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INQUIRY INTO THE CITY OF PERTH

PUBLIC HEARING - DAY 99

MONDAY, 2 SEPTEMBER 2019

INQUIRY PANEL:

COMMISSIONER ANTHONY (TONY) POWER

COUNSEL ASSISTING:

MS KATE ELLSON

COUNSEL APPEARING:

**CAV. MARIA SARACINI and MR MARTIN TUOHY (MR Martin MILEHAM)
MR MATTHEW HOWARD SC and MS PENELOPE FORD (DR Jemma
GREEN)**

MS ALENA ZORIC (Mr Gary STEVENSON)

MS ALEXANDRA TOMASINI (Ms Judith McEVOY)

MR JOEL YELDON (Ms Janet DAVIDSON)

MR PETER MARIOTTO (Mr Dimitrios LIMNIOS)

MR PETER van der ZANDEN (Ms Lisa-Michelle SCAFFIDI)

MR JASON O'MEARA (Mr Reece HARLEY)

MR GERALD YIN (Mr Yit Kee YONG)

.02/09/2019

HEARING COMMENCED AT 10.04 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 COMMISSIONER: Ms Ellson, Mr Mileham is being recalled for the purpose of examination by Ms Saraceni?

MS ELLSON: Yes.

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

MR Martin Nicholas MILEHAM, recalled on former oath:

20 COMMISSIONER: You remain under your oath. Are there any new applications at the Bar table?

MS ZORIC: Yes, Commissioner. I seek leave to appear for Gary Stevenson, an application was filed on Friday.

25 COMMISSIONER: Yes, Ms Zoric. Is there any objection, Ms Ellson?

MS ELLSON: No, Commissioner.

30 COMMISSIONER: Thank you, leave is granted.

MS ZORIC: Thank you, Commissioner. .

35 COMMISSIONER: When the Inquiry adjourned on Friday, Ms Saraceni, that was for the purpose of allowing Mr Mileham, your client, to review some notes he had made contemporaneously for the purpose of you examining him on specific instances of Elected Member inappropriate conduct.

40 MS SARACENI: Yes, sir.

COMMISSIONER: I understand that at 8.30 this morning, Mr Mileham attended at the Inquiry's offices and reviewed those notebooks and took some time to do so. So as far as I understand it, he has had an adequate opportunity to refresh his memory from those notebooks, is that correct?

45 MS SARACENI: I believe so, yes, sir.

COMMISSIONER: Thank you. On that basis, he now being mindful of those instances of what he describes as inappropriate Elected Member behaviour, you should be in a position to examine him on those matters and those matters alone.

5 MS SARACENI: I will try, sir. I have not seen them but yes, I will ask some questions.

COMMISSIONER: Very well. Thank you very much. Please proceed.

10 EXAMINATION BY MS SARACENI

Mr Mileham, the question I'm going to ask you this morning is now that you've refreshed your memory from your diaries, are you able to tell the Inquiry some specific examples of what you experienced or what you witnessed, which you
15 considered to be inappropriate behaviour by Elected Members while you were working at the City of Perth?---Yes. In reviewing the diary, I noted one particular instance that I recalled but not in a great deal of detail and the aide memoire in my diary helped me to understand. It was in particular in relation to the appointment of the Independent Member of the Audit and Risk Committee. To explain, the
20 City's Audit and Risk Committee at the time was Chaired by the Lord Mayor. It's probably, if not the single most important committee, an important committee, clearly, of the City. There was some debate in Council as to the structure of that committee and whether the Independent Member should be Chair or not. I received information or Councillor Green advised me that she believed apparently
25 that the Independent Member of the Audit and Risk Committee was frightened of the Lord Mayor and therefore - - -

MS ELLSON: I object to this, Commissioner, because the witness is not
30 testifying as to what he saw and heard but is rather reporting a secondhand account.

COMMISSIONER: Ms Saraceni.

35 MS SARACENI: Yes. Mr Mileham - - -?---Okay.

- - - in responding, perhaps you could get to the point where you experienced or saw some inappropriate conduct by Elected Members?---Okay. In discussing this matter with Ms Green, I said to her that the allegations she had - this was a meeting one-on-one with Ms Green whilst she was the Deputy Lord Mayor, I
40 believe, that the allegations she had made were serious and her responses were given in language I wouldn't repeat.

Mr Mileham, you're under oath. If you do recall exactly what was said, it would be of assistance to the Inquiry?---Okay. Am I able to use foul language?
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COMMISSIONER: I think you should be literal?---Okay, thank you. The Deputy Lord Mayor said, "No shit", and, "Fuck yeah." I was astounded by that.

MS SARACENI: Are you able just to say, those words were used in relation to what, exactly?---I had assumed that the comment that I had made that the allegation that she - - -

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MS ELLSON: I object to this, the witness being asked to give evidence beyond that directed from him and is now making an assumption.

COMMISSIONER: Ms Saraceni. .

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MS SARACENI: I won't take it further. Those words were spoken. Do you recall any other instances, Mr Mileham?---The Deputy Lord Mayor, I believe, had called for a meeting with the Independent Member and we had a meeting with the Independent Member in question in the CEO's conference room. It was attended by myself, Mark Ridgwell, Councillor Harley and Councillor Green and Councillor Green asked the Independent Member at that time why he was afraid, basically, to speak up and in support of Council Green and Councillor Harley's belief that the Chair of the Audit and Risk Committee should not be the Lord Mayor. They proceeded to speak in very, I saw, rude terms to the Independent Member and to myself and Mr Ridgwell.

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Are you able to give some exact examples of what was said?---As I recall, the meeting was set up at the request of Councillor Green to meet with the Independent Member to discuss her concerns. Councillor Harley appeared, although he had not been invited, and Councillor Harley tended to take the most aggressive tone and said repeatedly, "What are you doing about it", i.e., meaning removing the Lord Mayor as Chair as I understood it.

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To whom was this addressed?---To the Independent Member of the Audit and Risk Committee who is a person, not an employee of the City. They take a small amount of money to be an Independent Member on the Audit and Risk. So that was, I thought, rude but after the meeting closed, the Independent Member spoke to me and in terms that he had been - - -

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MS ELLSON: Again, Commissioner, I rise to object to this as it's not conduct of Elected Members. Mr Mileham is recalling a discussion he's had with someone who's not an Elected Member.

COMMISSIONER: Mr Saraceni.

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MS SARACENI: Mr Mileham, if there's nothing further in relation to what you heard on that day, are there any other instances?---I recall noting a telephone conversation - we have already spoken about telephone conversations with the Lord Mayor but another note in my diary about a telephone conversation with the Deputy Lord Mayor Limnios who was very aggressive toward me on the telephone during my acting period and the phone call was 45 minutes and, I guess, the discussion centred around my potential recruitment and I believed it was not

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something that should have been discussed between the Deputy and myself when there was a recruitment process on foot. The comments were, "I'm supportive of you getting the job", which whether he was or he wasn't, I didn't feel that should be a statement made to me before the matter was put before Council.

5

You said that he was aggressive, are you able to give some detail about what you mean?---Not with any great clarity but as I say, that's an aide memoire. Without the diary in front of me, I can't be more clear.

10 You've given three instances, Mr Mileham. Are there any others you can recall?---From the diary, directly witnessing and not reporting to some other person? The question you asked me was, was the note as an aide memoire to a matter I have witnessed. What that enabled me to understand was the diary aided me to understand what I witnessed which was an email exchange between

15 Councillor Limnios and Councillor Green. Subsequent to a member of the public having a discussion with me on the telephone, I saw an email address between the two Councillors referring to me as "snowflake". I understand that email has not been found by the Inquiry. However, I conducted an enquiry into that matter.

20 MS ELLSON: Again, Commissioner, the witness is going beyond the question and the direction you gave him with respect to what the evidence is to be.

COMMISSIONER: I think this is background, Ms Ellson, so I'm happy to let it continue for the moment?---With respect, sir, I was intending to indicate that I had
25 seen, having done the investigation, an email exchange between Limnios and Green about my "character", I guess, which I believed was an inappropriate exchange between two Councillors of the City of Perth.

MS SARACENI: Mr Mileham, are there any other instances?---Not that fit within
30 the very tight frame and I don't wish to go outside that frame.

Thank you, Commissioner. I don't have any further questions.

COMMISSIONER: Thank you, Ms Saraceni. Ms Ellson, anything arising out of
35 that?

MS ELLSON: Yes, Commissioner, if I may.

COMMISSIONER: Thank you
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EXAMINATION-IN-CHIEF BY MS ELLSON.

Mr Mileham, Councillor Green in saying, "No shit" and, "Fuck yeah" was agreeing
45 with you, wasn't she? She wasn't swearing at you?---I believed that to use the term to the CEO was inappropriate behaviour.

COMMISSIONER: What is the answer?---If she agreed or otherwise - I didn't

know whether she agreed with me. She didn't make that clear.

[10.45 am]

5 Nothing further, Commissioner.

COMMISSIONER: Thank you. Mr Mileham, thank you for your assistance. It's been helpful to the Inquiry. Ms Ellson, do you require a short adjournment before the next witness?

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MS ELLSON: No, Commissioner.

COMMISSIONER: You're excused then from the witness box?---Thank you, sir.

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WITNESS WITHDREW.

MS SARACENI: If we could be excused, Commissioner, from the Bar table?

COMMISSIONER: Yes, of course. Ms Ellson, do you call your next witness?

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MS ELLSON: I do. I call Jemma Marie Green.

COMMISSIONER: Thank you. I will have Ms Green in the witness box, please, sworn or affirmed and then I will hear applications. Ms Green, please take a seat. Do you wish to take an oath or make an affirmation?

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DR GREEN: An oath.

COMMISSIONER: Thank you. Madam Associate.

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DR Jemma Marie GREEN, sworn:

COMMISSIONER: Thank you, Ms Green. Please take a seat. Mr Howard.

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

COMMISSIONER: Thank you very much, Mr Howard. I don't know whether there's any - - -

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MR HOWARD: I will try not to draw attention to myself in that way again, Commissioner.

COMMISSIONER: There's no objection, is there?

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MS ELLSON: No, Commissioner.

COMMISSIONER: Thank you. Leave is granted.

MS ZORIC: May it please, Commissioner, I seek leave to appear on behalf of Gary Stevenson. An application was filed on Friday.

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COMMISSIONER: Yes, Ms Zoric. Is there any objection to Ms Zoric's appearance on this witness' evidence, Ms Ellson?

MS ELLSON: No, Commissioner.

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COMMISSIONER: Thank you. Leave is granted. Ms Tomasini?

MS TOMASINI: May it please the Commission, I seek leave to appear for and represent Judith McEvoy in relation to today's hearing.

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COMMISSIONER: Thank you. Is there any objection, Ms Ellson?

MS ELLSON: No, Commissioner.

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COMMISSIONER: Thank you. Leave is granted. Mr Yeldon.

MR YELDON: May it please the Tribunal, I renew my application to appear on behalf of Janet Davidson today.

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COMMISSIONER: Addressing me in that way makes me feel like I'm getting a promotion, Mr Yeldon. Is there any objection, Ms Ellson?

MS ELLSON: No, Commissioner.

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COMMISSIONER: Thank you. Leave is granted.

MR YELDON: Thank you.

COMMISSIONER: Mr Mariotto?

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MR MARIOTTO: May it please, Commissioner, an application was filed or dated 29 August. I appear for Mr Limnios, and I seek leave to appear.

COMMISSIONER: Thank you. Is there any objection, Ms Ellson?

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MS ELLSON: No, Commissioner.

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

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MR van der ZANDEN: May it please you, Commissioner, I seek leave on behalf of Ms Scaffidi to appear for this evidence and to represent her.

COMMISSIONER: Thank you. Is there any objection, Ms Ellson?

MS ELLSON: No.

5 COMMISSIONER: Leave is granted, Mr van der Zanden. Mr O'Meara?

MR O'MEARA: May it please you, Commissioner, I seek leave to appear on behalf of Councillor Harley.

10 COMMISSIONER: Thank you. Ms Ellson, any objection?

MS ELLSON: No, Commissioner.

COMMISSIONER: Thank you. Leave is granted. Mr Yin?

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MR YIN: If it please, Commissioner, I seek leave to appear for Mr Yong during these proceedings, for this witness. I haven't filed an application yet. I wasn't aware that Councillor Green was to give evidence.

20 COMMISSIONER: No, that change occurred very late in the piece, Mr Yin. If you file an application in due course, that will be acceptable, I'm sure.

MR YIN: I've prepared it and I've discussed it with my friends and I understand there's no objection.

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COMMISSIONER: That's very kind of you, thank you.

MR YIN: I'm happy to sit back now and there's an application that will be made at the end of the evidence but until then we can move forward.

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COMMISSIONER: I will see if there's any objection to your appearance. Is there any objection, Ms Ellson?

MS ELLSON: There's not, Commissioner, no.

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COMMISSIONER: Leave is granted. I will just see if Mr Howard has any objection to you sitting at the front Bar table with him.

MR HOWARD: The more the merrier, Commissioner, no.

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MR YIN: Thank you.

COMMISSIONER: I don't know about merrier, but in any event, thank you. Ms Saraceni?

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MS SARACENI: Commissioner, I seek leave to continue to appear for Mr Mileham in relation to this witness' evidence.

COMMISSIONER: Very well. Is there any objection, Ms Ellson, to Ms Saraceni?

5 MS ELLSON: No, Commissioner.

COMMISSIONER: Ms Saraceni, if you wish to resume a seat at the Bar table, there is one at the front, but we are now a full house, I think.

10 MS SARACENI: Thank you, sir.

COMMISSIONER: I should have checked with you, Mr Howard, there's no objection, is there?

15 MR HOWARD: Of course not. Thank you, Commissioner.

COMMISSIONER: Ms Ellson, are you ready to begin?

MS ELLSON: I am, Commissioner, yes.

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COMMISSIONER: Thank you.

EXAMINATION-IN-CHIEF BY MS ELLSON.

25 Dr Green, you had very limited involvement with Mr Stevenson's management, didn't you?---That is correct.

Yet you attended a Special Council Meeting on 20 January 2016, is that right?---That's correct.

30

And during that meeting, a decision was made with respect to Mr Stevenson's ongoing employment?---Yes, it was.

35 Can you tell me what you knew before you attended the Special Council Meeting on 20 January 2016?---Sure. I received a phone call, I believe it was the day prior to that meeting, from Councillor Janet Davidson, and on the call she said to me that there were some performance issues with the CEO and that it had come to a head and there would be a Council meeting to discuss his employment the following day - actually, she said there would be a Council meeting to discuss it and they proposed to have it the following day and was I able to make myself available, to which I replied yes, and I asked her what was the nature of the issues and she said that, "There's been quite a lot of things and we can discuss them at the meeting."

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45 Can you tell me when the phone call was made, what time of day?---It's difficult to recall exactly. Yes, I'm sorry, I can't say precisely when it was.

Did Councillor Davidson seek your agreement or otherwise to moving forward with Mr Stevenson on the call on 19 January?---She did ask what my views were about Mr Stevenson and I did say that obviously my experience with him is quite limited but in the limited experience that I'd had, I had found it somewhat difficult to get information that I needed to do my job.

Is that all?---I can't recall anything else that was discussed.

Do you have a recollection of attending the Special Council Meeting on 20 January 2016?---Yes, I recall attending the meeting.

Were you provided with anything at the meeting, any papers?---Yes, I was. On the table there was an agenda for the meeting.

Anything else?---No. I don't recall there being anything else other than the agenda.

Can you tell me who first spoke to the meeting?---I can't remember who first spoke at the meeting.

Can you tell me what time you arrived for the meeting?---I think I arrived at the meeting about 10 or 15 minutes before it started.

Do you have a memory or a recollection of whether anyone said anything at the meeting?---Yes, certainly things were said at the meeting. I can remember some things that were said.

In time, what is your first memory of someone speaking to the meeting?---I can recall the Lord Mayor speaking at the meeting and Janet Davidson speaking at the meeting, but I can't recall really - I can't recall specifically anyone else speaking, although they may have, but what I can recall about what was said by those two Elected Members was that there had been performance issues with the Chief Executive Officer, Mr Stevenson, and it had been going on for some time and that discussion had taken place between him and the Performance Review Committee, and there was a clause in the contract which made a provision whereby, by mutual consent of his employer, the City of Perth, and the CEO, the contract could be terminated and it was an offer - that the CEO had offered to terminate the contract if the Council also wanted to do that. I can't actually recall whether - that's the general - my general recollection of the content of what was said. I can't recall whether Ms Davidson or Ms Scaffidi said what out of those two things but I do remember the conversation being led by them and that being the general content of what was said by them.

Were you aware that both Ms Scaffidi and Ms Davidson were on the CEO Performance Review Committee at the time?---Yes, I was aware of that.

For that reason, did you have some trust in them with respect to what they were

telling you?---Absolutely. I did rely on what they said to me in forming the decision that I made.

5 Can you tell me, Councillor, whether the agenda that you were given was very many pages long?---My recollection of it was that it was quite short, maybe one or two pages, perhaps three at most.

10 Madam Associate, if you could bring up page 9.0207, please. You see here, "Agenda, Special Council Meeting, 20 January 2016"?---Yes.

[11.00 am]

15 "Approved for release." Madam Associate, if you could turn to 9.0209. It appears to be an order of business, do you accept that?---Yes.

9.0210, do you see there a list of members in attendance, and it includes yourself?---Yes.

20 It has Ms Smith acting as minute taker. Ms Smith is Ms Scaffidi's personal assistant, is that right?---Yes, she was.

25 Did you see anyone from Governance at the meeting?---I don't recall anyone from Governance being in attendance or anyone else other than the people listed there being in attendance.

9.0211, do you see there a resolution that, "Council endorses minutes/recommendations of the CEO Performance Review Committee held on Tuesday, 19 January 2016", do you see that?---Yes, I do.

30 Do you recognise this page as part of the papers you were provided with for the Special Council Meeting on 20 January 2016?---I do. I do recall this.

35 You weren't provided with any other papers?---I don't have any recollection of being provided with any other papers. I do recall asking questions about this in terms of the recommendations, and the answer I received, and again, I can't recall whether it was Ms Davidson or Ms Scaffidi that said this to me, but they said that due to the sensitive nature of the content relating to an employee, they didn't want to provide like a list of issues.

40 Is the resolution here the one you voted on?---It is.

45 You weren't able to endorse any minutes or any recommendations of the CEO Performance Review Committee, were you?---I wasn't provided with a copy of any minutes to review and I wasn't asked to, like, approve any minutes and I wasn't provided with them to inform the decision that was made at this meeting.

So what did you base your vote on, what was told to you at the meeting?---That's

correct, yes.

5 Did you ask any further questions querying why the Lord Mayor or Councillor Davidson thought that the CEO's performance was a sensitive issue?---They said it was - yes, I did and they said it was the nature of employment matters and that it wasn't appropriate to kind of circulate and provide those more broadly.

10 Council is responsible for measuring the performance of the CEO, aren't they?---Yes, they are.

15 Did you think that it was strange to be told that discussing the nature of employment matters wasn't appropriate in this context?---They didn't say that it wasn't appropriate to discuss them, they did say that it wasn't appropriate to circulate documentation and circulate things in writing because of the sensitive nature of them, but they were happy to discuss the issues and they did respond to questions that I asked.

20 And you based your vote with respect to Mr Stevenson solely on what you were told by Ms Scaffidi and Ms Davidson at the meeting?---No, actually I did not base it solely on those things?---There were three factors, I would say, that formed my view. One was what was said at the meeting; two was the fact that all of the Elected Members present were supportive of terminating the contract and that I knew it was by mutual consent, i.e., Mr Stevenson was supportive of that; and then the third factor was that even if a CEO's doing a good job in an organisation, if they don't enjoy the full support of their board or their Council in this case, then their situation, in my opinion, is untenable and that given that Mr Stevenson was offering this as a solution, it seemed the appropriate course of action.

30 So you believed Mr Stevenson was offering to resign?---Yes. I believed that he was offering his resignation and that was something that he wanted to happen.

35 And your view about that was as a result of what you heard at the meeting on 20 January 2016?---A combination of what was said at the meeting and then also what Ms Davidson said to me on the telephone call the day prior.

40 Dr Green, if you had been told that Mr Stevenson had not offered to resign, would that have changed your view?---If I had been told that Mr Stevenson didn't want to resign, I would have certainly viewed the situation differently. I would have wanted to get more information around what was happening. The fact that I thought that Mr Stevenson was offering this and Council, by the majority, wanted to terminate his employment led me to believe that there was mutual consent around this and that there was not another option on offer even. Had I known that Mr Stevenson had offered something else, it certainly would have changed the way that I viewed the situation and it would have led me to seek more information and see what other courses of action we might take.

Who would you have sought the information from?---Certainly from the Lord

Mayor and the Chair of the CEO Performance Review Committee.

Councillor Davidson?---Correct.

5 Madam Associate, that document can be taken down. 9.0177, please. Dr Green, have you ever seen this document before?---I don't believe that I've seen this document before.

10 Thank you, Madam Associate. If you could turn, please, to 9.0190. Dr Green, have you ever seen this document before?---No, I've never seen this document before.

15 Madam Associate, if you could take that down, please. Can you tell me for how long the meeting lasted?---It was quite a brief meeting. I would think it would have been less than half an hour and probably around 20 minutes.

20 I'm going to move topics with you now, Dr Green, and talk to you about the appointment of Mr Mileham. There was an internal recruitment process in order to appoint a replacement for Mr Stevenson, wasn't there?---Yes, there was.

25 In terms of your own involvement in the recruitment and selection of the replacement for Mr Stevenson, did you participate in a second round interview process?---Could I just ask you a question, clarifying question? Are you referring to the appointment of the Acting CEO or the CEO appointment process for the substantive position?

30 My apologies, I will be clearer. To appoint someone to the role substantively, were you involved in any second round interview?---I participated in an interview with a female applicant, I can't recall her name right now, and I participated in an interview with Mr Mileham and as far as I can recall, they are the only two interactions that I had with the process, apart from a meeting between the Elected Members to discuss the decision, and the Council meeting where we decided - we ratified the decision to appoint Mr Mileham.

35 I would like you to talk to you about the interviews that you've described being involved in. Were they situations in which the applicant was asked to make a presentation?---Yes, they were.

40 Were you provided with any idea about what your expected level of involvement was before you attended the interviews?---I can only recall being told that these presentations would occur and that the two shortlisted candidates would give us a presentation in the committee room, and I can't recall whether, in the setup of that, I was told that I would be given an opportunity to ask questions but I presumed that I would be.

45 Why did you presume that?---I just thought it would be the nature of an interview type scenario that there would be back and forth between the applicant and the

employer.

Was there, with respect to the female applicant?---Yes, I do recall that questions were asked by Elected Members of her and I believe I even asked her a question.

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Were those questions that you heard and the question that you asked, scripted?---No. I watched her presentation and asked her a question off-the-cuff.

Did she respond?---Yes, she responded to my question.

10

As a general proposition, did you assess the applicant's performance during the interview?---Yes, I did. I was - she made a presentation about her vision for the City and the things that she would do if she were hired, in the first period of her employment and what she thought the strategic priorities would be were she to be appointed, and I listened to that thinking about what that would be like if she was to be in the role.

15

Were you provided with any documents upon which you could or did record your assessment of the candidate?---Yes. I recall seeing a copy of her CV and I can't be certain but I seem to recall there being other supplementary information, a covering letter perhaps, and there may have been other things, I can't recall exactly

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[11.15 am]

My question concerned documentation that you could record your observations on?---I'm sorry. I can't recall whether or not I was provided with a template to put my observations in.

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Did you make any notes during the presentation?---Yes, I did.

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Did you provide those to anyone else?---I used them to refer to when we had a kind of round-up session subsequently to discuss both of the applicants and our views on their suitability for the position.

But you didn't give them to anyone else?---No. Normally after meetings I would, unless it was particularly important, I would send an email regarding something, otherwise which I would not keep paper, I'd recycle it.

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No-one asked you for them?---I don't recall having had a template. Like, I can't say whether I had a template or not but in regard to notes that I took, I don't - I'm pretty certain no-one asked me for them and had someone asked me for them, I wouldn't have surrendered them.

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You would not have?---No, I would not have.

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Why not?---Because they were my personal thoughts and observations and I wouldn't have thought it would be appropriate for someone to demand them, or an

Elected Member at least to demand them from me in that situation.

5 Do you consider that those notes could provide transparency with respect to the process?---Yes, I absolutely accept that having this kind of information would make the conversation that we are having right now a lot clearer, as opposed to relying entirely on my memory which is obviously not 100 per cent clear recollection of what occurred.

10 In that sense, in hindsight, would you have handed over your notes?---Do you mean to another Elected Member or - - -

15 To Human Resources if they asked, or to someone on the Recruitment Committee?---Okay. Sorry, I misunderstood. I thought you were asking me whether an Elected Member asked me for my notes but if you're asking whether someone from HR had asked me to provide details of my observations to them, I would certainly have provided those happily. Sorry, I didn't quite understand before.

20 That's all right?---But nobody did ask me for them. We just had a conversation in the committee room afterwards and I don't recall actually anyone from HR being present there in that meeting at all. My recollection is that it was just the Elected Members. Governance may have been present but I can't say for certain. Someone from Governance may have been present but I don't recall anyone from HR being present and no-one from HR asked me for my notes but had that been 25 requested, I would have provided them.

30 The session you're talking about with the Elected Members, maybe Governance being there, is that the session you described as a round-up session earlier?---Yes, it is.

35 And that was outside of the formal Council process?---Yes. So we had the two presentations in a committee room which is just around the corner from the Council room and my recollection is that there were two presentations, one from the female applicant, one from Mr Mileham, and then after that, the Council discussed both of the applicants in that same room.

40 With respect to the interview in which Mr Mileham participated, was the presentation Mr Mileham gave the same as the female applicant's?---Applicant. No, he gave a distinct presentation to the one that the female applicant provided.

Did Elected Members ask questions of Mr Mileham when he had finished his presentation?---Absolutely. Yes, there were a lot of questions that were asked by Elected Members of Mr Mileham subsequent to his presentation.

45 More so than for the female applicant?---Yes, I do recall it being a far more lively and productive conversation.

Did you ask Mr Mileham questions?---I did.

Do you know what they were?---I can't remember all of them but I do remember some of the questions that I asked.

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Were they scripted?---No. I just asked questions of Mr Mileham based on the presentation that he gave.

Were any of the questions asked of Mr Mileham scripted?---My questions?

10

Any of the questions?---I'm not sure whether any of the Elected Members had pre-prepared questions and asked him those pre-prepared questions.

Did you assess Mr Mileham on the basis of the answers that he gave to all of the questions?---I did, in addition to the presentation, yes. They were the two things that - actually, there were several things in relation to Mr Mileham as distinct from the other application, which was that his performance in his role up until that point, the presentation that he gave and his response to the questions and answers, as well as his CV.

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Mr Mileham was able to be assessed on the basis of his performance in the role because he was acting in it, isn't that right?---That's correct.

The other candidate had never done that?---As far as I'm aware, the other applicant had not worked at the City of Perth ever before and was not working at the City of Perth at that time.

25

Can you tell me more about the round-up session you described, please, doctor. Did it seem as though someone was leading the discussion?---Yes, it occurred that the Lord Mayor was leading the discussion.

30

In what sense?---She provided her initial views and then she started engaging the members of the CEO Performance Review Committee and I recall Ms Davidson providing some thoughts initially and then I think we went around the room and people shared their observations of both of the applicants.

35

And what happened as a result of that?---I think the kind of consensus view, both applicants were strong candidates for the position and the female applicant had delivered a really good presentation and articulated clearly a vision for the City, as had Mr Mileham, that because Mr Mileham had been in the role in an acting capacity and was doing a good job, that it made sense to stay with Mr Mileham rather than change the CEO position again.

40

Is it correct to think then that the Elected Members settled on Mr Mileham being the preferred candidate shortly after the presentation by Mr Mileham?---Yes, that is fair to say.

45

Madam Associate, if the witness could please be provided with a bundle of documents from 9.0672 to 9.0710. Madam Associate, I'm not sure that's the correct bundle. Dr Green, ignoring the first page, please?---Sure.

5 Can you tell me whether you recognise any of the handwriting on the documents provided to you as your own.

COMMISSIONER: Before you go any further, Ms Ellson, just wait for the next copy to be distributed.

10

MS ELLSON: Yes, Commissioner. My apologies?---Ms Ellson, none of those are my handwriting.

15 Thank you. The documents can be returned, Madam Associate. During the round-up session that you described, were you asked to put into writing your views with respect to either or both of the candidates that had provided presentations?---I don't recall being asked to do that.

20 Do you consider that the appointment of any employee, including a Chief Executive Officer, needs to be transparent?---I think that there needs to be a pre defined process that is well understood by anyone that is being asked to make a decision and that that process needs to be followed and if there are queries around the adequacy of the process, that those things would need to be dealt with.

25 And in dealing with them, regard would need to be had to the written documentation made at around that time the person was being considered, do you agree?---I'm not sure if I entirely agree with that because I have been a part of hiring processes before where feedback has been given orally to people that are making - managing the process, let's say, and I haven't always been asked to put things in writing and I've regarded those processes as being adequate. So I think
30 putting things in writing is one way of doing it, but I don't think that it's an absolute pre requisite for having a proper process.

35 It certainly assists in being able to assess the process looking backwards, doesn't it?---Without question

[11.30 am]

40 Do you consider that a decision to appoint an employee must be capable of review?---Would you mind repeating that question?

Do you consider that a decision to appoint an employee must be capable of review?---The process must be capable of being reviewed?

45 The decision?---The decision. Yes, I think that the people that are managing the process need to be able to substantiate the process that they went through, the thoroughness of that process and if any queries were raised, how they were dealt

with and to take account of the steps that were gone through to demonstrate that the process was adequate.

5 A decision to appoint a CEO of a Local Government needs to be an appointment based on merit, doesn't it?---I think that it's very important that the decision is made based on merit.

10 Do you agree that if the process cannot be adequately reviewed, then it's impossible to determine that the decision was based on merit?---I'm not sure I - I think as a part of my previous answer, I said it's obviously easier if things are in writing but even if they are not in writing in terms of every person that interacted with the process, if that's not in writing, if the people that are managing that process, whether it be chairman of a board or Manager of HR, whoever is tasked with that process, that they are adequately documenting the process that they are
15 going through and if they are receiving feedback orally from people, that they are recording that or receiving it in writing, that they keep a complete record of the steps that were gone through and the views that were expressed to them in consolidating all of the information together.

20 My question concerned the question of whether a merit-based appointment - sorry, I will withdraw that and ask it in a different way, Dr Green?---Sure.

Bear with me. I was asking you to tell me whether it could be seen that there had been a merit-based appointment if there was not adequate documentation.

25 MR YELDON: I object?

COMMISSIONER: Yes. What's the basis of the objection, Mr Yeldon?

30 MR YELDON: "What is not adequate documentation", counsel's referring to a generality. If she could say what she says to the witness is not adequate, that would assist the question.

35 COMMISSIONER: Thank you, Mr Yeldon. Ms Ellson, do you want to respond to that?

MS ELLSON: Yes, Commissioner. I will back up and ask one more question.

40 COMMISSIONER: Thank you.

MS ELLSON: If a decision is not capable of review, it is not capable of being assessed as meritorious, is it?---So if you're not able to go through the steps to review what's been done, it's very difficult to assess whether a process is adequate, yes, I would accept that.

45 Before you participated in the interview process that you've described, did you understand the process by which the appointment to the position of CEO was to be

conducted?---I can't recall how much information I was provided around the process, but certainly after Mr Mileham was appointed, I did spend quite a lot of time trying to garner information to improve my understanding.

5 Of what?---A process as to assess and manage the performance of a CEO in the context of Local Government.

Not with respect to his appointment?---I don't recall seeing any specific information that kind of prescribed the process and how it should go.

10

How much notice were you given to attend the presentations of the candidates?---I can't recall how much notice I was given.

15 Madam Associate, if you could bring up, please, Council document at 9.0319. Do you see here some minutes of the Council meeting on 7 June 2016?---Yes.

Madam Associate, 9.0322. Do you see here, Dr Green, Councillors present and you were among them?---I was, yes.

20 Madam Associate, 9.0323. Do you see here, "Confidential late item 17. Chief Executive Officer - recruitment process"?---Yes.

25 Madam Associate, if you could turn, please, to page 9.0327. Do you see here a confidential item, a report from Manager of Human Resources with respect to the CEO or Chief Executive Officer recruitment process. I see you're nodding, you need to speak, Dr Green?---Sorry. I'm just reading it. Yes, I can see this.

30 9.0328, it sets out the details for selection and appointment process to be applied to the position, or it begins to, doesn't it?---Yes, ma'am.

It starts with the nomination of a Recruitment Committee?---Yes.

35 9.0329, please, Madam Associate. 7 June 2016, 9.0329, do you see there, "CEO Recruitment Committee will be responsible for the following tasks"?---Yes, I do.

And that includes, "The presentation of two recommended candidates to all Elected Members"?---Yes.

40 "The first round interviews with potential candidates"?---Yes.

"The short listing of potential candidates"?---Yes.

"The appointment of an Executive search company if required"?---Yes.

45 And, "The development of the CEO Position Description", do you see that?---I do.

Would you therefore expect then that the CEO Recruitment Committee would be

responsible for collecting and collating any documentation with respect to all of those matters?---I would expect the committee to take account of those things.

5 Take account of?---Well, to manage those processes and to record the extent to which they have done that.

Turning back, please, Madam Associate, to 9.0324. A motion was moved by Councillor Davidson, seconded by Councillor Limnios which included a provision for, "The City of Perth to undertake an internally managed recruitment process" and you voted in favour of that?---I did.

10 That can be taken down, please, Madam Associate. Following on from the round-up session you described, Dr Green, the next involvement you had with the potential appointment of Mr Mileham was at a Special Council Meeting on 15 September 2016, was it?---That is my recollection.

Do you remember what happened at the meeting?---At the Council meeting in which the CEO was appointed?

20 Yes?---In respect of the appointment of the CEO, my recollection is that we moved to close the meeting, which meant that members of the public were asked to leave the Chamber. Mr Mileham was nominated as the preferred candidate and I don't recall there being any discussion about it. My recollection is that we voted in favour of his appointment and it was unanimously carried.

25 As far as you were concerned, from that point forward Mr Mileham was appointed as the CEO of the City of Perth, is that correct?---As far as I was concerned, yes, he was substantively appointed in that role.

30 Do you recall whether or what documentation you were provided with, upon which to base your decision?---I just suddenly remembered one extra thing which I think was discussed in a committee meeting, which was with regard to his salary. In the committee meeting, I just remembered that we talked about what salary bands - after it was decided that Mr Mileham was the preferred candidate, it was discussed what salary band he was in and the Lord Mayor proposed to put him on the higher salary band and I recall querying that because this was Mr Mileham's first appointment in a CEO position and I queried whether it would be appropriate to put him on a lower band to start off with, and over time, see him graduated to a higher band and I recall her replying to me and saying, "No, because it's the City of Perth and it's the capital city. The only appropriate banding is the top one."

40 [11.45 am]

45

I asked you about what documentation you recalled having at the Special Council Meeting on 1 September 2016, could you answer that question for me?---Certainly. So I remember seeing something around the salary bandings but I can't remember whether it was provided in the pack at the Council meeting or in the committee meeting. It may have been in the Council meeting.

You're talking about a committee meeting, which committee meeting are you talking about?---Pardon me, the round-up session that I referred to. It may have been either in the Council meeting where Mr Mileham was appointed or in the round-up session that information regarding the salary bands was provided and discussed.

So when you were talking earlier about the Lord Mayor speaking of placing Mr Mileham on the highest salary, don't recall whether or not that was at the round-up session or at the Special Council Meeting?---I believe it was discussed at the round-up session and then subsequently the salary was included in the pack, and I don't believe it was discussed, or anything indeed was discussed about Mr Mileham's appointment in the Council meeting.

Could you recall being given a pack for the Special Council Meeting on 1 September 2016?---Mm hmm.

Madam Associate, could you turn, please, to page 9.0791. Do you see here some Council minutes certified on 20 September 2016 relating to a meeting on 1 September 2016?---Yes.

Madam Associate, 9.0793. Do you see here you're present at the meeting?---I do.

Madam Associate, 9.0794. Do you see confidential item 334/16, "Appointment of Chief Executive Officer"?---I do.

So it's proposed the meeting be closed for discussion of that item?---M'mm.

Underneath you see a meeting note, "Council agreed that there would be no discussion on confidential item 334/16, therefore it was not deemed necessary to close the meeting", do you see that?---I do. I stand corrected on my previous testimony.

With respect to there being some discussion?---No, with respect to closing the meeting. I had previously said that I thought that we had closed the meeting but we obviously had not.

You mentioned that there was no discussion, Dr Green?---Yes, I do remember there being no discussion because everything had been discussed and resolved prior in the round-up session.

The documentation before you in the round-up session upon which you say that the

5 Elected Members reached an agreement to appoint Mr Mileham, did any of that include his contract of employment?---No. I don't believe we were provided with any template contracts or contracts for Mr Mileham because it was not - at least at that point we hadn't decided to appoint him and I don't recall whether, as a part of the Council meeting, we were provided with that either.

10 Going back to the minutes, Dr Green, Madam Associate, if you could turn to page 9.0795, do you see here, Dr Green, an indication that there is a report from Human Resources available to you?---Yes.

Madam Associate, 9.0797. Do you see there a reference to a Confidential Schedule 1?---Yes.

15 Would this form the first page of the pack you were talking about?---I believe it would have, yes.

Madam Associate, if you could bring up 9.0798, please. Do you see here a report from Human Resources dated 31 August 2016?---Yes, I do.

20 Does it appear that the committee recommendation to the Council is the same as that recommended by the officers?---Yes.

25 Madam Associate, 9.0799. Do you see here, Dr Green, under the heading, "Financial implications", some material relating to salary?---Yes.

Do you see there a band width?---Yes, I do.

30 The remuneration package between \$247,896 to \$375,774, is that the band you understood you as Council to be working within as at 1 September 2016 for Mr Mileham?---Yes, I understood that we were paying him in the highest band.

35 Sorry, I will just ask you another question before I ask you to clarify your answer there. Do you see here, under, "Contract provisions", a five year term, a six month review period and a remuneration breakdown, cash, car allowance, superannuation, total remuneration package?---Yes.

Do you see the total remuneration package is \$364,450?---Yes.

40 Did you have an understanding as at 1 September 2016 about the salary Mr Mileham would be paid?---Yes, not in dollar terms but that he would be paid in the highest bracket.

45 In the highest bracket or at the highest point?---I can't recall whether - for example, if within a bracket there were levels, but I do know that he was at the highest bracket. I can't recall whether it was - if there were different levels within that bracket but I do remember it being the highest bracket.

Madam Associate, could you turn to page 9.0800. Do you see there, Dr Green, a recommendation by the committee?---Yes.

5 Confidential Schedule 1 continues at 9.0801. Do you see there what appears to be a first page of an application by Mr Mileham for the position?---I do.

10 Do you recognise that as a document that was in your pack for the meeting on 1 September 2016?---I certainly remember reading this letter in the committee room where we had the presentation from Mr Mileham. I can't recall whether this was in the pack on the night of the Council meeting but I would have expected it to be.

It's headed, "Confidential Schedule 1"?---M'mm.

15 Do you accept that it was part of the pack?---I do. I accept that, yes.

9.0810, please, Madam Associate. Do you see here, "Confidential Schedule 1", what appears to be Mr Mileham's curriculum vitae, or the first page of it?---I do.

20 Do you recognise that as a document that was included in your pack for the meeting on 1 September 2016 ?---I do.

25 Madam Associate, that document can be taken down. Did you have before you at all, whether in the pack or not, Mr Mileham's proposed contract of employment?---I cannot recall whether the employment contract was in the pack.

It appears that it wasn't, do you accept that?---I do.

30 Going back to 9.0795, do you see there a motion which you voted in favour for, "To appoint the preferred candidate as detailed in Confidential Schedule 1" and we have seen those documents relating to Mr Mileham?---Yes.

"To the position of Chief Executive Officer for a period of five years under the contract of employment for a Chief Executive Officer"?---I do.

35 Before casting your vote on that motion, Dr Green, had you seen the contract of employment for Mr Mileham?---I don't believe that I had seen the contract of employment for Mr Mileham at that point.

40 Were you able to be satisfied with its terms before casting your vote?

MR YELDON: Your Honour - Tribunal, could I have the witness out, please?

COMMISSIONER: You want to make an objection in the absence of the witness?

45

MR YELDON: Yes, if I make an objection, I would think the witness - - -

COMMISSIONER: Yes. Just hold on for a moment. Dr Green, this is no comment on you at all, but I would ask that you leave the room for the moment?---Sure. Which door would you like me to go out?

5 My Associate will escort you.

WITNESS WITHDREW.

COMMISSIONER: Just wait, Mr Yeldon. Yes, Mr Yeldon.

10

MR YELDON: I'm sorry for the "Your Honour", Commissioner.

COMMISSIONER: That's all right, you've given me two promotions in the one day.

15

MR YELDON: If I ever was in a position of power, I would do far more than that.

COMMISSIONER: Now I'm worried.

20

MR YELDON: My objection is Counsel Assisting is being unfair to the witness because the City of Perth, quite plainly on the page that the witness is being referred to, resolved to appoint the CEO Recruitment Committee to negotiate the terms of the contract provisions. That was its resolution at the time. This witness is being asked whether she in fact had an opportunity to see the contract provisions, so in my submission, there is an air of unreality to Counsel Assisting's questioning of the witness.

25

COMMISSIONER: Thank you, Mr Yeldon. Ms Ellson.

30

MS ELLSON: Commissioner, it's quite proper for me to be asking the questions I am, given the way in which the motion has been moved and voted on by members, as will become clear from my following questions. I see no problem given that the witness has said she didn't see the contract, in asking her questions about not being able to make a decision based on its terms.

35

COMMISSIONER: As I understood it your last question, Ms Ellson, was directed to a particular aspect of the Act, am I right?

40

MS ELLSON: Yes.

COMMISSIONER: Is that the question you're objecting to, Mr Yeldon?

MR YELDON: Perhaps I was cogitating on the one before. I'm sorry, I missed that.

45

COMMISSIONER: That's all right.

[12 noon]

5 MR YELDON: The witness responded, "I don't believe I had seen the contract" and then the question was asked after that but the resolution makes it plain that the contract had not even been negotiated.

10 COMMISSIONER: Yes. That had come and gone, Mr Yeldon, we are into a different question at this point.

MR YELDON: Yes. Thank you.

15 COMMISSIONER: Ms Ellson. Madam Associate, would you please bring Dr Green back into the hearing room. While we are waiting for Dr Green, can I, just out of fairness to all counsel at the Bar table, indicate that the sound baffling above them has the effect that whatever is said at the Bar table is sometimes very audible up here, just in fairness to you all.

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

Dr Green, thank you. I just want to make it clear to you that your exclusion from the hearing room is no reflection on you whatsoever?---Thank you.

25 Ms Ellson.

MS ELLSON: Thank you.

30 Dr Green, were you satisfied with the terms of the contract of employment for Mr Mileham, or for the Chief Executive Officer, when you cast your vote on 1 September 2016?---I assumed that Human Resources would have prepared the employment contract in accordance with what would be expected for a CEO appointment at the City of Perth and at least in a similar manner to that which was done for the previous CEO or if market norms had changed between then, that they
35 would have prepared it with appropriate advice and crafted the document accordingly.

40 So you were not?---No. I relied on - I didn't actually consider that it was pertinent that I review the contract at that time.

Should you have been satisfied with the provisions of the proposed employment contract before you cast your vote on 1 September 2016?

45 COMMISSIONER: Yes, Mr Howard.

MR HOWARD: I think if my learned friend wants to ask that question, perhaps it should be done by reference to criteria, it it the Act, is it Governance, is it normal

(indistinct).

COMMISSIONER: I understand the point, Mr Howard.

5 MS ELLSON: I was one step away from that, Commissioner.

COMMISSIONER: Mr Howard's suggesting an acceleration.

MS ELLSON: I can certainly do that.

10

COMMISSIONER: Thank you.

MS ELLSON: Madam Associate, if you could bring up, please, page 148 of the
15 Local Government Act, please, section 5.36. Dr Green, do you see here subsection
(2) of 5.36:

*A person is not to be employed in the position of CEO unless the
Council -*

20 Paragraph (a), Madam Associate, if you could please turn to the next page,
paragraph (b):

*Is satisfied - and there's an asterisk there referring to the fact that an
absolute majority is required - with the provisions of the proposed
employment contract.*

25

Do you see that?---I do.

Were you aware that you should have been satisfied with the provisions of the
30 proposed employment contract when you cast your vote on 1 September
2016?---No, I was not aware of this provision within the Act. I did - if I may
expand slightly on that?

You've answered my question, Dr Green.

35

MR HOWARD: Commissioner, it's a matter for my friend but it might save
things if my friend wishes to take the witness to the foot of 799, because it will
save having to tidy it up later, with respect.

40 COMMISSIONER: Thank you, Mr Howard.

MS ELLSON: I'm not sure I have it.

COMMISSIONER: Just pause there for a moment, Madam Associate.

45 Ms Ellson, do you wish to do that?

MS ELLSON: I will take up my friend's offer in a moment, Commissioner. I just

would like to ask one more question before I do.

COMMISSIONER: Very well.

5 MS ELLSON: Dr Green, do you accept that as at 1 September 2016 you should have been satisfied with the provisions of the proposed employment contract when you cast your vote?

10 MR HOWARD: I rise again, sir. If the question is a question of the interpretation of the Act, that's one thing and it's not for this witness but it is, with respect, unfair, may I suggest, to ask that question before taking the witness to the foot of page 799.

15 COMMISSIONER: Yes, I understand the thrust of the objection, Mr Howard. Now might be the time, Ms Ellson.

MS ELLSON: Yes, Commissioner.

20 Dr Green, if you could have regard to page 9.0799?---Yes.

"Contract provisions"?---Yes.

"WALGA/LGMA CEO contract model base document", do you see that?---I do.

25 Did you have regard to that document before casting your vote on 1 September 2016?---I was aware of the contract provisions, including that, and accepted that the contract would be made based on what was being opined at in the Council meeting.

30 Is that an assumption that you made?---Yes. I would assume that any information that was presented to me in the Council meeting would be consistent with what would be happening contractually subsequently.

35 So you were aware that the contract had not been settled at the time you cast your vote on 1 September 2016?---I was not aware but I would have thought it wouldn't be appropriate to have fully executed a contract at that point for which Council had not agreed to this particular item. So I wouldn't have expected a contract to be executed in advance of this.

40 Going back to the Local Government Act provision that was put up on the screen, Dr Green, the provision requires "Council to be satisfied with the provisions of the proposed employment contract"?---Yes.

45 Did you consider Mr Mileham's salary at the time you cast your vote at 1 September 2016?---I did consider his salary as I spoke about earlier, along with the length of time of the contract and what I understood to be norms in terms of appointing CEOs within Local Government at that time.

5 So you based your vote not on the provisions of the contract that you had been provided with but on your assumptions and understandings of what might happen, is that right?---I wouldn't characterise it like that. I saw that the key terms or provisions within the agenda item covered off the kind of operative bits of the contract and the relevant structure was articulated, being the WALGA template and they were the key elements that I needed to be aware of and accept and be satisfied with.

10 Madam Associate, going back to page 9.0795 - I have been lax with TRIM this morning, Commissioner. I apologise for that. 17416 relates to this document.

COMMISSIONER: Thank you.

15 MS ELLSON: Do you see here at point 2 for the motion:

Subject to the completion of satisfactory reference checks, approves the CEO Recruitment Committee to negotiate the terms of the contract provisions.

20 Do you see that?---Yes.

25 What was your understanding of what terms the CEO Recruitment Committee still had to negotiate when you cast your vote on 1 September 2016?---The terms that we had agreed to, at the bottom of the previous page. So, for example, they could pay - negotiate a lower salary but no higher than that, for example.

So the salary was one, what were the others?

30 COMMISSIONER: Would it assist you to go back to the previous page, Dr Green?---It would, thank you.

MS ELLSON: 9.0799?---Thank you.

35 What did you understand was outstanding in terms of the terms to be negotiated with Mr Mileham when you cast your vote on 1 September 2016?---That had the CEO not wished to own a car, that a car allowance wouldn't have been required. The superannuation component was a function of legislation and not something that was up for negotiation, if you like.

40 So not superannuation?---Correct, and it could be that a longer review period was mutually agreed but it would be no less than six months.

45 So when you cast your vote you weren't yet satisfied of Mr Mileham's salary, whether or not he would accept a car allowance or whether or not his review period would be longer than six months?

COMMISSIONER: Mr Howard?

MS ELLSON: Sorry, I didn't see my friend rise.

5 MR HOWARD: With respect, I'm not sure that's a fair way to put that question in light of the evidence that's been given but I'm in your hands, Commissioner.

COMMISSIONER: I'm going to allow the question because I think Dr Green is more than capable of dealing with that. Ask the question again, please, Ms Ellson.

10

MS ELLSON: When you cast your vote on 1 September 2016, you weren't yet satisfied with the salary Mr Mileham would be paid?---I wouldn't characterise it like that. I accepted the Lord Mayor's view that because we were in the capital city, that we needed to pay in the highest bracket and that what we were accepting here was the key terms and provisions. So I wouldn't have expected there to be really any material deviation from this.

15

If there were, would that surprise you?---If there were to be material deviations from this, I would have expected it to be brought back to Council to review the situation.

20

You used the words "material deviations", would you consider one of those the salary being greater than the band width?---Without question.

25 The document can be removed, Madam Associate. Going back to 9.0795, do you see here, "Subject to the completion of satisfactory reference checks approves the CEO Recruitment Committee to negotiate", et cetera?---Yes

[12.15 pm]

30

Did you believe at the time you cast your vote on 1 September 2016 that Mr Mileham was suitably qualified for the position?---I did believe that he was suitably qualified for the position but I did - there was a question mark around how he would go because he had not been a CEO before and he had only been acting in the role for a short period of time, and so he was relatively untested.

35

In thinking about whether Mr Mileham was suitably qualified for the position, to what did you have regard?---I had regard to my dealings with him while he was acting in the role of the CEO.

40

Did you consider it important or necessary for reference checks to have been completed before appointing Mr Mileham?---I would have expected reference checks to be completed, as was stipulated in that agenda item and would have expected that to have occurred and if it wasn't, I would have expected Council to be notified.

45

It wasn't done before Mr Mileham was appointed, do you accept that?---I'm not

aware whether reference checks were undertaken or not.

5 Dr Green, looking at the motions, Mr Mileham was appointed - - -?---My apologies, I misunderstood your question. At the time of the Council meeting I was aware that the reference checks had not occurred but I expected them to be undertaken subsequent to the Council meeting.

10 Do you agree that the reference checks should have been done before Mr Mileham was appointed?---When you say appointed, do you mean before the contract was executed?

15 If you look at the motion, Dr Green, that, "Council recommendation appointing the preferred candidate under the contract of employment, subject to the completion of satisfactory reference checks and approves the CEO Recruitment Committee to negotiate the terms of the contract provisions", do you see that?---Yes, I do.

Do you consider or do you accept that the reference checks should have been done before this notion was moved on endorsed.

20 No, I don't. I think that if anything - if the reference checks were not satisfactory, it would be expected that this would come back to Council for a second review, so the fact that that hadn't occurred didn't concern me.

25 Do you consider reference checks to be something which enables you to assess whether a person is suitably qualified for the position?---I do, and I would say that's especially important where it's somebody that you're hiring for the first time. However, I think that the emphasis of that is less when it's somebody who's already working within the organisation.

30 Dr Green, when you cast your vote on 1 September 2016, were you aware that you should have been satisfied or believed that Mr Mileham was suitably qualified for the position?---Yes.

35 Do you accept that as at 1 September 2016, you could not be so satisfied because the reference checks were outstanding?---I don't accept that.

40 Why not?---Because we approved it contingent upon the reference checks being satisfactory and I would have expected if they weren't satisfactory, then they would have been - the matter would have come back before Council, in the same way any other kind of material aspect would come back before Council.

45 The document can be removed, Madam Associate. Dr Green, if you were aware as at 1 September 2016 that Mr Mileham's previous employment in the UAE had not yet been verified, would that have changed your mind or changed your vote?---May I just clarify your question?

Yes?---Do you mean when Mr Mileham was first employed at the City of Perth in

the Director of Planning role or in the CEO role?

Thinking about the events on 1 September 2016?---Yes.

5 And the vote to appoint Mr Mileham contingent upon some things, if you had
known that Mr Mileham's employment in the UAE had not yet been verified,
would that have changed your vote?---I would have expected his - some reference
checks to have occurred before he was employed at the City and had I known that
10 there were no reference checks of any kind or of his most recent role, I certainly
would have queried that.

MS SARACENI: Commissioner, I object because - - -

15 COMMISSIONER: Do I need to hear this in the absence of the witness or not?

MS SARACENI: I wouldn't have thought there's a need for the witness to be
excused in relation to the timing and who were the immediate predecessor
employers before Mr Mileham started at the City.

20 COMMISSIONER: What's the objection though?

MS SARACENI: The witness is being asked in relation to two or three lots of
employment pre his most recent employment before he started at the City. So the
recency of the reference checks is what I'm referring to, sir, and whether it's
25 appropriate to go back that far.

COMMISSIONER: Yes, Ms Ellson.

30 MS ELLSON: I wonder what my friend's interest is in the - - -

COMMISSIONER: I can see the interest but what's the answer to the objection?

MS ELLSON: The answer to the objection is that I have grounded the doctor's
evidence in time with respect to her vote and I'm asking her about information that
35 may or may not have been available to her at the time she did so.

COMMISSIONER: This goes to the statutory requirement of satisfaction, does it?

40 MS ELLSON: Yes.

COMMISSIONER: As to "suitably qualified to do the job"?

MS ELLSON: Yes.

45 COMMISSIONER: Yes. Please continue.

MS ELLSON: Dr Green, if you had known at 1 September 2016 that

Mr Mileham's employment in the United Arab Emirates had not yet been verified, would that have changed your vote?---I don't know.

5 If you had known that Mr Mileham's professional qualifications in Australia had not been completely verified by Human Resources, would that have changed your vote?---In concept, if I had known that his references had not been verified, I believe it would have, yes.

10 And if Human Resources had not yet been able to verify Mr Mileham's Australian employment, would that have changed your vote?---It would have. I would presume that those checks would have been done before he was employed at the City of Perth.

15 Would the international employment verification, the Australian employment verification and the Australian qualification verification have been factors upon which you would consider Mr Mileham's qualification for the position?---Yes.

20 Dr Green, following on from the meeting on 1 September 2016, you raised some questions with respect to your concerns about the process?---Yes.

Which process?---There were quite a few things that I raised. The things that I raised went all the way into 2017. Is there something particular - do you want me to talk through all of the concerns?

25 Did you raise some concerns about feedback and the review of Mr Mileham's performance at around March 2017?---I did.

30 Do you have a memory of what those concerns were with respect to feedback?---I do, yes. There was a need for key performance indicators to be articulated and there was a need for the performance associated with those KPIs to be reviewed, and I became aware at that time that there was a provision in the Act, a requirement for Council to do that within a certain period of time, I believe it was six months, and I was being asked by my Elected Member colleagues to sign-off the probation period for the CEO and review the performance of the CEO against the KPIs that the CEO Performance Review Committee had set and I think I remember being told about it on a Thursday afternoon and then being provided some documentation on the Friday for a meeting that was occurring the following Tuesday.

40 You had no issue with the key performance indicators that the CEO Performance Review Committee had established, did you?---I did have issues with them, yes.

In substance?---In substance, yes. I had several issues with them.

45 With whom did you first raise your concerns about the process, with respect to the KPIs for Mr Mileham?---As far as I can recall, the first person was Councillor James Limnios.

Did you raise your concerns also with Mr Ridgwell?---I believe I raised them with Mr Ridgwell and also with the Manager of Human Resources, and also Councillor Janet Davidson.

5

The Manager of Human Resources at the time being Ms Pember?---Yes, her name was Ms Kelly Pember.

[12.30 pm]

10

Do you recall calling Mr Ridgwell to speak about the process on 9 March 2017?---I do recall having a conversation with Mr Ridgwell on the telephone prior to the meeting.

15

What did you say to Mr Ridgwell?---I recall telling him that I was concerned about the process and that I was not convinced that the process was adequate and that we were being rushed, and Mr Ridgwell said to me - I can't remember the words exactly but to the effect of, this is a Council process, not an administrative process and if I had issues with that, I needed to take it up with my fellow Elected

20

Members.

And is that what you did?---Yes.

25

Dr Green, did you email Mr Ridgwell, copying in the Lord Mayor and Councillors and Mr Mianich on 9 March 2017 expressing concerns about the proper review process?---I recall sending an email like that, yes.

What did you say?---My recollection of what I wrote was that the KPIs - I can't remember whether if it was in this email or another email - - -

30

COMMISSIONER: Could we have the email?

MS ELLSON: Perhaps to be clear, Dr Green, I can take you to a document, 9.0988?---Thanks.

35

In fact, if we start at 0989 for completeness, TRIM 17436. Dr Green, do you see there some text signed by Mr Ridgwell?---I do.

40

Madam Associate, 9.0988. Dr Green, do you see there at the bottom of the page an email attributed to Mr Ridgwell, 9 March 2017, 11 am?---I do.

And above that, do you recognise an email from you to Mr Ridgwell copying in the Lord Mayor and Councillors and Mr Mianich, 9 March 2017, 2.57 pm?---I do recognise this email.

45

Do you see there some concerns you raised because you have "not been consulted as part of the review process" and you "expect a proper review process to include

soliciting feedback from EMs, Directors and other stakeholders" and you wanted to "receive information about the process that was followed"?---Yes.

5 COMMISSIONER: Dr Green, do you need a moment to just read that and digest it?---That would be great, thank you.

MS ELLSON: Please let me know when you've finished, Dr Green?---Certainly. Yes.

10 Does this help you to remember what it was that you were concerned about on 9 March 2017 with respect to the process to review Mr Mileham's performance?---Yes. I recall learning that the CEO Performance Review Committee had met and opined on how the CEO's performance was tracking in relation to making a decision on his - the conclusion of his probation period and I
15 was very surprised that this had occurred without my knowledge or my being consulted in any way, and I suddenly thought, what process is being followed, and wanted to know whether there was a process being followed and it was just me that was being excluded from it or everyone outside of the committee was being excluded. May I have some more water, please?

20 While that's happening, Dr Green, if you could look at 9.0987. Do you see here, Dr Green, an email from yourself to Mr Ridgwell, Councillor Davidson, copying in Lord Mayor and Councillors and Ms Pember, as well as Mr Mianich?---Yes.

25 Is there some reason why you included Ms Pember in your email?---You're referring to the email at the bottom?

9 March 2017 at - - -?---Yes, understood, thank you. Yes, I had, I believe at this stage, spoken with Ms Pember on the telephone and I may have also exchanged
30 two or maybe three emails with her and I believe she had recommended that I speak with my fellow Elected Member colleagues about this matter.

It's a matter properly for you to resolve with your fellow Councillors, is that right?---Essentially, yes.

35 Have you had the opportunity to read through the email at the bottom of the page?---Just halfway through. Yes.

40 Is it correct to think that as at 9 March 2017, you thought that the approach taken with respect to Mr Mileham was different to that undertaken with the previous CEO?---Yes.

And you were raising questions about why?---Yes.

45 And was that because you considered that the feedback with respect to Mr Mileham's performance was being restricted in some way?---That was one aspect of it, yes.

Was there another?---There was. I understood from my conversation with Ms Pember that in the previous CEO Performance Review process, that a consultant had assisted the committee in undertaking this review process and in respect of Mr Mileham, there had been no external consultant involved.

How did you find those things out, Dr Green?---I believe that I learned about that from my conversation with Ms Pember.

Above the email at the bottom of the page, Dr Green, there appears to be another one from you at 8.58 am on 10 March 2017 to Councillor Davidson, the Lord Mayor and other Councillors and Mr Ridgwell, do you see that?---I do.

You ask for an urgent reply to your queries regarding the review process that was undertaken. Can you tell me why it was urgent?---Sure. I hadn't received a response the previous day and I was growing increasingly concerned that I wasn't going to get a response and that this process was going to happen whether I knew about it or liked it, or not.

Is that because there was a Council meeting scheduled for 14 March 2017?---Yes. I was aware that there was a Council meeting coming up and that this was going to come to Council and I didn't want to have a situation where this was put in front of me and I was being asked to make a decision about it and I wasn't able to be informed about the process that had been undertaken and the responses that had been solicited in the feedback, and from what I understood, there were some limitations in the contract with regard to something that's called a 360 degree review and I was trying to understand from Ms Pember whether we could solicit an informal review as well as a way of garnering information about the CEO's performance, because it didn't appear that I was going to get a response from Ms Davidson and I needed some information to try and form a view of some kind.

Ms Pember recommended to you to ask Council about the feedback from Elected Members?---Yes.

Did you get a response from Councillor Davidson?---No. I may have even called her and text her and I did not receive any response.

Councillor Davidson was the Presiding Member of the CEO Performance Review Committee, is that right?---She was.

You went to the Council meeting on 14 March 2017, did you?---I did attend that meeting.

Madam Associate, if you could bring up, please, 9.1008, TRIM 17442.

COMMISSIONER: Thank you.

MS ELLSON: Do you see here some Council minutes, approved for release by Mr Mileham, dated 14 March 2017?---Yes.

5 Madam Associate, 9.1009. Dr Green, do you see here that you were present at the meeting on 14 March 2017?---I do.

You departed at 6.04 for two minutes and returned at 6.06?---Yes.

10 Madam Associate, could you please turn to 9.1011. Dr Green, the fourth item at the top of the page is a confidential item with two attachments, the CEO Performance Review?---Yes.

15 You would expect the documents set out there to be included in a confidential pack?---Yes.

9.1014. It appears to be a confidential memorandum to all Elected Members from the Chief Executive Officer, 10 March 2017, "Confidential information for the CEO Performance Review"?---Yes

20 [12.45 pm]

9.1016, you see here what purports to be a report to Council with respect to the officer's recommendation for Council to approve the satisfactory conclusion of the review period of six months for Mr Mileham?---May I see the subsequent pages?

25 Subsequent as in - I'm getting to those, Dr Green?---Pardon me.

9.1017, if that helps you?---Yes.

30 Do you recognise that as the officer's report?---Yes.

COMMISSIONER: Do you need to revisit the previous page?---No, I was just wanting to see the attachment but as appropriate.

35 MS ELLSON: 9.1018. This has a different TRIM, Commissioner, 17442.

COMMISSIONER: Thank you.

40 MS ELLSON: Do you see here, "Confidential attachment 13.20A" which appears to be an employment contract between the City of Perth and Mr Mileham?---Yes.

9.1030. Do you see here a page which sets out the contract details for Mr Mileham?---Yes.

45 The preceding page, 9.1029, appears to be a page signed by Mr Mileham and the Lord Mayor and a witness, do you see that?---Yes.

If we could go to page 9.1012. Under the original officer's recommendations, confidential item 13.20, "The motion is moved by Councillor Davidson and seconded by Councillor McEvoy for Council to approve the satisfactory conclusion of the review period for Mr Mileham", do you see that?---Yes.

5

The following page, please. Do you see here a number of motions which I will ask you about a bit later, but a number of motions that were put and carried with respect to the probationary review period, do you see that?---Yes.

10 Just take the time to read through those for a moment?---Yes.

Do you accept that you weren't being asked to make any decisions with respect to approving or otherwise the contract of employment that had been included in the papers?---I do because the contract was already executed.

15

Madam Associate, going now, please, to 9.1036, TRIM 17442.

COMMISSIONER: Thank you.

20 MS ELLSON: Do you see there a confidential attachment, 13.20B?---Yes.

It appears to be "Probation period review conducted by Councillor Davidson"?---Yes.

25 COMMISSIONER: Just give Dr Green a moment to digest this, please?---Yes, I've finished reading this.

MS ELLSON: Madam Associate, if you could bring up, please, 9.1052. Do you see here "Probation review completed by Deputy Lord Mayor Limnios"?---I do.

30

Which relates to Mr Mileham's Performance Review?---Yes.

Madam Associate, 9.1068. Do you see here, Dr Green, probation period review completed by Lord Mayor Scaffidi on 7 March 2017 with respect to

35

Mr Mileham?---Yes.

There doesn't appear to be any more documents which were attached to the Council minutes on this date, do you accept that?---I do.

40 Is it correct to think then that Council were being asked to confirm Mr Mileham's permanency based on the Performance Reviews of three members of Council?---Yes, that was my assessment at the time and now.

45 Do you know whether those three members of Council agreed between themselves as to whether Mr Mileham's appointment should become permanent at that stage?---I did know.

You did? What did you know?---I knew that the Lord Mayor and Ms Davidson felt that the CEO had performed satisfactorily and wanted to conclude his probation, and Councillor Limnios did not.

5 Did you know that before you raised your concerns about the process with Mr Ridgwell, Ms Pember and other members of Council?---Yes, I did.

If we could go back to 9.1013. Did you move a motion at the meeting, Dr Green?---I don't believe that I did move a motion at the meeting.

10

Did you move a motion to revert the matter back to committee?---I do recall moving a motion to move the matter back to committee but I can't see that here.

15 Can you tell me why you did that?---I wanted the Council to discuss Mr Mileham's performance to date and for there to be a proper reviews of his performance during his probation period and I didn't believe that a proper review process had been undertaken.

20 Is it the case that you wanted to see all Councillors involved in reviewing the performance of the Chief Executive Officer?--- Yes, I felt that it was necessary for all Elected Members to be engaged and consulted in the process and for there to be a well understood review process that was consistent with market norms.

25 Do you know why the CEO Performance Review Committee adopted a different process with respect to Mr Mileham than it had with Mr Stevenson?---I did ask the question but I did not receive an answer.

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

30 COMMISSIONER: Dr Green, while counsel is paused, who did you ask the question of?---Regarding the process? I asked it of Councillor Davidson over email and Human Resources, the Manager of Human Resources, Ms Pember, and also the Manager of Governance, Mr Mark Ridgwell.

35 Thank you.

MS ELLSON: Is it your belief that ultimately Council was responsible for the management of the CEO's performance?---Yes, it was.

40 And Council ultimately is responsible for creating the process through which the CEO's performance should be measured?---Yes, particularly as the CEO Performance Review Committee Terms of Reference didn't provide delegated authority for that function.

45 COMMISSIONER: Are you moving to something different now, Ms Ellson?

MS ELLSON: I'm covering off a question to this answer, Commissioner, and then

I will be?---Madam Associate, if you could bring up, please, 9.0145. You see there some Council minutes, 22 October 2015?---Yes.

5 9.0147, please, Madam Associate. I don't have a TRIM for this, Commissioner, I apologise.

COMMISSIONER: There's no need for an apology.

10 MS ELLSON: Do you see there record of your attendance, Dr Green?---I do.

9.0148. Do you see here, Dr Green, that the Terms of Reference for the CEO Performance Review Committee are set out there?---I do.

15 It appears to contemplate that the CEO Performance Review Committee did "undertake an Annual Review of the performance, establish annual performance objectives and report on the outcome of the review", do you see that?---I do.

Do you accept that?---I do.

20 How then do you say that what had occurred with respect to Mr Mileham's performance was outside the Terms of Reference of the committee?---The performance objectives could only be established by consultation with all Elected Members and the measurement of the performance against those objectives could only be known by consultation with all Elected Members

25 [1.00 pm]

So you had an expectation that those things would occur?---Yes.

30 It's not necessarily the case that the committee was operating outside of Terms of Reference, was it?---I recall there was one aspect of this that there was not full delegated authority for the CEO Performance Review Committee.

35 It's not necessarily the case that the CEO Performance Review Committee was operating outside its Terms of Reference, having set the KPIs and reporting on the outcome, was it?---I think consideration needs to be given to the way in which those things are done. It's not just a matter of you making a document and calling it that and then ticking a box. There needs to be a certain subjective - well, a way that that can be done that would be consistent with what would be expected for a
40 CEO.

MS SARACENI: Commissioner, I'm confused. Are we talking about the KPIs, the development of KPIs or the assessment of performance and one is annual performance and I thought we were talking previously about probation review.

45 COMMISSIONER: I wouldn't want you to be confused so I will have Ms Ellson clear it up. Ms Ellson.

MS ELLSON: Dr Green, do you accept that it's not outside the committee's Terms of Reference for it to establish annual performance objectives for the Chief Executive Officer?---I do accept it's not outside its Terms of Reference.

5

Do you accept that it wasn't outside its Terms of Reference to report the outcome of the review to Council?---I accept that.

10 And do you accept that it wasn't outside the Terms of Reference for the committee to undertake an Annual Review of the performance of the CEO officer as required by the section of the Local Government Act referred to?---Yes.

15 Do you accept that rather than it being outside the Terms of Reference, it wasn't a process that you agreed with?---It wasn't a process that I agreed with but I don't - I recall there being an aspect of the function that needed to be performed, in addition to these three items on the page, that wasn't reflected in the Terms of Reference here.

20 Is now a convenient time, Commissioner?

COMMISSIONER: It is, thank you. I will adjourn the Inquiry to 2.15 pm

WITNESS WITHDREW

25

(Luncheon Adjournment)

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HEARING COMMENCED AT 2.15 PM

DR Jemma Marie GREEN, recalled on former oath:

5 COMMISSIONER: Mr Yin.

MR YIN: Commissioner, just a housekeeping matter. The next topic relates to Mr Yong. After that, I seek your leave to vacate the Bar table, if I'm not going to have an application to make at the end of the evidence?

10

COMMISSIONER: That sounds eminently sensible, thank you.

MR YIN: Thank you.

15 COMMISSIONER: Dr Green, you remain under your oath?---Yes, understood.

Ms Ellson.

MS ELLSON: There's one more matter on the previous topic, Commissioner.

20

Dr Green, did you email Mr Mileham on 15 March 2017 and congratulate him on being appointed permanently to his position?---I did email him the day following his appointment.

25 Madam Associate, document 9.1087, TRIM 17445 can be placed on the screen. Do you see there an email from Mr Mileham to yourself, 15 March 2017, 1.06 pm?---Yes.

30 Underneath that, an email from yourself to Mr Mileham on 15 March at 10.10 am?---I do.

Do you recognise this an email in which you provided your congratulations Mr Mileham?---I do.

35 And you took some effort to explain your actions during the meeting?---I did.

And to be clear, that's the meeting on 14 March 2017, yes?---Yes.

40 I just would like to ask you about one statement you made in your email, Dr Green, at 9.1088. Just take a moment to read through what you've written. You've done that?---Yes.

Dr Green you've written:

45 *Sadly, the Lord Mayor and her group did not care about how the vote looked or the adequacy of the process, or to hear my views.*

Can you explain to me what you mean by "the Lord Mayor and her group", firstly?---Certainly. I meant the Elected Members that were part of her faction.

5 Who are they?---At the time they were Councillor Yong, Councillor McEvoy, Councillor Davidson, Councillor Chen, Councillor Adamos, Councillor Davidson and the Lord Mayor.

10 And you say that, "The Lord Mayor and her group did not care about how the vote looked"?---M'mm.

15 What did you see or hear during the meeting on 14 March 2017 that led you to that view?---In advance of the meeting I had been raising my concerns about the adequacy of the process and that it would not look good if Council was divided on this process - on the decision, rather, and it wouldn't look good if it wasn't a transparent process that we had gone through, so I was referring to those two things.

20 And you felt as though your views weren't heard?---Yes, I felt that in the written correspondence and also on the night of the meeting, my views were not heard, or taken into consideration.

25 The document can be removed, Madam Associate. Are you aware that following on from that meeting, at a committee meeting on 26 April 2017, the CEO Performance Review Committee meeting determined that future reviews would be conducted by an external facilitator, are you aware of that?---I am.

30 So the process was changed following on from the meeting on 14 March 2017, wasn't it?---I was advised that the process would change but I am not aware that the process did indeed change and I learned of that in - around October of 2017.

35 No more questions for you on that topic, Dr Green. I would like to talk to you now about the Grand Central Hotel. I'm going to run you through a number of documents now so we can be on the same page with respect to the chronology, before I ask you some specific questions about your involvement in the matter?---Certainly.

Do you recall attending a Council meeting on 5 April 2016?---I do, yes.

40 Do you recall the matter of the Grand Central Hotel and some other properties being the subject of discussion on that occasion?---Yes, I do.

Do you recall the details of that?---I do.

45 Specifically?---This had been the subject of several external and internal reviews to determine the applicability for Heritage Listing and it had been a process that had been going on for some time, one and a half to two years at that stage.

I'm talking about April 2016, Dr Green. I'm not sure you're in the same timeframe as I am?---Sorry.

5 I will show you a document at 27.0881, TRIM 17171. Just to put your mind within the history of things, Dr Green, do you see there some Council minutes, 5 April 2016?---Yes, I do.

Certified?---Yes.

10 27.0884. Dr Green, do you see there you are listed an a Councillor who was present?---I do.

15 27.0887. Do you see here, Dr Green, a Planning Committee report, "Results of landowner consultation on Heritage Assessments" and, "Principles of new Heritage Assessment Planning Policy", do you see that?---I do. I may just take a moment to read it?---Yes.

20 Madam Associate, 27.0889. Do you see there, Dr Green, some details, "Need for a new Planning Policy" and a duplicate of headings, "Objectives of new Planning Policy"?

COMMISSIONER: Take as much time as you need to read that, Dr Green?---Thank you. Yes, thank you.

25 MS ELLSON: Dr Green, what do you take it to mean where it says "these places" referring to a number of places previously identified as having potential heritage significance, "Have not been assessed for inclusion in the CPS 2 Heritage List and do not have any statutory protection", what do you take that to mean?---I took it to mean that these sites have not been assessed and don't have any particular
30 protections under any sort of heritage legislation.

Madam Associate, if you can move through to 27.0890, it's a new Planning Policy methodology proposed, do you see that, Dr Green?---Just reading that now.

35 Have you read that?---Yes.

There's no bold heading on the following page, Dr Green, but 27.0891, "Some further information with respect to new Planning Policy methodology".

40 COMMISSIONER: Do you want Madam Associate to go to the next page?

MS ELLSON: Yes, please. I thought I had asked, I'm sorry, Commissioner. 27.0891?---Yes.

45 Do you see there, Dr Green, "Some further information with respect to new Planning Policy methodology"?---Yes.

Madam Associate, 27.0892. You see here some information related to some associated Planning or CPS 2 policy amendments, some information referring to the draft planning and development Local Planning Schemes regulations. A heading, "New Planning Policy" and a heading I'd like to ask you more questions about, "Entering Heritage Assessments"?---Yes

[2.30 pm]

Madam Associate, 27.0893, do you see there, Dr Green:

Information officers have identified a list of Heritage places for further investigation on the basis that they have a construction date prior to 1940, have been classified by the National Trust and/or the Heritage Council has determined that the place does not meet the threshold for entry into the State Register (assessments can be provided on request). The City has consulted with the landowners with respect to the possibility of listing these properties in the City's Heritage List, the results of consultation are detailed in Confidential Schedule 1 and below.

Do you see that?---I do.

Madam Associate, if you could turn, please, to page 27.0896. It appears at the top, does it not, Dr Green, that there's a list of properties and the table includes no names but letters of the alphabet to identify the property, provides an indication of whether a submission was received, the position with respect to it and whether any independent advice had been obtained, do you see that?---I do.

Drawing your attention to H, I and J, you see that submissions have been received on all three properties?---Yes.

All three were not supportive of the listing, do you see that?---I do.

And independent advice had been received with respect to property I and property J, a planning consultant for I and an architect for J, do you see that?---I do.

Page 27.0897 at the very bottom of the page, you will see a reference to properties H, I and J?---Yes.

And the remarks:

Officers consider that the Heritage significance of these properties remains unproven until further assessment is undertaken.

Do you see that?---I do.

27.0898, please, Madam Associate:

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

Do you see that?---Yes.

10 Do you see a motion there moved by Councillor Harley, seconded by Councillor McEvoy?---Yes.

And motion 1.3 is a note that:

15 *Further assessment was required to determine if properties H, I and J are of cultural significance and worthy of built heritage conservation and request that officers undertake internal site inspections of the properties to determine their internal condition and authenticity.*

20 Do you see that?---I do.

27.0899. Do you see a vote recorded by you in favour of the motion?---I do.

25 Madam Associate, if you could please bring up 27.3381, TRIM 23191. Do you see here a cover page which appears to contain Confidential Schedule 1 relating to the results of landowner consultation on Heritage Assessments and principles of new Heritage Assessment Planning Policy?---Yes.

30 Madam Associate, if we could turn, please, to page 27.3389. Do you see a description in a table on the left-hand side, "Property H, Motor House", an address in Milligan Street, "Heritage status: classified by the National Trust", do you see that?---Yes.

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

35 Madam Associate, if you could turn, please, to page 27.3390. You see on this page, Dr Green, some photographs, some historic and current photograph of the Motor House?---Yes.

40 And underneath a table relating to property I, described as, "Grand Central Hotel" at an address in Wellington Street, Perth?---Yes.

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

45 Madam Associate, 27.3391?---Yes.

27.3392, you see there some historical images and a then current image of the Grand Central Hotel underneath a reference to, "Property J", Kastellorizo or the

Wiluna Flats in Hay Street, do you see that?---Yes.

Have you had the opportunity to read that now?---Yes.

5 27.3393, please, Madam Associate?---Yes.

10 Dr Green, do you agree that all three properties at the recommendation of the Heritage Officers, required further consultation with the owner in relation to reasons for objecting to the Heritage Listing and an internal inspection to determine internal condition and authenticity?

MR YELDON: Sorry, I wonder if Counsel Assisting could repeat the question, I didn't hear the last word.

15 COMMISSIONER: Yes, of course. There's a lot of coughing in the room, I appreciate that. No, I'm not looking to blame anyone, it's just hard to hear sometimes what the questions and answers are. So no difficulty at all, Mr Yeldon.

MR YELDON: Thank you.

20

MS ELLSON: I'll repeat the question?---Please do.

25 Do you consider that all three properties, H, I and J, at the officer's recommendation, were moving forward for further consultation with the owner in relation to reasons for objecting to the Heritage Listing, and requesting internal inspections to determine the internal condition and authenticity?---I accept that there may be aspects of the building that need to be assessed both internally and externally that would form part of the Heritage Listing and that the officer's recommendation to do that to conclude the assessment was needed.

30

Do you agree that in all three cases, further consultation with the owner was going to take place?---Would you mind taking me back to the first page, please?

35 I can take you back to where these things are suggested in the minutes, Dr Green. 27.3389?---Thank you.

"Proposed action" at the bottom?---Is it possible to go back to the original page with all the letters?

40 27.0896, please, Madam Associate?---Is it possible to turn to the next page, please.

27.0897?---I - - -

45 Just so you're armed with all of the information, Dr Green, 27.0898, the first paragraph might assist you?---Thank you. Would you mind repeating your question to me, please?

Yes. Do you agree that properties H, I and J were to be moved forward by further consultation with the owner in relation to the reasons for objecting to the Heritage Listing, as well as an internal inspection to determine the internal condition and authenticity?---I do.

5

Thank you, Madam Associate. Do you recall attending a Council meeting on 19 July 2016, so some months later, Dr Green, where two of the three properties H, I and J had progressed forward?---I believe I do.

10 Madam Associate, if you could bring up page 27.0939, TRIM 17172.

COMMISSIONER: Thank you.

15 MS ELLSON: Dr Green, do you see there some certified minutes pertaining to a Council meeting on 19 July 2016?---I do

[2.45 pm]

20 Madam Associate, 27.0942. Do you see yourself as being present at the meeting?---Yes.

25 Madam Associate, 27.0945. Do you see there, Dr Green, an item regarding the results of further assessment to determine if the identified properties were of cultural significance and worthy of built heritage conservation?---Yes.

You see there reference to the meeting on 5 April 2016 which I just took you to?---Yes.

30 Madam Associate, 27.0946. You see there a reference to property H and property J at the top of the page?---Yes.

And a note which says, "Property I will be reported to Council as a separate future report", do you see that?---Yes.

35 Do you have any insight into why that was to occur at this point?---At this stage, I don't - this didn't kind of raise any cause for concern. It didn't come to my attention that there was anything peculiar at this point.

40 27.0949, "Deemed provisions requirements", do you see that heading, Dr Green?---Yes.

The information under the heading, "Deemed provisions requirements" says, among other things:

45 *Should Council resolve to propose that places be included in the CPS 2 Heritage List, the Planning and Development Local Planning Scheme Regulations 2015 requires formal consultation to be undertaken prior*

to places being included in the CPS 2 Heritage List.

?---Yes.

5 :

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

10

Do you see that?---I do.

Skipping that paragraph there - sorry, I won't. It says:

15

Officers will report back to Council once the formal consultation with affected owners in this regard is complete. Whilst the City has already undertaken informal consultation with affected owners, the next phase of consultation will allow affected owners to formally respond to Council's proposed Heritage Listing prior to it making a final decision on the matter.

20

Do you see that?---Yes.

27.0950 - before that happens, I'm sorry, Dr Green, you can see that the information contained under the heading, "Deemed provisions requirements" relates to the Motor House and the Kastellorizo Building, do you see that?---I do.

25

Dr Green, do you see here a motion from Council, moved by Councillor Adamos, seconded by Councillor McEvoy relating to the Motor House, or property H in that:

30

Council proposes to include the Motor House in the CPS 2 Heritage List and gives the affected owner and occupier a description of the place, the reasons for the proposed entry and 21 days to make a submission, and Council notes that a report will be presented back to Council with the results of the consultation with the owners and occupiers located at the address in Milligan Street, Perth."

35

?---Yes.

40

Do you accept then that property H, the Motor House, had moved on this occasion, to the next page of Heritage Listing?---Yes, I do.

27.0951. Point 4, a motion that:

45

Council determines that Kastellorizo (Wiluna Flats) does not meet the threshold for entry in the CPS 2 Heritage List due to its low

authenticity and integrity.

Do you see that?---Yes.

5 And you voted in favour of those motions^ ?---Yes.

Madam Associate, the document can be taken down. You mentioned, Dr Green, during the course of my questions to you about the movement of those properties through the Heritage Listing process, that you had no cause for concern when we were talking about matters in July 2016. Did you become concerned about the movement of the Grand Central Hotel through the Heritage Listing process at some stage after that?---Yes, I did.

10
15 Can you tell me why?---I learned after the appointment of the CEO substantively from the Director of Economic Development that the CEO had delayed putting up to Council the Grand Central Hotel Heritage Listing.

20 When you say, to place this in time, that you learned these things after the appointment of the CEO substantively, do you mean you learned after the appointment of the CEO to the position or permanently to the position after the expiry of the probation period?---Substantively in the position for the first time and before the probation period was up, so at the beginning of the appointment. Approximately a month after he was appointed substantively in the position and during his probation period, I learned of this situation.

25
Evidence before the Inquiry suggests that Mr Mileham's appointment was endorsed on 1 September 2016?---Yes.

30 So you learned about these events after 1 September 2016?---Yes.

Did you raise your concerns with Councillor Harley?---I believe I did.

35 Can you tell me whether you became aware of these concerns in email or orally, or in some other way?---I believe I first became aware of the situation orally in a conversation that I had with the Director of Economic Development.

The Director of Economic Development was Ms Battista?---That's correct.

40 What did Ms Battista say to you in this conversation?---She said that the Heritage Listing for the Grand Central Station was due to come before Council - - -

45 COMMISSIONER: The Grand Central Hotel, I think?---Sorry, pardon me. Yes, thank you, was due to come before Council prior to the CEO's substantive appointment into the position and that during the Elected Member group acquittal process for deciding what items would be put into the agenda, the CEO had said that he wanted to delay that until after his appointment into the role substantively.

MS ELLSON: The information that was provided to you by Ms Battista you described as raising some concerns in your mind. What did you do about that?---I recall speaking with Councillor Harley about the matter. I may have also discussed it with Councillor Linnios and I may have also consulted with other
5 people but I can't recall anything at this time.

Did you raise your concerns with the Lord Mayor?---I don't recall raising it with the Lord Mayor.

10 Did you raise it with Mr Mileham?---No, but I just remembered that I also did raise it with the Manager of Governance, Mr Mark Ridgwell, and with a partner at the law firm Jackson McDonald.

15 Did you raise it orally or in writing with Mr Ridgwell?---Orally.

Can you tell me when?---It was approximately December 2017 at Council House in the Lord Mayor's office and there was a meeting between Mr Ridgwell, a partner who works at Jackson McDonald, I can't remember his name, I'm sorry, and myself.

20 Mr Mileham was present or not?---He was not present.

Why did you wait so long to report it to Mr Ridgwell?---There were so many things of this nature going on at the time and I recall thinking that - actually, I
25 remember some more now.

Just finish your answer to that question and I will ask you about the others?---Okay, sure. I thought that the appropriate place to deal with this was in the CEO Performance Review Committee.

30 And you said you remembered some other things?---Yes. So in October of 2017 I was appointed the Deputy Lord Mayor position and I was cognisant that Council was supposed to have appointed an external consultant to undertake the review for the CEO's performance and in the first meeting that I had with the CEO and
35 Mr Ridgwell, I asked for an external consultant, a list of potential consultants to be provided and I asked if an expert in employment from a tier 1 law firm could be provided.

40 For Mr Mileham's Performance Review?---Yes.

Did that happen?---No, it did not. If I can expand on that a little bit?

45 What happened?---Two weeks or so later I asked Mr Ridgwell if he had found somebody and he had said, sorry, he was really busy and that he had not and then two weeks later I asked again and I got the same answer and then I asked the CEO and he said, "Oh, I've been asking Mr Ridgwell to do this, I don't know why he's ignoring me. I've asked him several times. I will follow up." Then I recall

another conversation with the CEO where I asked again and it just began to occur to me that neither of them intended to do this

[3.00 pm]

5

Did you follow that up any further?---Yes, I did.

10 What did you do?---I convened a Council meeting to appoint a Chair to the CEO Performance Review Committee because the Presiding Member appointment lasts for two years and when I became the Deputy Lord Mayor, the position lapsed and I convened a meeting to elect a Chair and nominated myself to that position with the intention of using the committee process to appoint an external advisor.

15 Did that occur?---Yes, it did.

20 Going back to the Grand Central Hotel which is what we were talking about, you've mentioned Mr Mileham's Performance Review but I'm not too sure on how that relates specifically to your concerns about the Grand Central Hotel moving forward in the Heritage Listing process in around September 2016. What else did you do in September 2016 about your concerns?---I can't recall exactly what I did in that time period.

25 Did you try to work with Councillor Harley and Deputy Lord Mayor Limnios to move the hotel through?---I can't recall .

From time to time, Dr Green, did you message Councillor Harley using your telephone?---I did.

30 To Councillor Harley's private telephone?---Yes.

35 Madam Associate, if you could bring up, please, 27.3425. Do you see here, Dr Green, a start time, 21 May 2016, last activity, 12 September 2018, participants, Mr Harley and your name?---Yes, I can see my name.

There's a telephone number next to your name, do you recognise that as a telephone number belonging to you?---Yes, that is my - a telephone number.

40 Madam Associate, if you could turn, please, to page 27.3426. Commissioner, this is TRIM 23101.

COMMISSIONER: Thank you.

45 MS ELLSON: I'm going to ask you to find, Dr Green, a message time stamped 11/9/2016, 12.02.59 pm?---Yes.

Assuming that this is Mr Harley's private telephone, do you see there a message

from yourself to Mr Harley or Councillor Harley at 11 September 2016, 12.02.59 pm?---Yes.

5 And the message says, "Are you going to work on Lily regarding Lisa and Joe's heritage building"?---Yes.

10 Does this help you to recall what other things, or what you were doing about your concerns about the Grand Central Hotel moving through the Heritage Listing process in early September 2016?---I can't recall exactly but I do remember discussing this with Councillor Harley and he may have said he intended to speak to Lily or I may have suggested it, I can't recall specifically, but certainly it was an area of concern in terms of how the vote was going to go.

15 Just to be fair to you, Councillor Green, I will ask you to read through the messages that appear on that page?---Yes.

Up until the end of the conversation which is a couple of pages away.

20 COMMISSIONER: Dr Green, who is the Lily who is referred to?---I'm sorry.

Who is the Lily to which reference is made?---Ms Chen, Councillor Chen.

Thank you?---Yes, I've finished reading it.

25 MS ELLSON: Next page, please, Madam Associate, 27.3427?---I just remembered that I did speak with Ms Chen - I'm not sure if it was at the same time as this but around the time of the Heritage Listing. I can provide you more info, if you'd like.

30 When you say "about the time of the Heritage Listing", what do you mean?---The time that the decision was made before Council to list the Grand Central Hotel.

To propose the listing?---Yes.

35 And give the owner 21 days?---Yes.

I will come back to that, Dr Green?---Yes, I've finished reading that.

40 Next page, please, Madam Associate, 27.3429. You will see, Dr Green, the conversation ends at the second last message on that page.

COMMISSIONER: 3429.

45 MS ELLSON: Yes. 3429, please, Madam Associate?---I've finished reading that.

Thank you, Madam Associate, that can be taken down. Dr Green, does reading that conversation assist you to remember anything more about why you were going

to or wanted to involve Councillor Chen in voting for the movement of the Grand Central Hotel through the process?---Yes.

5 What?---I was aware that her vote was going to be important in deciding the ultimate fate of the listing because in this particular matter, the Lord Mayor would need to abstain from voting, which would mean that it - there would be somebody else that would be presiding over the meeting and that would be, at that point, the Deputy Lord Mayor, James Limnios and he would have a casting vote. So if it was split four even, he would have a casting vote over the way it would go, and so I
10 recognised that Lily's vote could mean that the officer's recommendation could be supported by Council with her support, and I felt that it was unlikely that any of the other Elected Members would be willing to vote consistent with the officer's recommendations because they appeared to be very closely aligned with the Lord Mayor.

15 Did you think you had a chance to convince Councillor Chen to vote with you?---No, I did not think there was a very strong chance of getting to vote consistent with us because her track record until that point was to vote consistently with the Lord Mayor and her team.

20 27.3461, please, Madam Associate, TRIM 23381. Did you message Deputy Lord Mayor Limnios on 11 September 2016 with respect to Councillor Chen's vote?---Quite possibly.

25 MS SARACENI: Commissioner, sorry. Just to clarify, was that with SMS or some other means of communication?

COMMISSIONER: That's a fair point. Would you please confirm that?

30 MS ELLSON: SMS. Do you see here what purports to be an extract from Councillor Limnios' private mobile telephone and a telephone number attributable to his wife. Did you from time to time use a personal telephone number for Mr Limnios to send SMS messages?---I think I predominantly messaged him on his personal number.

35 Dr Green, do you see here on the left-hand side, second last from the bottom, a message from or purporting to be from a mobile number above your name?---Yes.

40 Do you recognise that as a mobile number of yours?---I do.

And underneath, a number attributable to Councillor Limnios' family?---Yes.

45 Do you accept that this - if you read along the column there first?---The message that I wrote to Mr Limnios?

Do you accept that it is one?---Yes, I do.

It says:

5 *Lily needs to realise that she will look stupid and ill-informed of -
presumably you meant "if" - she votes against the officer
recommendations.*

Do you see that?---I do.

10 Did you speak to Ms Chen in these terms to her?---I did.

When?---I can't recall exactly. I may - - -

15 The document can be taken down - I'm sorry to interrupt you, Dr Green?---Yes. I
can't recall exactly the date but I spoke with her and I told her that the officer's
recommendations were really clear and she told me that she had been to the
property and it wasn't particularly special from her perspective

[3.15 pm]

20 Did you get any further with Councillor Chen than speaking to her about it and
being told that she had been there and it wasn't that special?---I think I may have
messed her as well. I most can recall the conversation that I had with her and
what I was left with was that she was unconvinced.

25 Following on from your message to Councillor Limnios, did you message
Councillor Harley with respect to potential action you would take to move the
matter through Council?---I may have done and quite well could have done but I
don't recall specifically.

30 Madam Associate, if you could bring up 27.3425. Do you see here again,
Dr Green, a message, or instant messages purportedly between yourself and
Councillor Harley to Councillor Harley's private mobile phone number?---Yes.

35 And you see your name as a participant?---Yes.

You've identified that phone number as your own?---Yes.

40 Madam Associate, could you please turn to 27.3430. The TRIM again for this
document, Commissioner, is 23101?---It changed like three pages at once, is that
correct?

Yes. Dr Green, do you see a message there time stamped 11/9/2016?---Yes.

45 Just read through the messages below that on the page. This conversation extends
into several pages beyond this?---Yes.

27.3431, please, Madam Associate?---Yes.

27.3432?---Yes.

27.3433?---Yes.

5

27.3434 to a message time stamped 3.02 pm?---Yes.

Have you read that, Dr Green?---Yes.

10 Madam Associate, back to 27.3430, please. Dr Green, this conversation, does it help you to remember what, if any, arrangements you were trying to make with Councillor Harley with respect to the Grand Central Hotel's movement into the Heritage Register?---Yes.

15 Can you explain what they were?---As I mentioned previously, I formed the view that Councillor Chen's vote was important for the officer's recommendations to be carried by Council and I spoke to Councillor Limnios and realised that he was supportive of the listing and Councillor Chen was important for the majority vote. So I spoke with Lily, as I mentioned, and tried to persuade her and it appears that
20 Councillor Harley also did too, and tried to persuade her of the merits of listing the property as per the recommendations of the officers.

Madam Associate, if you could move to page 27.3431, the message at 3.34 pm, Dr Green, the third one from the end:

25

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

Do you see that?---Yes.

30

Can you tell me why you wanted to "make a big noise about this"?---My observation in my time on Council, which was 11 months at this stage, was that many of the decisions that were made were based on group voting rather than on the merits of the matter and it struck me as not the appropriate way that people
35 should be voting in making decisions.

Up until this point, Dr Green, you hadn't witnessed any group voting with respect to the Grand Central Hotel's passage, had you?---On this particular item, I don't believe so.

40

27.3432, please, Madam Associate. Message at 12 September 2016, 10.13 pm, do you see that?---Would you mind repeating the time, please?

10.13 pm. Do you see a message there:

45

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

Do you see that?---I do.

5 Can you tell me what you had seen and heard which led you to believe that "Lisa" and I take that to be Lord Mayor Scaffidi?---It is, yes.

"Was trying to give Lily", I take that to be Chen?---Yes.

10 "A Nanjing trip"?---I can't recall how I came to know this. I don't remember how I came to know of this situation.

15 You mention that Ms Scaffidi was trying to give Ms Chen a Nanjing trip "to win her favors to knock down the hotel"; what did you see or hear which led you to believe that by 12 September 2016 the Lord Mayor wanted to knock down the hotel?---Again, I can't recall how I came to know that. It may have been from the pack, the Council meeting pack but I may have heard that from other places, I can't recall.

20 The document can be removed, Madam Associate?---Actually, I just remembered something on that question.

Yes?---I actually believe that Councillor Linnios told me that.

25 COMMISSIONER: Told you what?---That the Lord Mayor was offering Councillor Chen the Nanjing trip to earn her favour in relation to the heritage vote, vote for the hotel on the Heritage Listing.

Thank you.

30 MS ELLSON: Did you make an arrangement with Councillor Harley for him to attend a Planning Committee meeting on 13 September 2016?---Potentially. Is that the Planning Committee meeting where the Heritage Listing was discussed?

35 Yes, it is one of them?---I did attend - I did make an arrangement with Councillor Harley to attend one of the committee meetings, yes.

40 Sorry, you made an arrangement with Councillor Harley for you to attend yourself?---No. I recall there was one that I wasn't able to attend and I might have discussed that with Councillor Harley and then I also attended one myself.

45 Following on from the messages that we have looked at, the SMS and the instant messages, did you, Councillor Harley and Deputy Lord Mayor Linnios make an arrangement for you to make your presence known at Planning Committee meetings where the Grand Central Hotel was to be discussed?---Yes, I believe that we did discuss attending the committee meetings in relation to that item.

What difference did you think your mere presence would make?---I thought that -

well, it was not so much that actually, it was more that, in the committee meetings, you hear more information and the justifications for why Elected Members vote in a particular way or are inclined to vote in a particular way. So it's a forum where it's more readily available to ask questions and hear more details about a particular item and the Council meetings tend to go much faster and there's less discussion around items.

Did you expect your presence would make a difference at a Planning Committee meeting?---Probably not but potentially - I place that a low probability of change but that it would increase the likelihood of Elected Members doing their job properly and providing reasonable rationale for any decision that they might make.

Madam Associate, going back to 27.3425, 23101 is the TRIM.

COMMISSIONER: Thank you.

MS ELLSON: Again, Councillor Green, we are looking here at a page of messages purportedly between yourself and Councillor Harley from Councillor Harley's private mobile number, do you see that?---Yes.

Madam Associate, 27.3434, please. Do you see here a message under the middle of the page, Dr Green, 13 September 2016, 5.50 pm?---Yes.

Message from Councillor Harley?---Yes.

And your response. Could you read through those messages and tell me when you've finished, please?---Yes.

27.3435, please, Madam Associate. Please let me know when you've finished reading that page, Dr Green?---Yes.

There's just one line on the next page I need you to read, Dr Green, 27.3436, the top line?---"Can I call you later? "

That's all, yes. Dr Green, does this - - -

COMMISSIONER: Do you want the page taken down?

MS ELLSON: Yes, please. Thank you, Commissioner.

Dr Green, does reading through those messages assist you to appreciate what was happening in around 13 September 2016 with the Grand Central Hotel?---Yes.

Is it fair to say that you still had concerns about its movement through the process?---Yes, it is fair to say that.

And it is fair to say that those concerns extended to the actions of the Planning

Committee in moving the matter through the process?---Yes

[3.30 pm]

5 Is what was in those messages from Councillor Harley - I withdraw that. Do you recall attending a Planning Committee meeting on 25 October 2016?---I recall attending a Planning Committee meeting in relation to this matter, I can't remember the exact date.

10 Is one of the reasons that you attended the meeting what was contained in the messages we have just looked at?---Without question.

Had the level of your concern changed about the movement of the hotel through the process at the time these messages were sent, 13 September 2016?---I remained concerned. I don't recall becoming less concerned; if anything, I would have become more concerned.

Do you recall further messages being sent, including Councillor Green, with respect to encouraging her to vote with you, Deputy Lord Mayor Limnios and Councillor Harley?

COMMISSIONER: Councillor who? Did you mean Chen?

MS ELLSON: Yes, if I didn't say that.

COMMISSIONER: You said Green.

MS ELLSON: I'm sorry, Councillor Chen, Deputy Lord Mayor Limnios and Councillor Harley?---Yes, I do recall engaging with Councillor Chen in dialogue, both face-to-face and on the phone, via text message to try and encourage her to consider the matter properly.

And from time to time that involved group messages with Deputy Lord Mayor Limnios, Councillor Harley and Councillor Chen?---Quite possibly. I can't recall exactly but it's entirely possible.

Madam Associate, if you could please bring up 27.3479, TRIM 23381.

COMMISSIONER: Thank you.

MS ELLSON: Do you see here a table of what purports to be SMS messages and do you recognise your telephone number on the left-hand side, in the fourth row?---Yes.

45 Do you accept that these are messages between yourself and Councillor Limnios' family mobile telephone?---Yes.

Madam Associate, if you could turn, please, to page 27.3480. There's a large text message at the bottom of the page, Dr Green, which starts, "Hi Lily, Reece and Jemma", do you see that?---I do.

5 Could you read that to yourself, please?---Certainly. Yes.

Do you agree that it seems as though Councillor Limnios is trying to persuade you about your vote in this text message?---Yes - well, that's what's written in there but you're asking me slightly different, I think.

10

It seems as though he is, was he? Did he need to, is my question? Did Councillor Limnios as at 18 September 2016 need to persuade you as to which way to vote on the movement of the Grand Central Hotel?---No, he did not. He did not need to do that.

15

The message, Councillor Limnios referred to the matter being closely scrutinised; do you agree with that assessment as at the time the message was sent?---Yes. My understanding was that members of the Administration were becoming concerned with the process that had occurred to date and that it shouldn't take that long to get a decision to Council and it shouldn't require that many external reports and there was a growing concern that there was kind of special treatment being given to this listing and I think there was concern that there was preferential treatment being given to the property by virtue of the fact of who owned it.

20

25 Do you consider that the property needed special treatment because of the media attention it had received?---No.

Can you tell me why you say no?---I think that it should be assessed on its merits, like everything else and that the process should be transparent, perhaps because there would be more attention on it, but it shouldn't need additional processes or special processes, it should be treated like any other property.

30

Madam Associate, could you bring up, please, 27.1143. I've spoken to you, Dr Green, about your attendance at a Planning Committee meeting and I would just like to take you through the documentation to identify it. Do you see there Planning Committee minutes dated 15 November 2016 with an error which indicates it should be 25 October 2015?---Yes.

35

Madam Associate, if you could turn, please, to page 27.1146. Do you see, Councillor Green, an indication of the officers or the members in attendance. Under the heading, "Observers", you're listed there?---Yes.

40

As entering at 5.36 pm and departing nearly an hour later at 6.34 pm?---Yes.

45 Madam Associate, 27.1147. Commissioner, TRIM 19697. Do you see there an item, "Proposed entry of Grand Central Hotel, Wellington Street in the City Planning Scheme No 2"?---Yes.

Do you have a memory of what happened at this meeting, Dr Green?---I have some recollection of what happened at the meeting.

5 27.1156, please. While that's happening, Dr Green, was it usual for members who are not members of committees, to receive committee papers for the committees they are not members of?---Yes.

10 Did you receive the Planning Committee papers before attending the meeting?---I did.

On 25 October 2016?---I may not have received them at that time. Typically they would be put in our pigeonholes, the little post box near our office. So I'm not sure exactly when I would have collected mine.

15 Madam Associate, going back to 27.1148, do you see on this page, Dr Green, at item PL177/16, an item relating to a report from Arts, Culture and Heritage Unit relating to the Grand Central Hotel?---Yes.

20 And a paragraph which reads:

25 *It should be noted that in accordance with the City of Perth standard procedures, further consultation between officers and the landowner in relation to identifying specific zones of cultural heritage significance of a place that is being considered for Heritage Listing is not usually undertaken at this point in the Heritage Listing process.*

?---Yes.

30 Can you provide any reason as to why that paragraph might be there?---I think it's because, as I mentioned in my response a few minutes ago, officers within the City were becoming concerned with what was happening with regard to the listing process for the hotel.

35 Did you have any discussions with anyone before attending the meeting on 25 October 2016 about the potential for the property to be proportionately listed?---I vaguely remember that term but I can't remember any specifics. The only way it may have been discussed was where the facade of the building might have been listed but then the rear bit would not be and that would allow a high rise building to be installed. So I do - it's just sort of coming to me now that there was this ability to have a type of listing. It was mentioned that was a potential possibility but I do remember understanding that you would still list the whole property and then you would have to apply for a separate application to do that.

45 Are you aware as to whether or not a proportionate listing had ever been done before in the City?---I'm not aware of whether it is in fact a thing or if it has ever been done.

27.1156, please, Madam Associate. A motion moved by Councillor McEvoy and seconded by Councillor Yong that:

5 *Council proposes to include the Grand Central Hotel, to give the affected owners and occupier a description of the place, the reason for the entry and 21 days to make a submission, and noting that officers will report back to Council with the results of the consultation.*

10 Do you see that?---Yes.

If you recall, Dr Green - will you accept that's the same result that was made with respect to property H?

15 COMMISSIONER: Dr Green, would it be helpful if you were reminded of what happened with property H?---Yes, please.

MS ELLSON: Commissioner.

20 27.0949, please, Madam Associate - I'm sorry, I skipped ahead there. Madam Associate, 0939, please. Do you see there some Council minutes, 19 July 2016?---Yes - August.

Sorry?---Pardon me, I was looking at the date the minutes were signed.

25

27.0950. Do you recall property H was the Motor House, do you accept that?---Yes

[3.45 pm]

30

Do you see here the motion Council moved relating to the Motor House property is in the same terms as that we were looking at for the Grand Central Hotel?---Yes, I concur with that assessment.

35 Thank you, Madam Associate. That being the motion moved for the Grand Central Hotel on 25 October 2016?---Yes.

Dr Green, do you recall being advised by Ms Battista in February 2018 of her concerns about the Wellington Street hotel not being above board?---Yes.

40

Is it the case that Ms Battista raised these things with you twice?---I would say at least twice. I can recall two occasions and it may be that we discussed it on more than two.

45 Just to cover off on this, Madam Associate, if you could please bring up 27.1812. In the middle of the page there you see an email from Ms Battista dated 28 February 2018, 6.43 am?---Yes.

From Ms Battista?---Yes.

5 And she indicates her concerns with respect to the handling of the Wellington Street property?---Yes.

Thank you, Madam Associate, that can be taken down. You've mentioned to speaking to Ms Battista about her concerns in September 2017 - sorry, 16?---Yes.

10 Are you able to provide any insight as to why Ms Battista again raised her concerns with you after so much time had passed?---Certainly. The Director of Economic Development had raised numerous concerns to me in the course of my time on Council but specifically in February, I asked her to send me a summary of all of the issues that she had - - -

15 What year, Dr Green?---Pardon me, in February of 2018, I asked her if she could provide me with a comprehensive list.

20 And this was among them?---Yes.

I have no more questions on the topic of the Grand Central Hotel, Commissioner. I wonder if it might be convenient to have a short break.

25 COMMISSIONER: How much longer do you anticipate being with Dr Green.

MS ELLSON: 20 minutes to half an hour?---I'm okay to continue, but I'm happy to have a break.

30 COMMISSIONER: I think there might be others who would like a break, Dr Green. I will adjourn for 10 minutes.

WITNESS WITHDREW

(Short adjournment)

35

40

45

HEARING RECOMMENCED AT 4.02 PM

DR Jemma Marie GREEN, recalled on former oath:

5 COMMISSIONER: Yes, Ms Ellson.

MS ELLSON: Commissioner.

10 Dr Green, in June 2017, namely, 6 June 2017, it appears the Code of Conduct was amended to insert bullying provisions. Do you have a memory of that occurring?---No, I didn't recall it specifically but I did hear about it last week via the Inquiry.

15 I will take you to some documents and perhaps you can discuss them with me?---Sure.

Madam Associate, if you could bring up 15.0939, please, TRIM 22317.

20 COMMISSIONER: Thank you.

MS ELLSON: Do you see here, Dr Green, some Council minutes, 6 June 2017, approved for release by Mr Mileham?---Yes.

25 Madam Associate, if you could turn to the page, 15.0941. Do you see here "Councillors present", and you are among them?---Yes.

You accept that you attended the meeting?---Yes.

30 15.0946. Do you see under the table, Dr Green, a list of reports?---Yes.

15.0947, please, Madam Associate. Do you see there 13.18, "City of Perth Code of Conduct review"?---Yes.

35 Madam Associate, 15.0969. Dr Green, do you see there Code of Conduct with tracked changes through it?---Yes.

Attachment 13.18A. Do you see the attachment number, up the very top of the page?---Yes.

40 Madam Associate, 15.0997, Part 6, "Bullying and inappropriate behaviour"; just take a moment to read through that, Dr Green?---Yes.

45 Having read that, Dr Green, can you provide any insight into why bullying provisions were inserted into the Council's Code of Conduct on 6 June 2017?---Am I able to read the agenda item from the beginning of the item, please?

Going back to the Council minutes, the meeting was going to be closed in the

order of business, was from 15.0945, please, Madam Associate. Do you see there on the page an agenda, order of business and index to the meeting, 6 June 2017?---Yes. I was asking for the actual agenda item for the change of policy, so inside the pack for that particular item, the opening preamble about that particular matter.

5

I will try and have a look for you, Councillor Green, while we move on?---Sure.

Without referring to the agenda papers, do you have a recollection of the provisions being considered?---I don't. I don't specifically recall what pre-empted this. For example, some policies required review just as a matter of course after a period of time, whereas others were for a particular reason and on this matter, I can't recall the reason why it was being brought to us.

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Purpose and background information is provided, Madam Associate, at 15.0950?---It is possible to go back one page, please?

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15.0949, please, Madam Associate?---Thank you. Is it possible to turn to the next page, please?

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Madam Associate, 15.0950, please?---Okay, I've finished reading that, thank you.

Madam Associate, 15.0953. Dr Green, I will draw your attention to the heading, "New Part 6"?---Yes.

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"Bullying and inappropriate behaviour", if you could read the material under that heading?---Thank you.

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To be complete, 15.0966, please, Madam Associate. Dr Green, you will see a section there, "Part 6, bullying and inappropriate behaviour, new part." If I could direct your attention to those passages, please?---Yes.

Madam Associate, if we could please turn to 15.0997. Having considered the agenda items now, Dr Green, are you able to provide some insight into why bullying and inappropriate behaviour provisions were inserted into the Code of Conduct in June 2017?---At the time of this, it occurred that it was just in relation to the review that was being undertaken and obviously a number of different policy changes were cited as a kind of reason why. I didn't read anything into this, in terms of, that there was a particular reason other than, this is something that was becoming more topical and perhaps was being considered in part of the legislation and needed to be incorporated into our Policy Manual.

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You mentioned a review, that was a review being driven by Mr Mileham, was it?---Well, the reason I asked to look at the beginning of the item is I wanted to understand what was being explained to Elected Members as the reason for this review and what it said was that it had been - the last review was undertaken in 2010 and under the policy it was required to be reviewed every four years. So it

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was late in being reviewed and then it went on to explain several pieces of new legislation and updates to legislation that needed to be taken account of for our policy to be contemporary.

5 Dr Green, my question was, it was a review being driven by Mr Mileham?---That wasn't my understanding at the time. My understanding, it was just part of the review process, the standard review process.

10 Can you think of any conduct on your part which may have driven these particular changes?---No.

15 Any conduct on the part of any other Elected Members leading up to June 2017 which may have - - -?---I would say that there were quite a few points of contention between Elected Members and the Administration and if I was to characterise what was going on at that point, it was fairly tense but there's not a particular incident that I can recall from this period of time that would have precipitated this.

20 The document can be removed, Madam Associate. Dr Green, do you recall a time which Mr Mileham introduced something called the CEO Inbox?---Yes.

In late 2017 was that?---I can't remember the exact date but around about 2017 feels about the - - -

25 The end of 17?---No, no, it was earlier than that. It was - - -

Mr Mileham's evidence suggests that it was middle to late 2017, would you agree with that?---My recollection is that it was in place earlier than that

30 [4.15 pm]

35 Can you tell me how it was received by the Elected Members, or how was it received by you actually?---I thought it could work if there was a reasonable response time and the responses were adequate, but what I observed was that it was taking a very long time to get responses from the inbox and it was a five day service level agreement and then if you had to respond with a follow up point of clarification, you had to wait another five days for a response in many instances, and the quality of response was very poor in many respects, and I found the process, in the way that it was implemented, quite frustrating.

40 Did you take up Mr Mileham's offer to have one-on-ones with him?---I did.

45 Did you find that useful?---I did find it useful to be updated on what was going on in the City and also to see what I might do to assist him in liaison with the other Elected Members, particularly when I became the Deputy Lord Mayor.

Did you participate in a buddy program with respect to committees and the

Directors?---I'm not aware of a buddy program.

5 Did you have a meeting with Mr Ridgwell and Mr Mileham on 5 December 2017 and speak about, among other things, complaints about the CEO Inbox and what that was causing in the Administration?---I do recall a meeting at the start of December with the CEO and all of the Elected Member group. I believe that was on 6 December. I can't recall specifically the meeting on 5 December about the inbox but I do remember talking with the CEO about the problems Elected Members were experiencing with it.

10 What about the problems the Administration were experiencing?---The Executive Assistant for the Elected Members was given the role of looking after the inbox and she was asked to do that in addition to her existing role and she found it really difficult to manage the additional responsibilities. Then the function was moved to 15 another - she resigned and then the function was moved to another area and I remember that the CEO was expressing to me his frustrations with how it was going.

20 COMMISSIONER: How what was going?---How the process was going. I think he described that Elected Members were frustrated by the process and he said he was frustrated by how it was going as well, and that he was asking the staff to be more responsive and provide more detailed answers and he would take the complaints and see what could be done to improve matters.

25 Ms Ellson, we still have some way to go, do we?

MS ELLSON: Yes, a short way, yes. I note the time, Commissioner.

30 COMMISSIONER: It would be desirable to finish this today if possible, but I know that there is another commitment that requires attention, so now might be an appropriate time to adjourn the Inquiry. I will adjourn until 10 am tomorrow morning. Mr Howard.

35 MR HOWARD: Commissioner, since we resumed, some of the documents that my learned friend has been taking the witness to, or in fact all of the documents are not documents that were supplied ahead of Dr Green giving evidence. Simply in the interests of trying to assist to speed things along, the documents that are going to be put to Dr Green tomorrow, rather than having to read them on the screen, if 40 we can have those, it may speed things up.

COMMISSIONER: That's a matter to which counsel will turn her mind during the adjournment and there obviously is some wisdom in what you say, Mr Howard.

45 MR HOWARD: Thank you.

COMMISSIONER: Hopefully that will be the case, but that's a matter I will leave to counsel. Is there anything else of a housekeeping nature which I need to deal

with before I adjourn the proceedings for the day? Apparently there is.

MS ELLSON: Sorry, I am just checking with my learned solicitor.

5 COMMISSIONER: It's all right, Ms Ellson.

MS ELLSON: No, Commissioner.

10 COMMISSIONER: Thank you. I confirm I will adjourn the proceedings until 10
am tomorrow morning.

WITNESS WITHDREW

**AT 4.21 PM THE MATTER WAS ADJOURNED
UNTIL TUESDAY, 3 SEPTEMBER 2019**

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