIONER: Mr Beetham, are you able to proceed now?

MR BEETHAM: We will find out, sir.

Dr Green, did you know who Mr Douglas had been retained by?---At that time?

- 5 Yes?---I knew it was the City of Perth but in terms of individually, I did actually know that it was Mr Mianich because I did ask.

On the occasion?---Yes.

- 10 Did you know when that had happened?---I didn't. I was not told an answer - I did ask but I didn't receive an answer to that question.

Do you know now?---I don't know whether it was on the 14th, the 15th or the 16th, I don't know.

- 15 Did you understand it at the time to have been before Mr Douglas entered the room to speak with you?---Yes.

I think you gave some evidence about what Mr Douglas said, and you gave some  
20 evidence about what you also said; is there anything else that you said in that meeting in respect of this matter?---Yes. I said that this matter was confidential and privileged. I was advised that only Mr Ridgwell would retain a copy of this. I asked questions about who made the decision to waive privilege over this? I didn't get a response to that - actually, Mr Mianich said that, because of the seriousness -  
25 I wrote it in the note. I did write some notes about it so it would be helpful if I could look at those to help - - -

Refresh your memory?---M'mm.

- 30 Just before, and if we go to those, you said that, you asked who had waived privilege in the document?---Yes, who had made the decision to inform a bigger group of people.

Does the phrase "waive privilege" have a technical meaning for you?---I think that  
35 I don't - I don't understand it to the extent that you would clearly but I understood - my limited understanding of it was that the advice that was being given was under legal privilege and if you were to discuss it outside of the confines of the solicitor and the person seeking the advice, then that matter could then - was no longer, or the contents of that conversation were no longer the subject of legal privilege and,  
40 for example, a Freedom of Information request to be made of this and any member of the public could obtain it.

- So did you understand the holder of the privilege in that case to be you as the person seeking the advice or did you understand it to be the City?---No, it would be the City.  
45

What did you consider was the conduct that would constitute the waiver of that

privilege?---Mr Ridgwell, when he had initially sent me the email about this, had explained to me how confidentiality would be managed in relation to this.

- 5 Yes, and did he say to you that it would be kept confidential to certain people?---He said he would be the only person who would retain a copy.

So when you say privilege, are you talking also about confidentiality in the same breathe?---Yes, I would say you're right, that I'm conflating these two points.

- 10 So it was your concern expressed on that day about the fact that the document had appeared to you to have gone to a wider audience than you had anticipated?---Yes, and it subsequently ended up in the media as well.

- 15 What was the concern you had about the advice going wider than just yourself and Mr Ridgwell?---I think, in the context of this situation, that it was being used to attack me.

- 20 Did you have - I will come back to that in one moment but did you have a broader concern, an in principle concern about the document being shown to anyone other than you and Mr Ridgwell at all, or was it because it was shown to somebody and you felt attacked as a consequence of that person or those people having access to it?---I knew at the beginning of this process that Mr Mileham would receive a copy of this, whatever the outcome was. I anticipated that would occur. I knew Mr Ridgwell was and I embarked on this process understanding that that would be the case and then what transpired here was manifestly different.

25 And you felt a sense of grievance at that?---Absolutely.

- 30 What I'm trying to understand is whether or not that sense of grievance arose simply out of your dismay at being told X and then having Y occur, or whether there was some underlying or other concern?---Well, I think that I was told that a particular process would be followed and a completely different process was followed and I was not informed about that, even beforehand and I would have expected that this would have been brought up with me directly, but instead it was done in a very theatrical fashion and it just seemed to be grossly inappropriate.

35 If I can put an hypothetical to you: had Mr Ridgwell given a copy to yourself, to Mr Mileham and to the Councillors, would you have considered that - would you have had the same sense of grievance if that's all that occurred?---Yes.

- 40 And that's because, is it, the process you were told that would be followed was not followed, even in that hypothetical?---Yes.

- 45 And was that exacerbated in the facts of what actually happened because of the way it was dealt with, in your view, at that meeting on the 16th?---Yes.

You were aware, quite obviously from that meeting that you had with Mr Douglas

and others, that Mr Douglas was undertaking a review into the investigation and report?---Yes.

Were you interviewed as part of that investigation?---I was not.

5

Were you involved in it in any way?---I attempted to be involved but I was not involved in any way.

When you say you attempted to be involved, what do you mean?---I wanted to understand what the scope was and they said it was desktop only and they said that in this invoice, that it had said I'd instructed Freehills and I said, "Well, I got whatever's written in this document is whatever's written in this document but" - - -

Did they show you? Did you see the document?---No, I never saw the document.

15

Have you, other than that page of it, ever seen - - -?---Never.

And I include within that the itemised list of billing?---No, I've never seen it.

20 Other than, I understand you saw it in Mr Douglas' hand?---He had it in a folder so I didn't actually see the - - -

You didn't see the contents of it?---No.

25 All right?---So I set about requesting that Mr Ridgwell or Mr Mianich and also Mr Douglas, and I engaged a solicitor in this respect as well, to ask them to put the question to Freehills directly, did I instruct them in the sense that was being spoken about, because it was not my view that I had done that and they refused to do that. Then they received a Directions Notice from the Department of Local Government to provide that and I wrote to Ron Murphy - - -

Sorry, Dr Green, when you say "provide that", what do you mean?---The details of this matter, so the Directions Notice required Mr Ridgwell, within a few hour period to provide all documentation relating to Project Percy. Then I wrote to - - -

35

Sorry, I will interrupt you from time to time just to clarify?---Sure.

Can you recall when that Direction Notice was received?---I think it was on the following Monday or Tuesday.

40

Could 27 February 2018 possibly be the date?---I believe so, yes. I think it was Monday, the 27th but I'm not 100 per cent sure on that.

45 Sorry, I interrupted you there, you were saying that the Directions Notice was issued?---Yes. So I was asking for this to be directly requested and my solicitor wrote to Mr Douglas and asked him if they would be able to ask Freehills directly and they wrote back and said, "No."

Did you see this correspondence?---Yes.

And was there a reason given as to why they wouldn't contact Freehills?---No.

5

Sorry, go on.

[3.15 pm]

10 COMMISSIONER: When you say "they", who do you mean?---So Neil Douglas wrote to my solicitor and my solicitor, Mr Martin Bennett, wrote to Neil Douglas and asked - - -

15 I understand now?---Yes, and I also wrote to Mr Mianich and asked him if he would do that and he said, "No, the scope of this report is a desktop review only with available information", and I wrote back saying, "The information's available, you just have to ask for it", and he still refused to do that.

20 MR BEETHAM: It might be self-evident to you, Dr Green, but can you articulate why you thought it was important that they obtain that information?---Well, Mr Douglas had sat in a room with all the Elected Members and waved a document around telling me that I had broken the law because of the contents of this invoice.

25 Yes, so if you can just go a bit further and explain why it was important to you that they obtain the Freehills material?---Well, they were quite obsessed with suggesting that I had acted inappropriately and I wanted them to assess objectively the situation with the relevant information to arrive at a view and they seemed more interested in narrowing the scope of the process so they could arrive at a decision they wanted to, to attack me personally.

30 On that day of the CEO Performance Review Committee meeting of the 16th, I understand it, and I would be interested in your views on this, that is the date on which Mr Mileham went on leave?---I actually think he went on leave two days prior, on 14 February.

So you think it was on the Wednesday then?---Yes.

40 Was it conveyed to you at any stage between receipt of the report and Mr Mileham going on leave that there was a connection between those two things?---In this meeting it was, but my view is that it was something different.

I think I will take that in two parts, Dr Green. So your first recollection of a connection being drawn between those two things was at that meeting?---Yes.

45

And when you say you think it was something different, are you talking about the reason for Mr Mileham taking leave?---Yes.

What did you think that thing was?---On 6 February I was contacted by a journalist who said that they had received information suggesting that the Lord Mayor was going to go on 14 business trips overseas and did I know anything about that and I

5 said no, I did not. I then contacted Ms Battista and said, "A journalist has just called me and said that the Lord Mayor's going on 14 international trips, or 14 interstate and international trips, is this just an invention" and she said to me, "Oh no, it's true."

10 Ms Battista said that?---Yes, and I said, "Do you have any details of that" and she said, "Yes", and she sent me the list of the 14 trips. I then wrote to the CEO and said, "Is your Administration organising any trips for the Lord Mayor" and he wrote back saying, "No." The way he worded it was a little bit vague and so I wrote back to him on the 12th and put the question to him again in a more explicit  
15 sense and I didn't get a response and then on the 14th I wrote to him again and asked him to answer my question and meanwhile, I'd also written to the Lord Mayor and put the question to her and she also denied it. Then in addition to that, on the 14th, Councillor Limnios nominated me as Chair for the CEO Performance Review Committee.

20 On the 14th or the 16th?---On the 14th.

You were nominated in advance of the meeting?---Yes.

25 Can you explain to me how the narrative you've just given to the Commission feeds into your view that Mr Mileham took leave for a reason that did not include this Project Percy report?---I think that the CEO knew that I was aware that he had lied to me in relation to the travel and he also was aware - - -

30 MS SARACENI: Commissioner, I have some difficulty with the witness giving evidence as to what she thinks may or may not have been in Mr Mileham's mind at the time.

MR HOWARD: That's wasn't the question she was asked.

35 COMMISSIONER: It doesn't matter, an objection can still be taken. Yes, Mr Beetham, what do you say about that?

40 MR BEETHAM: I can perhaps ask the question in a different way and ask Dr Green to explain why she thinks Mr Mileham took leave, without reference to what she assumes is in Mr Mileham's head, if that's possible to do so, sir.

COMMISSIONER: Yes, have a go.

45 MR BEETHAM: Dr Green, you've given a narrative about these trips and the discussion with Ms Battista and the emails to Mr Mileham and the Lord Mayor and about those, and I asked you to explain how that's connected to your view that

Mr Mileham took leave for some other reason other than Project Percy. Are you able to explain that without speculating as to what was in Mr Mileham's mind?---Given that I was persisting with asking questions about this, I think it was fair to assume that he knew that I wasn't going to let this go and that I'd been

5 nominated as the Chair of the CEO Performance Review Committee and so upcoming was a review of his performance and that this would likely form the topic or one of the topics that would be looked at in the context of assessing his performance as the CEO.

10 Why, in your view, did that lead you to think - I will rephrase that. Did you think all of those things were the reason Mr Mileham took leave?---Yes.

Why do you think that?---Because I think Mr Mileham understood that I was likely

---

15 Sorry, Dr Green. I expect another objection in a moment. Are you able to express that view without reference to what you think Mr Mileham was thinking?---My assessment was that it was likely I would be elected as the Chair of the CEO Performance Review Committee, it was likely that I would have the majority of support of Council in undertaking the review of the CEO's performance and it was likely that matters concerning his conduct and the extent to which they were misleading and deceptive would be assessed.

20 Sir, perhaps can I whether you can excuse Dr Green from the hearing room for the moment so we can have some short discussion about whether questions of the type are permissible for a particular purpose without Dr Green hearing that argument, sir. I imagine Ms Saraceni may want to have something to say about that.

30 COMMISSIONER: Yes, of course. Dr Green, I'm very sorry, you will have to leave the hearing room again.

#### **WITNESS WITHDREW**

35 MR BEETHAM: Thank you, sir. I would like to ask Dr Green to now express her view as to what she thought Mr Mileham was thinking at the time too, expressly ask her to speculate and I appreciate there's likely to be an objection to that. The reason I want to ask Dr Green that question is because one of the issues for the Inquiry is what was the thinking of all the people at the time, the key people, the Councillors and the Executive, leading up to 27 February 2018, what 40 was their impression of each other and how and whether that fed into the events of that day and the potential breakdown in relationships.

45 COMMISSIONER: In other words, what was motivating them to behave in the way in which they then did?

MR BEETHAM: Yes, sir. I accept that Dr Green's evidence about Mr Mileham's thinking is not probative of what Mr Mileham was thinking, but it is probative, sir,

of Dr Green's view of that and whether that fed into things that happened later down the track. I don't know if Ms Saraceni or Mr Howard wish to be heard on that.

5 COMMISSIONER: Thank you, Mr Beetham, for indicating that. Mr Howard, I will turn to you first because the witness is your client. Do you wish to make any submissions about what has just been submitted by Mr Beetham?

10 MR HOWARD: I don't but while I'm on feet, there is one matter that, before the witness comes back in, if I can confer with my friend, but after this debate has finished.

15 COMMISSIONER: Yes. What I was proposing to do after this debate is finished, is have the witness brought back in and then take a short adjournment, because it seems to me that we have got to that point in the day where it might be useful for everyone to clear their heads. Ms Saraceni, what do you wish to say in answer to Mr Beetham's submissions?

20 MS SARACENI: I'm not sure that that similar question was asked of anyone else who might, or you would think would have been asked to be able to make some comparison. I'd still suggest that it has very limited value, other than - yes, I guess the difficulty I'm having is that the witness has given some evidence that it was her Chairing the CEO Performance Review Committee meeting, was done in advance of her being elected and if there's some questions about course of conduct or why 25 people did things, the planned - there's been no question, I guess, of Ms Green or anyone else about the planning of her being put up to lead this committee as part of what she needed to do, given the timing of the Project Percy report coming down, the timing of McLeods doing the review, when she found out that McLeods was doing the review, when she said to someone, it would appear, "Pick me and then I 30 will Chair the committee and we will look into Mileham."

So we are being asked to or Counsel Assisting's looking at a particular point but all these other matters, I would say are relevant and haven't been addressed. So in relation to motivations, there's not enough about this person's motivations in 35 relation to becoming the Chair of that committee or anything else that she's done to date, sir. It needs a little bit of balance, I'd suggest.

40 COMMISSIONER: Thank you, Ms Saraceni. Mr Beetham, do you want to respond?

MR BEETHAM: I'm happy to ask Dr Green about her motivations for becoming the Chair of the CEO Performance Review Committee, sir.

45 COMMISSIONER: Thank you. I'm going to permit you to proceed down this line of questioning because I understand the relevance of it.

MR BEETHAM: Thank you, sir.

COMMISSIONER: Madam Associate, can we have Dr Green back in the hearing room, please.

5 MR BEETHAM: Sir, sorry. Did Mr Howard have one other point to raise?

MR HOWARD: I understood that the Commissioner wanted us to do it when we broke.

10 COMMISSIONER: Yes, that might be preferable.

MR BEETHAM: Certainly, sir. Thank you, Mr Howard.

15 COMMISSIONER: Dr Green, please resume your seat in the witness box

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

20 COMMISSIONER: Thank you, Dr Green. In your absence, some submissions were made to me about a line of questioning that Counsel Assisting wishes to pursue with you and I've permitted him to follow that line of questioning with you. I also indicated to everyone in the room that I would take a short adjournment on your return to the room, so that everyone can clear their heads because my perception is that's probably something that everyone requires at this point in time, and during that time there will be some private conferral between your counsel and 25 Counsel Assisting?---Understood.

So I will adjourn the Inquiry for 15 minutes.

**WITNESS WITHDREW**

30

(Short adjournment)

35

40

45

HEARING RECOMMENCED AT 3.47 PM

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

5 COMMISSIONER: Mr Beetham.

MR BEETHAM: Thank you, sir.

Dr Green, before we broke I was asking you some questions about why you had  
10 formed the view that Mr Mileham had taken leave from the City for reasons other  
than those connected with Project Percy, do you remember that?---Yes.

15 And you gave some evidence in relation to a discussion you had, I think it was a  
discussion, with Ms Battista and some emails in relation to trips that the Lord  
Mayor, you had understood, would be taking in that year, is that right?---Yes.

I had asked you to explain how that was connected, in your mind, to Mr Mileham  
taking leave and I had asked you to do that without speculating was to what was in  
Mr Mileham's mind at the time, do you remember that?---Yes.

20 Can I now ask you to explain to the Commissioner as best you can why you  
thought Mr Mileham took leave and if you need to speculate, you're very welcome  
to do so?---My view is that Mr Mileham was concerned about the CEO  
Performance Review process and what that would mean for his ongoing  
25 employment prospects.

Why did you think Mr Mileham was concerned about that?---Because I had asked  
him questions and he had lied to me in his response and I asked him again and  
once more after that and I think that he realised that I must know about the  
30 situation and that he had been caught.

When you were referring to what you understood to be a lie, is that in relation to  
the travel you were talking about?---Yes.

35 The Lord Mayor's travel. Can you then take that the next step and explain to me  
why you say that was a basis for Mr Mileham taking leave?---I think there were  
some other things at play so it's worth putting those into context, if I may. On 6  
December the CEO had convened a meeting with myself and the Directors at the  
City of Perth and they had asked me to go to the State Government and request  
40 that the Council be suspended.

That was on 6 December 2017?---Yes.

45 Thank you. Go on?---They did that, at least they were asking that I would do that  
because they were worried that when the Lord Mayor came back from her period  
of suspension, that she would no longer enjoy the majority of support of Council  
and that she would be involving herself in Council, in administrative matters and

that the majority of Council would be trying to direct Council - direct the Administration rather and that it would become a very stressful place for the Administration, and that there were - I think the term that was used was persistent and ongoing interference and bullying of Elected Members into the Administration as well.

5 Can I - - -?---Yes.

Are you going to keep talking about that meeting or can - is that what you were  
10 about to say?---No, I was going to talk about what I did after the meeting.

Before you do that, can I ask you some questions about what you've just said?---Sure.

15 The first was, who was at the meeting?---The Directors at the City of Perth and - - -

All of them?---Yes, I believe all were present and the Manager, Governance, and the CEO.

20 So Mr Ridgwell and Mr Mileham?---Yes.

And where was the meeting?---In the Lord Mayor's office.

And were you the only Councillor there?---Yes.

25 And why were you in that meeting and no other Councillors?---I don't know. I did not convene the meeting, I attended it at the request of the CEO.

So Mr Mileham asked you to come to the meeting?---Yes.

30 Did he tell you when he asked you to come to the meeting, what it was about?---He said that the Directors wanted to talk with me about the challenges that they were facing.

35 And you said, I think, a number of things in that piece of evidence and one of them was that the Directors and Mr Mileham, as I understand it, were concerned that upon the Lord Mayor's return she would involve herself with the administration, is that right?---Yes.

40 And another thing I think you said was that they - they being the Executive - was concerned that the majority on Council would involve themselves in the administration?---They would be directing the Administration via - - -

That majority, is that a majority that does not include the Lord Mayor?---Yes.

45 And is that a majority that comprises yourself, Councillor Harley, Councillor Hasluck, Councillor Limnios and Councillor Barton?---Yes.

And did you respond to that suggestion that that majority would involve themselves in the Administration?---The way it was framed was that the majority of the Council would be legitimately directing the Administration.

5

I understand. I thought your evidence was to suggest that there would be some sort of improper involvement?---No, not at all.

10 Your understanding of that meeting is that the Administration's suggestion was that the majority would be properly directing the Administration?---Yes.

And why was that - was that a problem or why - what was the significance of that piece of information?---In and of itself, no problem at all.

15 It sounds like there might be more to that "in and of itself", what about with other things?---That the Lord Mayor would be returning from her period of absence and no longer enjoy the majority of support and yet at the same time still be trying to direct the Administration and so there would be two forces at play in directing the Administration and that was the source of great consternation for the  
20 Administration, the thought of that.

Of being effectively pulled in two different directions?---Yes.

25 Did you respond to this suggestion or this request that you go to the State Government and ask them to suspend the Council?---I said that I would consider what they said in the meeting and come back to them.

30 Did you indicate that you would consider that with anybody else?---No. At that time I didn't - hadn't decided what I would do and then I left the meeting and then subsequently thought, I'm going to go to the Department to seek advice on this.

I think you were giving that evidence to give some context as to the question as to why you thought Mr Mileham went on leave?---Yes. So subsequent to that, the advice that I got, because in addition to that in the meeting, the main point I  
35 wanted to make was that the Directors and the CEO were suggesting that Elected Members were interfering and bullying staff, that was the main point and that this had been a persistent issue that had existed. So I went to the Department and said, "How do we deal with this kind of conduct if it's happening" and the Department wrote to me and said that, "It's the responsibility of the CEO to - in terms of his  
40 duty of care to staff, to deal with these kinds of issues" and so there should be a process in place to look into this kind of conduct and there should be a register of issues and a process in place to look into them. So then I subsequently wrote - - -

Just before - - -?---Sorry.

45

I think I might know where you're going, Dr Green, but did the Directors indicate to you at this meeting that you were a source of their concern of the bullying and

those types of behaviours?---No.

Sorry, go on?---So then I wrote to the CEO and I said that I'd received this advice and could he please provide me with a log of the issues and details of how they were being dealt with and - - -

5 Did you provide a copy of the advice you'd received to Mr Mileham?---I can't remember if I forwarded him the email from the Department but I did certainly mention it in the correspondence that I wrote to him - the email that I wrote to him.

10 You let Mr Mileham know you'd received advice of a particular - - -?---From the Department, yes.

15 And do you recall whether you told Mr Mileham the gist of the advice?---I believe that I did, yes. I believe I said that it was the role of the CEO to - the CEO had a duty of care to deal with these kinds of issues and could he please help me to understand how he was addressing them, mitigating them, managing them and could he provide me with a register of issues, because the suggestion was in the meeting that this had been going on for a very long time.

20 When did you write to the CEO in these terms?---I think it would have been like maybe two or three days subsequent to the meeting, so perhaps around 9 December.

25 Yes, and did you get a response?---I think I got a response saying that they are looking into it and I subsequently asked further because I never received the list and my understanding was that there was no such list, it didn't exist, and I think what happened - - -

30 Sorry, where did you get that understanding from?---I think that the CEO and Mr Ridgwell said that there was not a list.

Thank you. Yes?---And then I think what happened was I started pursuing getting information - at least if there was no list, was there a process in place? How are 35 these things dealt with, and I didn't even get any information on that and I think the CEO - my view of that - - -

[4.00 pm]

40 Just before you go on to express your view of that, did you have any meetings with Mr Mileham to deal with this issue that you can recall?---I can't recall a specific meeting with Mr Mileham on this issue but I can recall a meeting with Mr Ridgwell and Matthew Reid from Jackson McDonald.

45 Just focusing on Mr Mileham for the time being, did you pick up the phone and try to speak to you about the issues?---I think I did have a conversation with him on the telephone in relation to this.

Is that your recollection, it's just the one conversation?---There was certainly correspondence exchanged via email as well.

- 5     Exchanged or was it mostly one way?---I think that he replied but he didn't respond in terms of giving me the information that I had been seeking, and then I think I spoke with him and then he said he was going to set up the meeting with Matthew Reid and he asked Mr Ridgwell to do that and Mr Ridgwell did do that.
- 10    What was the purpose of that meeting, with Mr Reid and Mr Ridgwell?---I think after I said to him that it's his responsibility to provide - to deal with these issues and could he demonstrate to me to the extent that he had, that he - I think - my interpretation of what happened is he realised that I was kind of putting the spotlight on him and he was trying to point to problems with the Elected Members
- 15    and I reframed the conversation, that it was his responsibility to address these issues and then I believe that he had asked the Directors to shift through two years worth of emails to dig up issues and he instructed Jackson McDonald to look into those.
- 20    I think you were, before I asked you some specifications about whether or not you had a meeting or telephone calls, you were going to express a view about what all this signalled to you?---Yes.
- 25    Can I ask you to express that view, please?---Sure. I think that the CEO became concerned that he had not been properly dealing with these issues and that he wanted me to take action in going to the State Government and ask that the Council be suspended and I was saying, "Hey, can you please substantiate this claim" and he wasn't able to and then he became aware that he had a responsibility to have been dealing with these things in a certain way and he realised that he
- 30    hadn't been doing that, so then I think he undertook this review with Jackson McDonald to try and retrofit this into existence.
- If we assume that your view is correct, that Mr Mileham hadn't been recording these things in a register, the fact that he then took the step to have the Directors go through this material and brief Jackson McDonald would be a positive step, wouldn't it?---Sure.
- Towards preparing those kinds of things?---Yes, I would agree.
- 40    Did you have a problem with that process?---No.
- Could it be that Mr Mileham understood the issues and was just simply taking a different path to deal with them than perhaps the path that you wanted?---I didn't have a negative view at that time about him doing that, other than the fact that it hadn't been done until now and he was asking me to take very large action without having, like, requisite supporting information and I just found it a very strange request to make, given that he didn't have that kind of information.

Notwithstanding that, the fact that he was trying to do something to put the proper process in place, I accepted was a reasonable course of action.

5 How does all of this feed into your view that Mr Mileham went on leave for a reason other than Project Percy?---So then what happened was - - -

Sorry, are you about to embark upon some more context?---Yes.

10 In response to my question?---Then I became aware that that the Director of Economic Development had written a letter to the CEO detailing her concerns and  
- - -

15 Is that Ms Battista?---Yes, and in that email had highlighted specific issues in terms of her Directorate and how some Elected Members were dealing with that, and - Elected Members were dealing with her Directorate and had cited, I think, 137 instances and also cited the fact that she had been raising it to the attention of the CEO and he'd failed to act on numerous occasions.

20 How did you find out about this?---I think in January I received a copy of it from Ms Battista.

Of the email setting out these instances?---Yes.

25 Did you ask her to provide that to her or do you recall if it was just an unsolicited copy that you received?---I can't recall what was the nature of the conversation such that she sent it to me but it certainly was in that time period where these things were being looked at and I think that what happened was that she had said to me that she had - it wasn't that these things weren't just documented - that's what happened. So she said that these things - it wasn't that there was not a record, like 30 a log of these things, it was that these things were not actually being appropriately looked into at all, and that she had felt that the CEO was failing in his duties to look at these things. So it wasn't just kind of a process, like documentation neglect but it was actually through neglect of the duty.

35 Just so it's clear, is that a view that Director Battista expressed to you in the forward of the email or is that a view that you recall Ms Battista expressing to Mr Mileham in her correspondence to him?---No, it was what she had said to me and she also articulated that in the letter.

40 What does that have to do with Mr Mileham going on leave?---Well, I think that - I think the fact that I was asking him questions about what he'd done on this and he knew that - I think he knew that some of his staff were unhappy with the way that he was handling these things - - -

45 MS SARACENI: Commissioner, I again have a difficulty.

COMMISSIONER: Do you object?

MS SARACENI: Yes, as that one before.

COMMISSIONER: Mr Beetham?

5

WITNESS: I can answer that differently.

MR BEETHAM: Dr Green, can you explain how the narrative you've given to the Commission over the last few minutes led you to the view that Mr Mileham went 10 on leave for some reason other than, or not connected with Project Percy?---Yes. I think that the assertion in the letter was that the CEO was not doing his job properly and I think the CEO was - - -

Which letter?---The letter from Ms Battista on 23 December to the CEO, and that 15 the CEO, in my opinion, was concerned that his conduct, including this matter, would be looked at in the context of the CEO Performance Review Committee and he did not want that to occur.

Is it the case that Mr Mileham going on leave would mean that the CEO 20 Performance Review Committee with not meet and review the CEO's performance?---Yes - well, it could meet but the extent to which it could look at his performance would be severely limited because in his employment contract we were not able to do 360 reviews and the ability to kind of assess his performance would necessitate asking him for information and if he wasn't around, we wouldn't 25 be able do that.

I see?---And just to add to that, I think that he didn't want me to be initiating the review of his performance either, so the kind of ambush that I experienced on 16 February was just kind of a - because the assertion was that I wasn't the appropriate 30 person to Chair that committee as well.

Mr Mileham wasn't at that meeting, was he?---No, he was not but a lot of the information that was being spruiked by Mr Douglas was originating from Mr Mileham.

35 How did you know that?---He said so.

Mr Douglas told the room that he had obtained the information from Mr Mileham?---Yes.

40 To join the dots, do I understand your evidence in sum to be, all of these things led you to the view that Mr Mileham didn't want to be around when the CEO Performance Review Committee was meeting to review his performance because if he was around, you would be able to undertake that review and would reach an unfavourable view about that performance?---Correct.

45

And is it your view that he took the leave to prevent that from happening?---Absolutely.

Is it for those reasons that you've given that you reached that view?---Yes.

5 It's been suggested by other - at least one other member of Council at the time that that person formed the view that Mr Mileham was taking leave as part of a concerted effort/plan to blow up the Council or the City. Is that a view you shared?---Yes.

Is that a view you discussed with, for example, Councillor Harley?---Yes.

10 10 Did you share reasons with Councillor Harley for reaching that view?---I can't remember specific conversations where we discussed it but I definitely would have and my views on the matter were - just to provide a bit of context on this particular topic, I felt like there were sort of three forces at play here. There was the  
15 Administration who really didn't want to have a Council overseeing them and - - -

20 Is it the case they didn't want a Council or they didn't want the Council they had overseeing them?---I don't know because I'd only been part of that Council, but they didn't want the oversight of Council in the form that Council took, and then there was obviously tensions between various groups within the Elected Members and from my perspective, the Administration did not want - I think they were used to having many Elected Members who just sort of complied with the views of the Lord Mayor and they were not used to other people expressing an opinion, and this was an unusual cultural experience for them.

25 Sir, I note the time. That may be a convenient moment, sir.

COMMISSIONER: How much longer do you think you'll be with Dr Green.

30 MR BEETHAM: Half a day at least, sir.

MR HOWARD: Jesus, Mary and Joseph.

WITNESS: I'm happy to keep going.

35 COMMISSIONER: I heard that, Mr Howard.

MR BEETHAM: I say half a day, sir, bearing in mind that the start and adjournment times of the hearing - - -

40 COMMISSIONER: If it requires half a day, it requires half a day, that's fine. Very well. I'm sorry you have to come back, Dr Green, but we will have you back on Monday and I will adjourn the Inquiry now until 10 am Monday morning.

45 **WITNESS WITHDREW  
AT 4.14 PM THE MATTER WAS ADJOURNED  
UNTIL MONDAY, 23 SEPTEMBER 2019**