

# **EPIQ AUSTRALIA PTY LTD**

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**INQUIRY INTO THE CITY OF PERTH**

**PUBLIC HEARING - DAY105**

**TUESDAY, 10 SEPTEMBER 2019**

**INQUIRY PANEL:**

**COMMISSIONER ANTHONY (TONY) POWER**

**COUNSEL ASSISTING:**

**MS KATE ELLSON**

**COUNSEL APPEARING:**

**MR ALEN SINANOVIC (Ms Michelle HOWELLS)**  
**MR JOEL YELDON and MS EMILY CHAPPELOW (Ms Janet DAVIDSON)**  
**CAV. MARIA SARACINI (Mr Martin MILEHAM)**  
**MR ALAN SKINNER (Mr Dimitrios LIMNIOS)**  
**MS ALENA ZORIC ( Mr Gary Stevenson)**  
**MR NICK MALONE (Mr Reece HARLEY)**  
**MR MATTHEW CORNISH (Dr Jemma GREEN)**  
**MR TOBIAS BARRIE (Ms Judith McEVOY)**  
**MR PETER van der ZANDEN (Ms Lisa SCAFFIDI)**

.10/09/2019

HEARING COMMENCED AT 10.05 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 Ms Ellson, you recall Ms Davidson?

MS ELLSON: I do.

15 COMMISSIONER: Thank you. Ms Davidson, would you please come forward and take your seat in the witness box

**MS Janet Elizabeth DAVIDSON, recalled on former affirmation:**

20 COMMISSIONER: I will now hear any applications and take appearances. Mr Sinanovic?

MR SINANOVIC: Yes, Commissioner. I seek leave to appear on behalf of Michelle Howells in accordance with the application filed on 6 September 2019.

25 COMMISSIONER: Mr Sinanovic, I don't have the application of 6 September but some enquiries will be made during the morning and we will see what has happened to it.

30 MR SINANOVIC: Thank you.

COMMISSIONER: Is there any objection?

MS ELLSON: No, Commissioner.

35 COMMISSIONER: Leave is granted. .

MR SINANOVIC: Thank you, Commissioner. .

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

MS SARACENI: Correct.

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

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

COMMISSIONER: Thank you. Mr Skinner, you continue to appear for Mr Linnios?

MR SKINNER: By your leave, sir.

5

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

MS ZORIC: I do, thank you, Commissioner.

10

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

MR MALONE: I do, thank you, Commissioner. .

15

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

MR CORNISH: Yes, thank you, Commissioner. .

COMMISSIONER: Mr Barrie, you appear for Ms McEvoy?

20

MR BARRIE: Thank you, Commissioner.

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

25

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

COMMISSIONER: Thank you. Ms Ellson, are you ready to proceed?

MS ELLSON: I am, Commissioner, yes.

30

COMMISSIONER: Thank you.

MS ELLSON: Madam Associate, if you could return the documents at 14.1045 through to 1050 to Mrs Davidson, please, TRIM 13542.

35

COMMISSIONER: Thank you.

MS ELLSON: The document ends at 1063, I'm sorry, Commissioner.

40

COMMISSIONER: Thank you.

MS ELLSON: Mrs Davidson, yesterday I asked you some questions to ascertain whether or not the Performance Review document in front of you, being the collated document you prepared, was the same as Mr Blades' Performance Review conducted in June 2013, do you recall that?---I do.

45

And your evidence was to the effect that you considered your Performance Review

document to be the same as both of Mr Blades', do you recall that?---I do, but having gone through it, there is a difference between the two.

5 Just to be clear, Mrs Davidson, I will ask you to consider a document at 14.0580, if that could be brought up on the screen, please, Madam Associate. I'm sorry, that's not the correct document, Commissioner. Apologies for that. That can be taken down. 14.0783 - I'm sorry, that's not correct either, Commissioner. My apologies for this. 14.1445, TRIM 14134.

10 COMMISSIONER: Thank you.

MS ELLSON: Mrs Davidson, do you see here a document marked, "Final" with respect to CEO Performance Review, September 2014?---Yes.

15 Do you recognise this as the Performance Review conducted on Mr Stevenson in 2014 by Lester Blades?---It hasn't got Lester Blades on it but I'm assuming that the next page will have the identification.

Mr Blades conducted the September 2014 review, didn't he?---Yes.

20 14.1446, please, Madam Associate. This is not the same as yours, is it, Mrs Davidson?---No.

14.1447, still not the same as yours?---No.

25 14.1448. It's not the same as yours, is it?---No.

14.1449.

30 COMMISSIONER: When you say "not the same as yours", what are you referring to?

MS ELLSON: It's not the same as your Performance Review document in front of you, Mrs Davidson, is it?---No.

35 14.1045. 1449 on the screen. Mrs Davidson, what is here is not the same as what is in your document at 14.1045 and following, is it?---No.

40 14.1450. Mrs Davidson, what is here is not the same as what's in your Performance Review at 14.1045, is it?---No.

14.1451. It's not the same as what is in your Performance Review for 2015 at 14.1045, is it?---No.

45 14.1452. Mrs Davidson, what is here is not the same as what is in your Performance Review?---No.

14.1453. Mrs Davidson, what is here is not the same as what is in your Performance Review in 2015, is it?---No.

5 14.1454, please, Madam Associate. Mrs Davidson, what is here is not the same as what is in your Performance Review in 2015, is it?---No.

14.1455. Mrs Davidson, what is here is not the same as what is in your Performance Review in 2015, is it?---No.

10 You haven't used ratings and you haven't used competencies?---Correct.

And you haven't identified a CEO comment in your Performance Review either, have you?---No.

15 14.1456. What is here is not the same as what is in your Performance Review in 2015, is it?---No.

14.1457. What is here is not the same as what is in your Performance Review in 2015, is it?---No.

20

14.1458, please, Madam Associate. What is here is not the same as what is in your Performance Review 2015, is it?---No

[10.15 am]

25

14.1459, please, Madam Associate. What is here is not the same as what is in your Performance Review in 2015, is it, Mrs Davidson?---No.

30 14.1460. What is on the page in front of you on the screen at 14.1460 is not the same as what is in your Performance Review document for 2015, is it, Mrs Davidson?---No.

14.1461, please, Madam Associate. What is on this page is not the same as what is in your Performance Review document 2015, is it?---No.

35

Madam Associate, 14.1462. What is on this page is not the same as what is in your CEO Performance Review document at 2015, is it, Mrs Davidson?---No.

40 14.1463. What is on this page is not the same as what is in your Performance Review document at 2015, is it?---No.

14.1465, please, Madam Associate. What is contained in this document is not the same as what is in your CEO Performance Review of 2015, is it?---No.

45 And that's because you haven't identified to whom comments relates, isn't that right?---That is correct.

And there are no outcomes specified in your documentation, are there?---No.

14.1466. For the same reasons, Mrs Davidson, what is on this page is not in the same as what is in your Performance Review 2015, is it?---No.

5

14.1467. Mrs Davidson, there are outcomes and comments attributable to specified respondents here, that's not the same as what is in your Performance Review 2015, is it?---No.

10 14.1468, please. For the same reasons, Mrs Davidson, what is on 14.1468 is not in your CEO Performance Review for 2015, is it?---No. There is a typing error there, Reece Harvey.

15 14.1469. For the same reasons, Mrs Davidson, what is on page 14.1469 does not appear in your CEO Performance Review 2015, does it?---No.

20 14.1470, please, Madam Associate. Here there are outcomes and comments attributable to specified people. You have not used the same - this is not the same as what is in your CEO Performance Review of 2015, is it?---No.

14.1471, please. Mrs Davidson, there are competencies in the document on 14.1471, do you see that?---Yes.

25 You haven't used any in your CEO Performance Review of 2015, have you?---No.

So it's not the same?---Correct.

30 14.1472, please. For the same reasons, this page is not the same as anything in your CEO Performance Review 2015, is it?---No.

14.1473, please, Madam Associate. For the same reasons, Mrs Davidson, this is not the same as what is in your Performance Review in 2015, is it?---No.

35 Madam Associate, 14.1474, please. For the same reasons again, Mrs Davidson, this is not the same as what is in your Performance Review in 2015, is it?---No.

14.1475. Mrs Davidson, for the same reasons again, this is not the same as what is in your Performance Review in 2015, is it?---No.

40 14.1476. Again, Mrs Davidson, for the same reasons, this is not the same as what is in your Performance Review for 2015, is it?---No.

45 14.1477. Again, Mrs Davidson, there are competencies and comments attributable to specified respondents, that's not the same as what is in your performance review in 2015, is it?---No.

14.1478, please, Madam Associate. Again, for the same reasons, it's not the same

as your Performance Review in 2015, is it?---No.

14.1479, please, Madam Associate. For the same reasons, Mrs Davidson, this is not the same as what is in your Performance Review for 2015, is it?---No.

5

14.1480, please. Mrs Davidson, there are competencies and comments attributable to specified people or respondents here, that is not the same as what is in your Performance Review in 2015, is it?---No.

10

14.1481, please. For the same reasons, Mrs Davidson, what is on this page is not the same as anything in your Performance Review for 2015, is it?---No.

14.1482, please. Again, Mrs Davidson, for the same reasons, this is not the same as what is in your Performance Review 2015, is it?---No.

15

14.1483. For the same reasons, this is not the same as what is in your Performance Review for 2015, is it?---No.

14.1484, please, Madam Associate. Again, for the same reasons, Mrs Davidson, this is not the same as what is in your Performance Review for 2015, is it?---No.

20

14.1485, please, Madam Associate. Again, Mrs Davidson, you will see competencies and comments attributable to specified respondents, do you see that?---Yes.

25

You haven't used competencies and you haven't referred specific comments to specific respondents in your Performance Review of 2015, have you?---No.

So in that respect, it's not the same?---No.

30

14.1486, please, Madam Associate. Again, for the same reasons, this is not the same as what is in your Performance Review 2015, is it, Mrs Davidson?---No.

14.1487, please, Madam Associate. Again, Mrs Davidson, this is not the same as what is in your Performance Review of 2015, is it?---No.

35

For the same reasons as the previous pages?---Correct.

14.1488, please, Madam Associate. Again, it's not the same as what is in your Performance Review 2015, is it?---No.

40

14.1489, please, Madam Associate. Again, for the same reasons, Mrs Davidson, there being no competencies or comments attributable to specific respondents in your Performance Review 2015, this is not the same, this page, is it?---No.

45

The content of the page is not the same as the content in your Performance Review 2015?---No.

14.1490, please, Madam Associate. Do you see here, Mrs Davidson, an overall rating with comments attributable to specified respondents?---Yes.

5 It's not something that you did in your CEO Performance Review of 2015, is it?---No.

So it's not the same, is it?---No.

10 14.1491, please, Madam Associate. Again, for the same reasons, Mrs Davidson, this is not the same as your CEO Performance Review 2015, is it?---No.

Thank you, Madam Associate, the document can be taken down from the screen. Mrs Davidson, yesterday I asked you a question whether or not you accept or  
15 reject that your survey in 2015 called for comment only from Elected Members and anyone else asked to complete it, and you said yes. Did you accept that your survey called for comment only from Elected Members and anyone else asked to complete it?---It's Elected Members and Directors, correct.

20 Comment only?---In terms of the items that had been listed, yes.

Mrs Davidson, do you accept that Mr Stevenson's performance was never measured against budget outcomes?---Correct.

25 Was that a requirement of Mr Stevenson's contract?---I don't know that.

If it was, should it have been done?---I can only say yes if that was within the contract.

30 COMMISSIONER: Sorry, Ms Davidson, I'm having trouble hearing you?---Sorry, I can only say that if it was within the contract. I don't know, Commissioner.

Thank you very much.

35 MS ELLSON: Madam Associate, could you please bring up page 14.0353, TRIM 13571.

COMMISSIONER: Thank you.

40 MS ELLSON: Do you see here, Mrs Davidson, a document entitled "Employment agreement" between City of Perth and Gary Stevenson?---Yes.

45 14.0357, please, Madam Associate. Do you see here a date, 19 September 2012?---Yes.

And the parties are City of Perth and Mr Gary Stevenson, do you see that?---Yes.



14.0371, please, Madam Associate. Do you see here a page which is signed by the Lord Mayor and Mr Stevenson in the presence of a witness?---Yes.

5 Do you accept that this document is Mr Stevenson's employment agreement?---Yes.

14.0363, please, Madam Associate. If you could read clause 5.1, please, Mrs Davidson?---5.1(2)(c)?

10 Yes?---Yes.

You said that Mr Stevenson's performance was not measured with respect to any budget outcomes, do you accept that?---Yes.

15 And you accept that that was required to be done under his contract?---Yes, according to this document, yes.

20 And there was nothing in your survey with respect to any budget outcomes for 2015, was there? I will rephrase that question, Mrs Davidson. There was nothing in your 2015 survey asking for Mr Stevenson to be assessed by way of budget outcomes, was there?---No, not specifically on the budget. It was financial.

25 And there were no questions related to financial outcome measurement, were there?---Not specifically, no

[10.30 am]

30 Mrs Davidson, do you consider that the document that you have there from 14.1045 is an adequate Performance Review tool?---At the time of undertaking it, I believe that it was, because we were looking for an open-ended comment.

35 You do not consider it is looking at it in hindsight?---In hindsight, it could be all improved.

In July 2015 it was not an adequate Performance Review tool, was it?---I believed it was at the time.

40 It was not an adequate Performance Review tool because it contained no ratings, no measures, no outcomes, no competencies and called for purely comment from the respondents, isn't that right?---That is correct.

45 The document can be returned, please, Madam Associate. I would like to ask you now, Mrs Davidson, to turn your mind back to events concerning things other than Mr Stevenson's Performance Review?---Still with Mr Stevenson?

Yes?---Thank you.

From time to time, did you communicate with the Lord Mayor using a Hotmail email address?---I did.

5 And from time to time would you receive emails from Ms Scaffidi, or the Lord Mayor, from her personal email address to your personal email address?---That I can't recall. I think it might have been more of the City of Perth, but she may have.

10 Do you have any memory of receiving an email from Mrs Scaffidi from her personal email address on 6 October 2015?---No, I don't.

Madam Associate, 14.2093, please, TRIM 23263.

15 COMMISSIONER: Thank you.

MS ELLSON: Mrs Davidson, I want to take you to the PS at the very bottom of the page, please.

20 MR YELDON: Sorry, Commissioner. Could I have the one on screen blown up, please. It's difficult for me to read that one.

COMMISSIONER: I'm sure that can be done. Which part are you going to take the witness to?

25 MS ELLSON: Firstly, it would be easier for Madam Associate if we identify the top portion first, please, Madam Associate.

MR YELDON: Thank you.

30 MS ELLSON: Mrs Davidson, do you see there an email from a strongandvitalPerth.com address?---Yes.

To an address attributed to you at Hotmail.com?---Yes.

35 Do you recognise this as an email that the Lord Mayor sent you on 6 October 2015?---Yes, I do. Contents, I'm not too sure, I haven't read it yet.

I would like for you, please, Madam Associate, to blow up the PS.

40 COMMISSIONER: Just before you do that, just in fairness to Ms Davidson, just let her read this part.

MS ELLSON: Okay.

45 COMMISSIONER: Tell me when you've finished doing that, Ms Davidson?---Thank you.

MS ELLSON: You've finished? Madam Associate, if you could move it down, please, to the end?---Yes.

Mrs Davidson, do you see there:

5

*PS. There is a lot more about who referred me to the CCC which I'm very keen to share but for now one haemorrhaging step at a time!*

Do you see that?---Yes.

10

A lot of things happened with Mr Stevenson after October 2015 but I would like you to think about what was happening in October 2015 and around the time that this email was sent, Mrs Davidson. Did the Lord Mayor talk to you about who referred her to the CCC in October 2015?---I can't recall that, Ms Ellson, I'm sorry.

15

The document can be taken down, please, Madam Associate. In October or November 2015, Mrs Davidson, did you hear anything about, or anything to make you think that the Lord Mayor was going to terminate Mr Stevenson's employment after the October election?---No.

20

In November or at the end of November 2015, Mr Stevenson provided submissions to you with respect to your 2015 Performance Review of him, did he?---He did.

Madam Associate, if you could bring up, please, page 14.0911.

25

MR YELDON: Once again, Commissioner.

COMMISSIONER: Yes. Which part are you taking the witness to?

30

MS ELLSON: The top, please, Madam Associate. Thank you.

Mrs Davidson, do you see here an email from Mr Stevenson to yourself copying in the other members of the CEO Performance Review Committee, dated 30 November 2015?---Yes.

35

Do you accept that you received this email on that date?---Yes.

You can see there's reference to an attachment, "Submission to CEO Performance Review Committee - November 2015", do you see that?---Yes.

40

14.0913, please, Madam Associate, TRIM 13560.

COMMISSIONER: Thank you.

45

MS ELLSON: Mrs Davidson, do you recognise this document as the first page of Mr Stevenson's submission with respect to his or your 2015 Performance Review of him? Take your time, Mrs Davidson?---Yes. Is this the 16 page document that

I'm looking at?

14.0928, please, Madam Associate. I'm hoping you can see the bottom right-hand corner, Mrs Davidson.

5

COMMISSIONER: The number 16 is what counsel means.

MS ELLSON: Do you see a 16?---Yes.

10

Back to 14.0913, please, Madam Associate. Do you accept now that this document is Mr Stevenson's submission in response to your 2015 Performance Review of him?---Yes.

15

Take some time, please, Mrs Davidson, to read the second last paragraph which starts, "As such" toward the nearer end of the page.

COMMISSIONER: Madam Associate, please just blow that up so that Mr Yeldon can read it. Thank you.

20

WITNESS: Referring to the "agreed verbally" that paragraph?

MS ELLSON: Yes. It's one very long sentence, Mrs Davidson, do you see that?---Yes.

25

Do you agree with Mr Stevenson's comments?---Yes  
Madam Associate, if you can turn to page 14.0922. Under the heading, and please, Madam Associate, blow up the material under heading 3.15?---Yes.

30

Mrs Davidson, did you have any awareness of Mr Stevenson's concerns about references to the CCC before or during your Performance Review of him in 2015?---Could you repeat that?

35

Did you have an awareness of Mr Stevenson's concerns about references to the CCC around the time that his performance was reviewed in 2015?---I don't recall specifically, no.

40

Did you mention in any of the Performance Reviews that you participated in for Mr Stevenson, the fact that you did not believe Mr Stevenson had your back?---I didn't say that, no.

Do you agree with Mr Stevenson's statement where he says:

*I'm devoutly loyal to this organisation and will always act with that in mind and in its best interests."*

45

?---Yes, he believed that, yes.

Did you accept that?---Yes.

Madam Associate, 14.0927, please. Starting from the beginning, Madam Associate, I will ask you to read the page, Mrs Davidson, before I ask my next set  
5 of questions. If you could let me know when you've finished reading what's on the screen, please?---Yes

[10.45 am]

10 Next portion of the page, please, Madam Associate?---Yes.

Going back to the top of the page under heading 5.0, Madam Associate. Do you agree with Mr Stevenson's remark that "2014/15 was a year of great reform and achievement", the first sentence?---Yes, that is what he obviously felt.

15

Did you agree that 2014/15 was a year of great reform and achievement for Mr Stevenson?---Yes.

20 Do you agree with Mr Stevenson's remark in the second sentence where he says:

*Dedicated capital city legislation, major organisation structure reform and long awaited boundary expansion are all achievements that City of Perth has wanted and needed for many years.*

25 ?---Yes.

And you agree with Mr Stevenson's remark that his role in achieving those outcomes was instrumental?---It was a collective role of Elected Members, the CEO and the Directors working on many of those outcomes.

30

And Mr Stevenson led the Administration through those achievements, didn't he?---He did.

35 And he worked very closely with Council to do that, didn't he?---Yes.

And in that sense, he had quite a significant role in achieving the outcomes, didn't he?---Yes.

40 Could you just read through the second paragraph, Mrs Davidson. Did you consider that or do you accept Mr Stevenson's statement in his first sentence?---That is what he believed.

45 Did you have that belief in 2015 about the views of the Elected Members toward Mr Stevenson?---Some of the comments from the 2014 Performance Review and 15 detailed some of those issues.

Relating to his personality?---And his leadership and communication style.

The style of him?---Yes.

He was very different to Mr Edwards in his style, wasn't he?---Yes.

5

And some of the Elected Members didn't really warm to him, did they?---No.

The third paragraph, Mrs Davidson, Mr Stevenson asserts that the conclusions with respect to the Elected Members were the product of a flawed and very subjective Performance Review relating to the 2015 Performance Review. Do you accept Mr Stevenson's remarks in that respect?---Yes, but the above paragraph also says it's consistent with the 2014 review.

10

And do you consider that was a flawed and very subjective Performance Review as well?---The one by Lester Blades.

15

COMMISSIONER: You need to look at that sentence more carefully because that's the final sentence in a paragraph that deals with personality, leadership and communications style. So it cannot be given the same meaning, I would have thought, Ms Ellson.

20

MS ELLSON: I see, Commissioner.

Mr Stevenson goes on to say that he does not believe that the review is credible or fair or that it reflects much at all of his broader achievements, capabilities and performance, do you agree with that?---That is what he believed, yes.

25

Do you agree that that was the case?---I think the process could have been improved.

30

COMMISSIONER: Does that mean you don't agree with it?---I agree with what he said because he said it, Commissioner, so he has a belief in what he says.

Yes, but what counsel is asking you about is your belief. Do you believe that the Performance Review, about which this speaks, was not credible or fair?---In hindsight, yes, Commissioner, because it obviously did not have the competencies of the other review in 14, although in that second paragraph he does say it is consistent with that review.

35

Yes, but what he's referring to there is a different subject matter. Do you agree that the review about which this speaks does not reflect much at all of his broader achievements, capabilities and performance?---I think with some of the items that were listed, I think it detailed some of those achievements, capabilities and performance.

40

45

Yes, but the comment here is that it "does not reflect much at all" of those things, do you agree with that part?---Yes.

And then the final sentence is:

*It certainly does not satisfy contractual commitments.*

5

?---No.

You agree with that?---Yes.

10 Sorry for interrupting, Ms Ellson, but these things need to be spelled out.

MS ELLSON: Commissioner.

15 On or about 30 November 2015, did you communicate with Mr Stevenson orally or in writing about the two options, or either of the two options that Mr Stevenson set out on this page?---Orally, I believe, Ms Ellson.

Can you tell me about the conversation you remember?---Yes. Having received this document, I believe that - - -

20

The document can be taken down, please, Madam Associate?--- - - - Gary Stevenson came to see the CEO Performance Review Committee and the Option 1, which he proffered, was accepted.

25 That did not happen on 30 November 2015, did it?---I don't recall the date.

14.0947, please, Madam Associate. Again, Madam Associate, if you could blow up the top of the email, please. You see here an email from Mr Stevenson to yourself on 30 November 2015 at 7.32 pm?---Yes.

30

"Good evening, Councillor Davidson"; take a moment to read that, Mrs Davidson, and let me know when you've finished?---Yes.

Madam Associate, if you could move the page down, please?---Yes.

35

The end of the page, please, Madam Associate?---Yes.

14.0948, please, Madam Associate. Have you read that, Mrs Davidson?---Yes.

40 Do you recognise the document that you've just read as an email Mr Stevenson sent to you?---Yes.

Mr Stevenson wanted to know, did he not, whether or not Council preferred Option 1 on 30 November 2015?---Yes.

45

You didn't confirm Option 1 with him on 30 November 2015, did you?---No.

He wanted to do that because he wanted to go to the United States for his daughter's wedding, isn't that right?---Yes.

5 The document can be taken down, please, Madam Associate. Mr Stevenson called you to follow up on his email to you on 2 December 2015, didn't he?---I don't recall that.

10 Do you recall speaking to Mr Stevenson about Option 1 at all on 2 December 2015?---I would have been with the CEO Performance Review Committee.

You say "would have", you don't know?---I don't know the date but it was the CEO Review Committee who saw Mr Stevenson.

15 That was some time later, Mrs Davidson, wasn't it?---I don't know.

Madam Associate, 14.0951. This is not your handwriting, is it, Mrs Davidson?---No.

20 Mr Stevenson has identified this document as a note that he took on 2 December with reference to him calling you to discuss his email that we have just looked at, do you accept that?---I do.

Does it help you to remember what - - -?---No.

25 - - - whether you discussed anything with Mr Stevenson?---The bit that says, "She advised that Option 1 was not being considered", I don't recall that.

Do you accept that Mr Stevenson's account of that is correct?---That is what he's documented, Ms Ellson, so I have to accept it.

30 COMMISSIONER: I don't know that she can, Ms Ellson. She can't recall it.

MS ELLSON: I see the difficulty, Commissioner, yes. The document can be taken down, please, Madam Associate

35 [11.00 am]

No decision had been made about Option 1 by 4 December either, had it, Mrs Davidson?---I don't recall the date.

40 On 4 December 2015, did you meet with Mr Stevenson and the other members of the CEO Performance Review Committee to talk to Mr Stevenson about his submission?---Yes.

45 Do you agree that during that meeting, there was no clarity about whether or not Council were going to accept Option 1?---No, it hadn't gone to Council.



I'm not asking you whether it went to Council on 4 December 2015, Mrs Davidson, I'm asking you whether or not there was any clarity in the meeting about the committee - - -?---Yes.

5 - - - accepting Option 1?---The Option 1, as he outlined, was accepted.

It was not accepted on 4 December 2015, was it?---I don't know about the date but in that gathering of the CEO Performance Review Committee with Mr Stevenson, whatever date that was, Option 1 - - -

10

There were several gatherings of the CEO Performance Review Committee, Mrs Davidson. I'm asking you about one that occurred specifically on 4 December 2015?---No, I don't recall.

15

Did Mr Stevenson contact you again on 13 January 2016 to follow up on what was happening with his employment?---I don't recall that.

Madam Associate, if you could bring up, please, page 14.0963. Mrs Davidson, take a moment to read that?---That I don't recall. I'm not sure what he's referring to in terms of the draft review summary.

20

Summary of his Performance Review, Mrs Davidson?---No, that I don't recall, I'm sorry.

25

COMMISSIONER: Sorry, whose summary, Ms Ellson?

MS ELLSON: Sorry, it was the summary of his Performance Review that you had prepared, Mrs Davidson, the draft review summary?---No, I don't recall that. Are you referring to my Performance Review document?

30

Mr Stevenson's evidence was that the draft review summary was the summary of his Performance Review. This was the 2015 Performance Review?---No, I don't recall that, I'm sorry.

35

Mr Stevenson's evidence is to the effect that during this call there was no indication Option 1 was being considered, do you accept that?---Off the evidence that you've given me, yes.

COMMISSIONER: This is the problem when you put a question like that, because it's not clear to Ms Davidson whether she's being asked to accept that that was his evidence or whether she's being asked to accept that it was the fact. Mr Yeldon, you don't need to rise, I understand the problem and the problem is really evident in the answer that Ms Davidson gives. So it needs to be put differently to Ms Davidson if it's going to be useful to me.

45

MR YELDON: There's another problem with "was it being considered"; the question is by whom?

COMMISSIONER: I know that.

MR YELDON: So I'm leaving it all to weight, the questions.

5

COMMISSIONER: Yes, that is the difficulty, Mr Yeldon, I accept that. Unless the questions come with the required degree of precision - - -

MR YELDON: Correct.

10

COMMISSIONER: - - - then there's a limit to what I can do with the answers.

MR YELDON: It's worthwhile keeping a very detailed look at what you're writing down also, it's a useful guide to me.

15

COMMISSIONER: I wouldn't make assumptions, Mr Yeldon.

MR YELDON: I certainly won't.

20

COMMISSIONER: Ms Ellson.

MS ELLSON: Mrs Davidson, do you recall or did you speak to Mr Stevenson on 13 January 2016 about the summary of his Performance Review?---I don't recall, Ms Ellson.

25

Did you give Mr Stevenson any indication that Option 1 was being considered by you during the call on 13 January 2016?---No, I would not have proffered Option 1 or 2 in a telephone conversation.

30

Why not?---It was not my call to do so.

Did you give Mr Stevenson any indication that Option 1 was being considered by the CEO Performance Review Committee during a call on 13 January 2016?---No.

35

By Council?---No.

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

40

COMMISSIONER: When you say didn't give the indication that Option 1 was being considered by the Performance Review Committee on 13 January 2016, are you saying you have a recollection of not doing it or are you saying you do not recall whether you did it or not?---I don't believe it did do it, Commissioner.

45

Belief might be one thing but what I'm concerned about is what you recall. Do you recall it or not?---I recall that I didn't do it.

You have a specific recollection of that?---In terms of that conversation, yes,

because I know that I wouldn't do it.

5 There's a difference there, Ms Davidson. What you would or would not have done is one thing but what I'm concerned to know is what you remember, as is everyone. So if you don't remember, then best say so, rather than telling me what you would or would not have done which is an assumption on your part?---That is true, so I might as well say that I don't recall, Commissioner.

10 Thank you, Ms Davidson.

MS ELLSON: Commissioner.

15 Mrs Davidson, do you remember a meeting with the Lord Mayor, Deputy Lord Mayor Limnios, Councillor McEvoy and yourself on 15 January 2016 where you spoke of Mr Stevenson's employment?---I don't recall that.

20 Mrs Davidson, you've mentioned that at some point the CEO Performance Review Committee accepted Option 1 from Mr Stevenson, is that right?---The CEO Performance Review Committee accepted his offer of Option 1, yes.

And that was for Council to terminate his employment, isn't that right?---By mutual consent, yes.

25 Mr Stevenson's employment was never terminated by mutual consent, was it, Mrs Davidson?---I believe it was, Ms Ellson.

When did it happen, Mrs Davidson?---The CEO Performance Review Committee met with CEO, Gary Stevenson.

30 When?---The date I can't remember, and accepted his Option 1, which was to terminate by mutual consent and then to put together a deed of agreement and an agreed media release.

35 That was the same day - the presentation of a deed of agreement occurred at the same time you first spoke to Mr Stevenson about accepting Option 1, didn't it?---I didn't think so. No.

40 Mrs Davidson, going back in time to 15 January 2016, do you have any memory of speaking to the Deputy Lord Mayor, the Lord Mayor and Councillor McEvoy about Option 1?---I don't recall.

45 Can you explain, Mrs Davidson, why Councillor McEvoy might be involved in a meeting with the Lord Mayor, yourself and Deputy Lord Mayor Limnios to discuss Mr Stevenson's employment on 15 January 2016?

MR YELDON: Objection.

COMMISSIONER: Yes.

MR YELDON: It calls for Councillor McEvoy's motivation which is not within the knowledge of the witness.

5

COMMISSIONER: Yes. All counsel is asking for is whether this witness can offer an explanation. The answer she gives will have the weight it deserves but she may or may not be able to offer an explanation.

10 MR YELDON: Yes. I'm satisfied with that, thank you.

COMMISSIONER: Thank you, Mr Yeldon.

WITNESS: I don't recall the situation, Ms Ellson.

15

MS ELLSON: Mrs Davidson, by Tuesday, 19 January 2016, had you obtained some advice from WA Local Government Association in relation to the possibility of accepting Option 1 for Mr Stevenson?---Yes.

20 By that stage you had not yet discussed with Mr Stevenson the possibility of accepting Option 1, had you?---I believe we had.

Mrs Davidson, you obtained advice from WALGA with respect to Mr Stevenson's employment because you were still considering a way forward, isn't that right?---I thought it had been done before.

25

When you say "it had been done before", what are you referring to?---That we had accepted his offer of Option 1.

30 You don't recall whether there was a meeting on 15 January 2016?---With whom?

[11.15 am]

35 With the Deputy Lord Mayor, the Lord Mayor, Councillor McEvoy and yourself?---No, I don't recall.

You're not sure, are you, that you'd raised with Mr Stevenson Option 1 before the 19th, isn't that right?---I can't recall, Ms Ellson.

40 MR YELDON: Commissioner, may I just confer with my learned friend about a matter?

COMMISSIONER: Yes, of course.

45 MR YELDON: I'm grateful, Commissioner.

COMMISSIONER: No problem.

MS ELLSON: I apologise, Commissioner, I'm looking for a reference.

5 COMMISSIONER: That's quite all right, Ms Ellson. Ms Ellson, while you're doing that, do you mind if I interrupt and ask the witness about a document you took her to earlier?

MS ELLSON: Not at all, Commissioner.

10 COMMISSIONER: Thank you. Madam Associate, would you please bring up 14.0947, please. Would you enlarge, please, the top half of that page so that everyone can read it clearly. Thank you. Ms Davidson, what I would like you to do is to look carefully, please, at the first paragraph that begins with the words, "This is a difficult email to send"?---Yes.

15 And tell me when you've finished reading that, please?---Yes.

20 Then I want you to look carefully, please, at the beginning of the next paragraph beginning with the words, "Therefore if Option 1 is ultimately going to be chosen by Council", just the chapeau, I don't need you to read the numbered paragraphs?---All right. Yes.

25 Ms Davidson, when you got this email from Mr Stevenson, did you understand that it was being sent to you in your capacity as a member of the CEO Performance Review Committee?---I believe, Commissioner, it was sent to me as the Presiding Member.

Thank you?---Yes.

30 When you got it, did you understand that it was a difficult email for Mr Stevenson to send to you because he had a preference for Option 2 but felt that the chosen option might be Option 1?---Yes.

35 When you look at that second paragraph which begins with the words, "Therefore, if Option 1 is ultimately going to be chosen by Council", did you understand at the time that you got this email that the final decision about which option would be chosen, that is 1 or 2, would be a decision to be made by Council and not by him?---Yes.

40 And did you also understand at that time that the decision to be made by Council would be one that would take into account the recommendation of the Performance Review Committee?---Yes.

45 Having all of that in your mind at the time, did you understand that in this email to you, Mr Stevenson was making it plain that he did not want Option 1 but preferred Option 2?---Yes.

Understanding that, did you understand then the importance for him in you, as the Presiding Member of the CEO Performance Review Committee, letting him know at the earliest time whether it was going to be Option 1 or Option 2?---It was not my sole decision, of course, Commissioner.

5

I accept that?---It would have to go to the CEO Performance Review Committee.

Yes?---Which then ultimately went on to Council.

10

Yes, I understand all of that, but my question to you was, did you understand the importance of letting him know as soon as possible whether it would be Option 1 or Option 2?---Yes.

15

Thank you. Ms Ellson, I apologise for the interruption. Please resume wherever you want to.

MS ELLSON: Commissioner.

20

COMMISSIONER: Mr Yeldon?

MR YELDON: I see the time. The witness has been in the box for 1 hour and 23 minutes.

25

COMMISSIONER: Yes.

MR YELDON: I don't know where we are with the Mr Stevenson issue, but would a break be permissible for the witness?

30

COMMISSIONER: Mr Yeldon, I normally take the break at 11.30. I will just check with Ms Davidson to see whether that's convenient. Ms Davidson, can you endure another 8 minutes?---I believe I can, thank you, Commissioner.

35

Ms Davidson. We will persist until 11.30. If you need a break sooner, Mr Yeldon, then you must tell me that.

MR YELDON: I will persevere, thank you.

COMMISSIONER: I'm glad to hear it, Mr Yeldon. Ms Ellson, please continue.

40

MS ELLSON: Mrs Davidson, it was you, was it not, who was the spokesperson for the CEO Performance Review Committee?---I was the Presiding Member.

45

And as the Presiding Member, you were the spokesperson for the committee?---Yes, but a decision would have to be made for me to speak on a particular topic.

Is it correct that CEO Performance Review Committee decisions are only made at

CEO Performance Review Committee meetings where minutes are recorded?---Yes.

5 The document can be taken down, please, Madam Associate. Madam Associate, could you please bring up 14.0971 - actually, 0974. Do you see at the bottom of this page, Mrs Davidson, an email by yourself to persons by the name of Ricky Burges and Tony Brown?---Yes.

10 On 18 January 2016?---Yes.

14.0975, please, Madam Associate:

*Thanks to both of you. Special Council Meeting. Item: CEO contract.*

15 Do you see that?---Yes.

And there's a proposition here:

20 *The Council accept Mr Stevenson's offer known as Option 1 that relates to 8.5 of the employment contract, "Termination by the City, any reason, and terminates his appointment as CEO immediately, Wednesday, 20 January 2016 .*

25 Do you see that?---Yes.

Mr Stevenson's employment was terminated, wasn't it, Mrs Davidson?---Yes, accepting Option 1.

30 Option 1 was a termination by the City for any reason, wasn't it?---Yes, but agreed that it was to be by mutual consent.

35 I will come back to that with you, Mrs Davidson. At this point in 18 January 2016, a decision had not been made by Council to accept Mr Stevenson's offer, had it?---No.

40 And a decision had not been made by a CEO Performance Review Committee meeting at a CEO Performance Review Committee meeting, to accept Option 1, had it?---No. If I can just go back to, the CEO Performance Review Committee did meet with Mr Stevenson and accepted his offer of Option 1.

I'm trying to place these events in time, Mrs Davidson?---So am I.

45 Just take it one step at a time, please?---Well, that discussion would have been well before this.

You don't know that?---I'm sure it - in terms of those events, I believe that it was before this date.

Would now be a convenient time, Commissioner?

5 COMMISSIONER: It's still 11.27. Do you have any other questions to ask before 11.30?

MS ELLSON: Yes, I have many.

10 COMMISSIONER: I can't show favouritism to you, Ms Ellson, when I've refused Mr Yeldon's request.

MR YELDON: I suggest you take it, Commissioner. It's 11.27.

15 MS ELLSON: I'm prepared to press on in the interests of fairness, Commissioner.

COMMISSIONER: By the time we finish this exchange, it will be 11.30 anyway. So on that basis I will adjourn for 15 minutes.

**WITNESS WITHDREW**

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(Short adjournment)

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HEARING RECOMMENCED AT 11.50 AM.

**MS Janet Elizabeth DAVIDSON, recalled on former affirmation:**

5

COMMISSIONER: Mr Sinanovic.

10 MR SINANOVIC: Commissioner, I've had the opportunity to speak with one of the Inquiry's officers during the adjournment and it seems that my attendance is not going to be useful until Thursday. In those circumstances, I request to be excused from today's attendance, until Thursday, or until otherwise informed by the Inquiry.

15 COMMISSIONER: Certainly, you're excused.

MR SINANOVIC: Thank you.

COMMISSIONER: Yes, Ms Ellson.

20 MS ELLSON: Commissioner.

Mrs Davidson, did you attend a meeting on 15 January 2016 with the Lord Mayor, Councillor McEvoy and the Deputy Lord Mayor Limnios?---I don't recall.

25 Madam Associate, if you do bring up page 14.0965. Councillor Davidson, from the middle of this page there's a note, 15 January 2016, "LM, JD, JM, JL", do you see that?---Yes.

30 MR YELDON: Perhaps that could be blown up as well, Commissioner.

COMMISSIONER: Yes, I think so.

35 MS ELLSON: Perhaps, Madam Associate, you could move it down slightly so the line above 15 January 2016 is above the page. TRIM 13564.

COMMISSIONER: Thank you.

40 MS ELLSON: Mrs Davidson, Deputy Lord Mayor, or Mr Limnios, has given evidence that this is his note taken at the meeting on 15 January 2016 and that it records what had occurred during the meeting. Reading it now, do you accept that you attended a meeting on 15 January 2016 with the Lord Mayor, Councillor McEvoy and Deputy Lord Mayor Limnios?

45 COMMISSIONER: Just give the witness and myself a moment to read, and in some cases, decipher what's written there, please, Ms Ellson. Do you only want Ms Davidson to read down to just above, "Step 1", where that word and letter appears?

MS ELLSON: No, until the end of the page, please.

COMMISSIONER: I see. Very well.

5

MS ELLSON: To the very bottom, please, Madam Associate. Have you finished reading it, Mrs Davidson?---Yes.

10 Mrs Davidson, did you attend a meeting with the Lord Mayor, Councillor McEvoy and Deputy Lord Mayor Limnios on 15 January 2016 and discuss Mr Stevenson's employment?---According to this document I did. I don't recall the upper section at all.

15 COMMISSIONER: Sorry, what did you say, "I don't recall"?---I don't recall the upper section - - -

I see?--- - - - at all of those notes.

20 Yes?---So I don't recall discussing "travel officers spent".

20

MS ELLSON: Did you attend the meeting, Mrs Davidson?---I can only say that I must have.

You don't remember?---No.

25

On 15 January 2016, did you agree to email - - -

MR van der ZANDEN: Objection.

30 COMMISSIONER: Yes, Mr Yeldon.

MR YELDON: It's Mr van der Zanden, I think.

COMMISSIONER: I beg your pardon, Mr van der Zanden.

35

MR van der ZANDEN: This is the same point. The witness has just said she doesn't recall the meeting. She's read the note and said she doesn't recall.

40 COMMISSIONER: Yes, Mr van der Zanden. You're quite right and apologies for not recognising your voice. I was looking down and writing.

MR van der ZANDEN: Apology not needed.

45 COMMISSIONER: That may well be so and I understand that, but I'm going to allow Ms Ellson to persist for a little bit longer because she's testing the evidence.

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

MS ELLSON: Mrs Davidson, on 15 January 2016, did you agree to email Mr Stevenson to arrange a meeting with the CEO Performance Review Committee for Monday, 18 January?---I don't recall.

5

Mrs Davidson, on 15 January 2016 did you agree with the other members of the CEO Performance Review Committee and Councillor McEvoy to advise Mr Stevenson to accept his Option 1 offer, effective immediately?---I don't recall that.

10

By 15 January 2016, not all Elected Members had agreed on Option 1, had they?---No.

Mrs Davidson, on 15 January 2016, did you discuss with the Lord Mayor, Councillor McEvoy and Deputy Lord Mayor Limnios the possibility of getting a legal opinion regarding cutting off Mr Stevenson's services?---I can't recall.

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

COMMISSIONER: Before you to do that, Ms Davidson, if the CEO Performance Review Committee had made a decision to terminate the employment of Mr Stevenson on 15 January 2016, before Council had considered whether his employment should end or not, that would be beyond the power of the CEO Performance Review Committee, wouldn't it?---They had decided? Yes, it would, Commissioner.

25

Thank you. Ms Ellson.

MS ELLSON: Mrs Davidson, if the CEO Performance Review Committee had proposed to discuss accepting Mr Stevenson's Option 1 effective immediately, that would indicate that it's not mutual, wouldn't it.

30

MR YELDON: I object. There's a point to be developed in the absence of the witness.

35

COMMISSIONER: Thank you, Mr Yeldon. Ms Davidson, I'm going to ask you to be excused from the hearing room while a hear the objection. Thank you.

**WITNESS WITHDREW.**

40

COMMISSIONER: Yes, Mr Yeldon.

MR YELDON: To suggest it's not mutual is a mischaracterisation of the evidence which has already been led. The evidence is that two options were provided and they were not revoked, before the committee came to accept either one of them. So to suggest that an option that has not yet been exercised, which is to be exercisable is not mutual is to mischaracterise the nature of the evidence, in my

45

submission.

[12 noon]

5 COMMISSIONER: Thank you, Mr Yeldon. Ms Ellson.

MS ELLSON: I'm asking the witness to explain whether or not in her view, accepting Mr Stevenson's offer effective immediately could be characterised as mutual.

10

COMMISSIONER: Just remind me of the question you asked.

MS ELLSON: If the CEO Performance Review Committee had determined to accept Mr Stevenson's offer for Option 1 effective immediately, that would mean that it was not mutual, wouldn't it?

15

COMMISSIONER: I think what Mr Yeldon is concerned about is the assumption that's implicit in the question. Whilst I accept that you are entitled to test the evidence, in the way that you propose to, that question has a difficulty in it and it's the implicit assumption. Would you be able to reframe the question by putting it in a different way, or by asking some questions before it, Ms Ellson?

20

MS ELLSON: Yes.

25 COMMISSIONER: Mr Yeldon, I expect you to be as vigilant as ever, of course, but if we take that approach and there's no difficulty of the kind that you've indicated, then it should be smooth sailing, shouldn't it?

MR YELDON: I very much think it will, thank you.

30

COMMISSIONER: Thank you, Mr Yeldon. Madam Associate, would you please bring Ms Davidson back into the hearing room. Thank you. Ms Davidson, please resume your seat in the witness box.

35 **MS Janet Elizabeth DAVIDSON, recalled on former affirmation:**

COMMISSIONER: Ms Davidson, in your absence your counsel's objection was heard and upheld. Your exclusion from the hearing room is no reflection on you?---Thank you, Commissioner.

40

Ms Ellson.

MS ELLSON: Commissioner.

45 Mrs Davidson, Option 1 was for the employment contract of Mr Stevenson to be terminated by the City for any reason, isn't that right?---Yes.

If the employment of Mr Stevenson was terminated by the City immediately, it would be a termination of employment, would it not?

MR YELDON: I object.

5

COMMISSIONER: Yes, Mr Yeldon.

MR YELDON: It's calling for - is this her unqualified legal opinion which is being sought, because the question of termination is a legal conclusion. She's not a lawyer.

10

COMMISSIONER: No, the only basis on which I would treat that evidence is that it is a statement of her unqualified opinion.

15

MR YELDON: Yes, thank you. I'm content with that.

COMMISSIONER: Yes, Ms Ellson. Please repeat the question.

MS ELLSON: If the City terminated the Mr Stevenson's employment immediately, that would be a termination, would it not?---Yes, mutually agreed.

20

No, Mrs Davidson, it's not mutually agreed, is it?---There's a clause which has obviously come up which says a termination can be undertaken, I think it was 8.5.

25

COMMISSIONER: Perhaps it might be worth bringing that up, Ms Ellson - on the screen, I mean.

MS ELLSON: 14.0353, please, TRIM 13571.

30

COMMISSIONER: Thank you.

MS ELLSON: Do you see, Mrs Davidson, "Employment agreement between City of Perth and Mr Stevenson"?---Yes.

35

Do you accept this is Mr Stevenson's contract of employment?---Yes.

14.0366. Mrs Davidson, 8.5, could you read that to yourself?

MR YELDON: Could that just be - - -

40

COMMISSIONER: Enlarged, yes. Please enlarge 8.5, thank you, Madam Associate. Thank you.

MS ELLSON: Mrs Davidson?---Yes.

45

If Mr Stevenson's employment was terminated under clause 8.5(a) effective immediately, it's a termination, isn't it?---Yes.

COMMISSIONER: Termination by the City I think is what you mean, isn't it?

MS ELLSON: It's a termination by the City, Mrs Davidson, isn't it?---Yes.

5

There's nothing in the clause that you've asked to see that refers to any consent, is there?---Not in the agreement, no.

10 And there's nothing in the clause that you see that refers to the termination being mutual, is there?---No.

15 No matter how you think of what happened, Mrs Davidson, it was always the City that terminated Mr Stevenson's employment, wasn't it?---I believe it was actually by mutual consent because of being offered Option 1. That agreement doesn't say that, of course.

Just because the City accepted Option 1, it doesn't follow that Mr Stevenson's employment was not terminated, does it?---No.

20 COMMISSIONER: Terminated by whom?

MS ELLSON: By the City, my apologies?---No.

25 Just because the City accepted Option 1, Mrs Davidson, it doesn't follow that Mr Stevenson's termination was mutual, does it - termination by the City was mutual, does it?

30 MR YELDON: I object. There's just a level of sophistry in the question, asking to draw some mutually exclusive Venn diagram in her mind. Can't the question be put in a much simpler way? Simply put the proposition that it wasn't a mutual, and then move on?

COMMISSIONER: You're objecting to the form of the question?

35 MR YELDON: Yes.

COMMISSIONER: Ms Ellson, what do you say about that objection?

40 MS ELLSON: I can move on, Commissioner. The document can be taken down, please, Madam Associate.

45 COMMISSIONER: Ms Davidson, I need to understand this evidence of yours so I'm going to ask Madam Associate to bring back up a document that I asked you some questions about earlier and it's 14.0947. I'm going to again ask you to focus on the first two paragraphs of this document, which I will have Madam Associate enlarge so that everyone can read them. I'm sure you will recall that I asked you some questions about this earlier this morning?---Yes.

5 If I'm not mistaken, Ms Davidson, you agreed with me earlier today that when this email was sent to you, you understood from these paragraphs that Mr Stevenson's preference was to stay and not to leave the employment of the City?---His preferred option, yes.

10 That's right, and indeed, you agreed with a number of other propositions that I put to you which I won't repeat to you now, but one of the things that you did agree with me on in relation to paragraph number 2, was that the decision about whether Option 1 was going to be chosen or not was for the Council to make; do you remember that evidence?---Yes.

15 So while you say to me that clause 8.5 was invoked and it was by mutual consent - those are my words, not yours - am I to understand that when that happened, it was nonetheless done on the understanding, by at least you, that Mr Stevenson's preference was to stay and not have his employment terminated under clause 8.5?---He preferred Option 2.

20 To stay?---To stay.

Right?---But accepted Option 1.

25 Yes. If you look at the first paragraph of what is on page 14.0947, you will see he says, and I quote, in the first and second lines, these words:

*As a pragmatist I do not hold my hopes for that option following discussion at our meeting this afternoon.*

30 Do you see that?---Yes.

What did you take those words to mean, when you read them?---I think he believed that - - -

35 What did you take them to mean, rather than telling me what he believed?---That Option 1 was probably the option to be taken up.

Sorry, that what?---Option 1 was the option to be taken up.

40 You think he was saying that to you, do you, in those words?---Yes.

Then what meaning did you give to the words in the next sentence:

*As you might expect, I've given a great deal of thought to the way this might all unfold, including my non-preferred scenario of Option 1.*

45 What do you think those words meant?---That he preferred Option 1 not to be taken up.

So when he described himself in the first line as a pragmatist, what point did you understand him to be making to you?---That Option 1 was the most likely option.

5 [12.15 pm]

You can see that's linked to the words "following discussion at our meeting this afternoon." I know you've been asked about this before but I'll give you another opportunity: do you recall what the content of that discussion was?---I don't,  
10 Commissioner.

Thank you, Ms Davidson, for your assistance. That document can be taken down.  
Ms Ellson.

15 MS ELLSON: Mrs Davidson, after 30 November 2015 Mr Stevenson did not indicate to you any preference for Option 1, did he?---I don't recall the time.

At any stage, Mrs Davidson, Mr Stevenson did not indicate to you a preference for Option 1, did he?---Not a preference. His 16 page document indicated an Option 1  
20 and 2.

At no stage, Mrs Davidson, did Mr Stevenson suggest to you that Option 1 ought to be accepted, did he?

25 COMMISSIONER: Accepted by whom?

MS ELLSON: By you or Council, Mrs Davidson?---I can't recall.

If you can't recall Mr Stevenson expressing a preference for Option 1, you cannot  
30 say that it was a mutual arrangement for the City to terminate his employment, can you?---I believe the process after Option 1 was to try and complete the process mutually.

COMMISSIONER: Come back to counsel's question, please, Ms Davidson. It's a  
35 fair question and it's asked precisely and I would like your answer on it. Do you need it repeated?---Please.

Thank you. Ms Ellson.

40 MS ELLSON: Mrs Davidson, if you can't recall Mr Stevenson indicating a preference for Option 1, you can't say that the termination of Mr Stevenson's employment by the City was mutual, can you?---I believe that was the intent.

I didn't ask you about the intent, Mrs Davidson. I will ask the question again: if  
45 you can't remember if Mr Stevenson offered - - -

COMMISSIONER: Just the question in exactly the same terms, please.



MS ELLSON: Mrs Davidson, if you can't recall Mr Stevenson expressing a preference for Option 1, you cannot say that his termination by the City was mutual, can you?---On that basis, no.

5

Mrs Davidson, on 17 January 2016 you arranged to meet with Mr Stevenson, did you?---I don't recall that.

Madam Associate, if you could please bring up page 14.2035. Do you see there an email, Mrs Davidson, at the bottom of the page, 17 January, 7.30 pm? Do you see that?---Yes.

10

Perhaps it could be blown up, Madam Associate:

15

*Dear Gary, further to your telephone call the other day, could we please meet on Monday, 18 January 2016 at 2.30 pm.*

Do you see that?---Yes.

20 :

*To continue discussions from the previous meeting.*

14.2036, please, Madam Associate - I said "continue" and it says "complete", my apologies. Do you see there, Mrs Davidson:

25

*Hopefully 2.30 pm is fine with you. I've checked with the Lord Mayor and the Deputy Lord Mayor.*

30 ?---Yes.

14.2035, please, Madam Associate. Mrs Davidson, will you accept that 17 January 2016 is a Sunday?---Yes.

35 Had someone asked you to send this email to Mr Stevenson?---I don't recall. From those previous notes, I was obviously tasked to do so.

Putting the notes to one side, you don't remember?---No.

40 Above that, Mr Stevenson replies at 7.38 pm, he has commitments and can't meet, noting less than 24 hours notice has been given?---Yes.

There's no mention in the email to Mr Stevenson about the nature of the meeting, other than to complete some discussions from a previous meeting, do you accept that?---Yes.

45

There's nothing to indicate in here whether it's about Option 1 or not, do you agree

with that?---I do.

5 The document can be taken down, please, Madam Associate. 14.2033, please, Madam Associate. Mrs Davidson, 18 January 2016, in the middle of the page, you've written an email addressed to Gary, Mr Stevenson?---Yes.

Is that right?---Yes.

10 You suggest a Wednesday morning slot for a meeting?---Yes.

And ask him to confirm preferred time, do you see that?---Yes.

Do you accept that you did that?---Yes.

15 There's no indication in your email there about what the meeting was about, was there?---No.

20 By 18 January 2016, the CEO Performance Review Committee had not had a meeting and settled on whether or not Option 1 would proceed, had it?---Correct.

It follows then that Mr Stevenson had not, by 18 January 2016, been advised that Option 1 would proceed, doesn't it?---Yes.

25 The document can be taken down, please, Madam Associate. Mrs Davidson, it wasn't until Tuesday, 19 January 2016 that the CEO Performance Review Committee members met to discuss a way forward with Mr Stevenson, was it?---From the dates on the documents, yes.

30 By that stage, Mr Stevenson had still not been consulted about whether or not Option 1 would proceed, had he?---No.

35 Mrs Davidson, did you attend a CEO Performance Review Committee meeting on 19 January 2016 in the afternoon?---The date means something to me, I'm not too sure about the time, but there should be a set of minutes.

Madam Associate, 9.0171. Do you see here an agenda, CEO Performance Review Committee meeting, 14 January 2016?---Yes.

40 19 January 2016, my apologies, Mrs Davidson?---Yes.

9.0172, please Madam Associate. There appears to be a certification on the page for an agenda, do you see that, Mrs Davidson.

45 9.0173, the next page, please, Madam Associate. See a reference here to minutes of the meeting, members in attendance and Ms Smith acting as minute taker, do you see that?---Yes. It's not defining a time slot.

An agenda is being referred to as minutes, do you see that?---Yes.

Governance weren't in attendance at the meeting, were they, Mrs Davidson?---No.

5 Was that usual for Governance to attend CEO Performance Review Committee meetings in January, or in 2016 or even in 2015?---Yes.

Why was Governance not involved in this meeting, Mrs Davidson?---Because the issue was very sensitive

10

[12 30 pm]

Governance deal with sensitive information all the time, don't they, Mrs Davidson?---Yes.

15

It makes no sense for Governance to be excluded because the issue was a sensitive one, does it?---No.

20

COMMISSIONER: Yes, it makes no sense or no, it makes no sense?---It doesn't make any sense.

Thank you?---It was trying to keep the issue reasonably contained.

25

MS ELLSON: Governance Officers can be trusted to keep confidence, Mrs Davidson, can't they?---Yes.

30

And they could as at 19 January 2016 be trusted to keep things in confidence, couldn't they?---Yes.

It makes no sense for them to be excluded because a matter needed to be, or an issue needed to be contained, does it?---No.

35

Can you explain, Mrs Davidson, why something labelled as an agenda is described on this page as minutes?---I can't, Ms Ellson, no.

Is there some reason, Mrs Davidson, Ms Smith was asked to take the minutes?---Only because of the sensitivity of the issue.

40

Madam Associate, 9.0174. Do you see here Mrs Davidson, the time, 1.10 pm?---Yes.

And you declared the meeting open?---Yes.

45

And an agenda item is described as, "CEO Performance Review", do you see that?---Yes.

Resolutions are set out there, do you see that?---Yes.

5 Committees don't make resolutions, do they, Mrs Davidson? They make recommendations, isn't that right?---They do resolve items but the recommendation would then go to Council.

10 Did you view the matters under points 1, 2 and 3 to be recommendations?---To go towards Council as final decision-maker.

15 Do you accept then that as at 19 January 2016 at 1.10 pm, the committee was recommending to Council to accept Option 1, without having - I withdraw the question. Do you accept that the CEO Performance Review Committee as at 19 January 2016 at 1.10 pm was recommending to Council for Option 1 with respect to Mr Stevenson to be accepted?---Yes.

Do you agree that as at 1.10 pm on 19 January 2016, Mr Stevenson had not expressed a preference for Option 1 to move forward?---Correct.

20 COMMISSIONER: Just while we are on this page, Ms Ellson, is there a following page to this?

MS ELLSON: Yes.

25 COMMISSIONER: Are you going to take Ms Davidson to that in a moment, or not?

MS ELLSON: Yes.

30 COMMISSIONER: Right. Please continue.

MS ELLSON: Madam Associate, 9.0175, please. Ms Davidson, do you see here a 3(b) and a 4 and a 5?---Yes.

35 Do you consider that on 19 January 2016 the CEO Performance Review Committee was recommending Council "negotiate with the CEO for a mutually agreed separation which is supported by a Deed of Settlement and Release that includes payment to the CEO of 100 per cent of the total annual remuneration (12 months) plus any accrued entitlements"?---Yes.

40 Do you accept then that, as at 19 January 2016, no negotiations had occurred with Mr Stevenson about whether or not his separation was mutual?---I'm trying to work out the timeframe because at one point the CEO Performance Review Committee had had discussions with Gary Stevenson to accept his Option 1.

45 Mrs Davidson, you earlier gave evidence that you didn't recall a time when Mr Stevenson - - -?---I can't recall the time.

- - - expressed a preference for Option 1, do you accept that?---I do, but we did - the CEO Performance Review Committee met with him and said that we accepted the Option 1 offer.

5

That was the day following this meeting - I withdraw the question. A meeting with Mr Stevenson occurred between you, the Lord Mayor and Deputy Lord Mayor Limnios the following day, didn't it?---I will take your word for that, Ms Ellson, if that's the set-up of the timeline.

10

Do you accept that as at 19 January 2016 Council had not negotiated with Mr Stevenson for a mutually agreed separation?---No.

15 Do you agree that the CEO Performance Review Committee, on 19 January 2016, recommended that they do negotiate with Mr Stevenson for a mutual agreed separation?---Yes.

That didn't occur, Mrs Davidson, did it?---Could you repeat that question?

20 Council never negotiated with Mr Stevenson for a mutual agreed separation, did it?---Yes, it did, because once this had been in train and then the Council had met, and obviously we had offered the Option 1 and they agreed to undertake this mutually agreed separation, Deed of Settlement, et cetera.

25 COMMISSIONER: Did I understand your evidence earlier, Ms Davidson, to be that you have some sort of recollection of a meeting between Mr Stevenson and the CEO Performance Review Committee prior to this meeting on 19 January 2016, where Option 1 was discussed, although you can't recall the date of that?---I can't recall the date of the meeting, Commissioner, but I do recall the CEO  
30 Performance Review Committee meeting with CEO Gary Stevenson and accepting his offer of Option 1.

35 So was that meeting a formal meeting of the CEO Performance Review Committee?---Not a formal meeting to be documented, no. It was those people, CEO Performance Review Committee members, meeting with CEO Gary Stevenson.

So the members being - you mean the three members of the committee?---Yes.

40 Anyone else?---No.

45 When you say it wasn't a formal meeting, not documented, are you telling me that this meeting and what happened at it is not the subject of any written record?---I don't recall it being documented, Commissioner. It was a discussion to accept his offer of Option 1.

Right, and was it your understanding that at this time, at that point in time there

was an agreement between the CEO Performance Review Committee and Mr Stevenson to the effect that Option 1 was accepted?---Yes.

5 If that happened, do you think it should have been documented?---Well, that's why, of course, can we set in train - - -

I appreciate - - -?---Yes, I understand what you're saying, Commissioner.

10 I'm asking, do you think it should have been documented if that kind of agreement was reached?---It was verbal, Commissioner.

I accept that but my question was, do you think it should have been documented?---There should have been a notation somewhere, Commissioner.

15 Right?---Hence, as I say, this CEO Performance Review Committee has put it into some format going forward.

20 If, as you say, an agreement was reached between the CEO Performance Review Committee and Mr Stevenson at that earlier date in time, can you tell me what authority the CEO Performance Review Committee had to make such an agreement?---Only to offer it, Commissioner, and then to meet - - -

25 Sorry, to offer what?---Offer the acceptance of the Option 1 and put in train then the formal CEO Performance Review Committee to then put forward recommendations to Council for a decision by Council.

30 Madam Associate, would you please bring up on the screen 9.0174. The part that I'm not understanding about what you're telling me just now is the resolution that appears in 3(a) that the CEO Performance Review Committee:

*Accepts Option 1 offer on 30 November 2015 by CEO Mr Gary Stevenson that relates to 8.5 of the employment contract, "Termination by the City; any reason."*

35 If you look at that wording, as I read that, it is the CEO Performance Review Committee, on 19 January 2016, not some earlier point in time, accepting Option 1 and the reason I'm having difficulty with that, Ms Davidson, in fairness to you is, you're telling me, as I understand it, that the offer of Option 1 was accepted at an earlier point in time. If that happened, why doesn't this resolution refer to that earlier acceptance and confirm it, rather than being worded in a way which suggests that the Option 1 offer was accepted on 19 January 2016; can you explain that to me, please?---I can only explain that the offer of Option 1 was the receipt of that 16 page document on 30 November, which obviously included Option 1.

45 Yes, I understand that, but what you are in effect telling me is that the offer of Option 1 was accepted at a point in time earlier to 19 January and then here we have the minutes of the 19 January meeting which appear to be an acceptance of

offer 1. In other words, it seems odd to me that the offer of Option 1 is accepted twice at two different points in time. Does that make sense to you?---Yes, one being verbal, Commissioner

5 [12.45 pm]

I beg your pardon?---One, I'm assuming, being verbal when the CEO Performance Review Committee met with CEO Gary Stevenson when he had responded to the Performance Review with his 16 page document.

10

So that's the earlier point in time at which the acceptance was made, am I right? Am I right?---The acceptance of Option 1?

Yes?---Yes.

15

So you're now referring to the earlier acceptance, am I right?---Verbally.

Verbal or otherwise?---Yes.

20

And you are the Presiding Member of the CEO Performance Review Committee meeting on 19 January 2016, is that right?---Yes.

So after that meeting had taken place, you would be conscious of what was recorded in these minutes, wouldn't you?---Yes.

25

Indeed, it would be your responsibility to make sure the minutes were true and correct, wouldn't it?---Yes.

30

Well, knowing then of an earlier acceptance of Option 1, why did you allow paragraph 3(a) to be written in the way it was?---I believed that was the documentation of the process that we had been going through.

It doesn't say that though, does it?---I can only say that's how it was documented, Commissioner.

35

I accept that, Mrs Davidson, and I'm not questioning that's the way it was written but what I'm trying to understand is how you can tell me, in effect, that there were two acceptances of an offer of Option 1 at different points in time?---Yes. One was a verbal discussion.

40

In which case, should this paragraph 3(a) have not referred back to that earlier acceptance and confirmed it, or noted, alternatively, that the acceptance was made at an earlier point in time?---Yes, which I think that's what 3(a) says, that we accepted the Option 1 - - -

45

No, it doesn't. It says "accepts", not "accepted". It's present tense, not past tense?---Yes.

Can you understand the difficulty I'm having in understanding this part of your evidence?---Yes. This is the CEO Performance Review Committee now documenting the process that was going forward.

5

Can you see the inconsistency that there is between your evidence on this point? No, Mr Yeldon, I want to hear the answer?---I can't see the inconsistency because I'm just in this process now of documenting, you know, what was occurring going forward, Commissioner.

10

But look at 3(a) for me. 3(a), because of the tense in which it is written, does not accurately reflect what you said about an earlier acceptance, does it?---No, and that was a verbal agreement and was not documented in a CEO Performance Review Committee formal process.

15

Even though you say it should have been documented at the time?---In hindsight, yes.

Can I just test that with you, please, Mrs Davidson?---Mm hmm.

20

I took you earlier to an email from Mr Stevenson to you of 30 November?---Yes.

I can bring it back up on the screen or have Madam Associate, if you like, but this is the one that starts with the words, "This is a difficult email to send", do you remember that one?---From Gary Stevenson, yes.

25

Do you want it brought back on the screen?---No, I'm fine.

So this is an email in which he explains to you his difficulty with Option 1 and his preference for Option 2?---Yes.

30

At some point in time, prior to 19 January 2016, you say that Mr Stevenson met informally with the Performance Review Committee and there was an oral acceptance of his offer of Option 1, have I got that right?---Yes.

35

And I'm assuming, given the content of this email of 30 November 2015, that this oral acceptance must have occurred after that email and before the meeting of 19 January 2016, am I correct in my assumption?---Yes.

So knowing what was in the email of 30 November 2015, and having then got an oral acceptance of the offer of Option 1, is that not something that occurred to you as so important at the time that it should be documented?---No, at that point in time it was verbal and then it was a case of trying to put into train the process of the formal CEO Performance Review Committee - - -

40

I understand that?--- - - - recommending to go to Council.



But as at the date of this oral acceptance, the CEO Performance Committee had, I would have thought, and tell me if I'm wrong, an important agreement with Mr Stevenson, do you agree?---Yes, we accepted his - - -

5 That important agreement, because of its importance, should that not have been recorded by someone on the CEO Performance Review Committee at that time?---In hindsight, Commissioner, yes, but it wasn't.

10 But look at it even then - I appreciate you've given me evidence about how it looks in hindsight, but at the time, it was an important agreement that had been reached, you've agreed with me on that?---Yes, it was a - - -

15 What I'm - I'm sorry, I didn't mean to speak over you?---That's okay. It was an exchange of discussion.

20 You put it higher than that, you said it was an oral acceptance. So there being an oral acceptance, I'm trying to understand how that could not have been important enough for someone on the CEO Performance Review Committee to have written it down at that stage. That's what I'm struggling with?---It was a verbal discussion.

I know that?---I know, and it wasn't documented, Commissioner.

25 And it must have been obvious - tell me if I'm wrong - but it must have been obvious to one of you, perhaps you as the Presiding Member, that it should be written down somewhere?---Yes.

30 And that must have been obvious to you at the time, and again, tell me if I'm wrong?---At the time, in terms of documenting, it was - as far as I'm concerned, it was not considered. It was taken as a verbal discussion between the CEO Performance Review Committee members - sorry, I'm losing my voice - - -

That's all right, Mrs Davidson. I will adjourn for lunch in a moment?---And CEO Gary Stevenson.

35 Yes, and was there some reason for not writing it down at that time?---No reason at all.

Ms Ellson.

40 MS ELLSON: Mrs Davidson, an acceptance of Option 1 earlier than 19 January 2016 was not documented because it didn't happen, isn't that right?---I can't agree with that, Ms Ellson.

45 An acceptance of Option 1 by Mr Stevenson earlier than 19 January 2016 was not written down because Mr Stevenson did not accept Option 1 any earlier than 20 January 2016, isn't that right?---I believe he did because we had that discussion where we accepted his Option 1 offer.

The only discussion you had with Mr Stevenson before 19 January 2016 was on 30 November 2015, the same day he sent you the email, wasn't it?---Yes.

5 And there was no acceptance by Mr Stevenson of Option 1 during your discussion with him on 30 November 2015, was there?---That I don't recall, Ms Ellson. It was when he - the 16 page document and I'm assuming that was discussed on 30 November, and then the discussion, but I can't recall. There was between the CEO Performance Review Committee on the 19th and earlier that the CEO Performance  
10 Review Committee members did meet with Mr Stevenson and accepted his Option 1 offer.

And there's no documentation in support of that at all, is there, Mrs Davidson?---No.

15

And that's because it simply didn't happen, isn't that right?---It did happen.

COMMISSIONER: Why was it an informal meeting?---It was just a gathering of the CEO Performance Review Committee members as CEO Gary Stevenson had  
20 sent through his 16 page document reply, Commissioner.

Could that have been a formal meeting instead of an informal one?---It could have been.

25 If it had been formal, would minutes have been taken?---Yes.

Would the decision, or alternatively, what happened at that meeting, have been recorded in those minutes?---Yes.

30 Ms Ellson.

MS ELLSON: If the decision with respect to the CEO Performance Review Committee was not recorded in any minutes, Mrs Davidson, no formal decision about it was ever made, was it?

35

COMMISSIONER: There's a problem with that question. That doesn't follow, Ms Ellson. I'm just saving Mr Yeldon the objection there.

MR YELDON: I see the time, Commissioner.

40

COMMISSIONER: You're very concerned with the time today, Mr Yeldon.

MS ELLSON: I'm sorry, Commissioner, I was waiting for you to address Mr Yeldon's concern about the time before I proceeded.

45

COMMISSIONER: No, that was just a comment.

MS ELLSON: I see.

MR YELDON: It's gratuitous.

5 MS ELLSON: Mrs Davidson, as the Presiding Member of the CEO Performance Review Committee, you're responsible for keeping track of the CEO Performance Review Committee business, isn't that right?---Yes.

10 One of your functions as the Presiding Member of the CEO Performance Review Committee is to convene meetings of the CEO Performance Review Committee, isn't that right?---Yes.

15 So if a meeting of the CEO Performance Review Committee occurred - formally occurred, it would be because you convened the meeting?---Yes.

If a CEO Performance Review Committee meeting did not occur when it should have occurred, that was your responsibility, wasn't it?---Yes.

[1.00 pm]

20 COMMISSIONER: Ms Ellson, would this be a convenient time?

MS ELLSON: Yes.

25 COMMISSIONER: Thank you. I will adjourn until 2.15.

**WITNESS WITHDREW**

**(Luncheon Adjournment)**

30

35

40

45

HEARING RECOMMENCED AT 2.19 PM.

**MS Janet Elizabeth DAVIDSON, recalled on former affirmation:**

5 COMMISSIONER: Yes, Ms Ellson.

MS ELLSON: Commissioner.

10 Mrs Davidson, did Mr Stevenson call you on 19 January 2016 and ask you about the purpose of the meeting scheduled for 20 January 2016?---I don't recall, Ms Ellson.

15 Madam Associate, if you could bring up page 14.1029, please, TRIM 13801. Mrs Davidson, Mr Stevenson has identified this as a note that he made contemporaneously to a call with you on 19 January 2016. Just take a moment to read through it, please?---I'm not too sure what the third line going upwards, that word is something "document". It looks like précis.

20 Précis, yes. Mrs Davidson, reading this note, do you remember speaking to Mr Stevenson on 19 January 2016 on the telephone?---I don't recall.

25 Mr Stevenson recalls you saying the words "to take it to the next step" after he asked you why there was a meeting scheduled for 20 January 2016; do you accept that you did that?---I can accept his note. I don't recall doing that phone call. I don't remember the second comment at all.

30 The note can be taken down, please, Madam Associate. On the topic of a call on 19 January 2016 with Mr Stevenson, Mrs Davidson, did you speak to Mr Stevenson about the possibility that Option 1 would be accepted?---I don't recall that on the 19th.

35 Mr Stevenson has given evidence to the effect that he had no inkling Option 1 was on the cards by the time that he called you on 19 January 2016; do you accept Mr Stevenson's version?---I don't. I believe it was - - -

COMMISSIONER: I don't know how she can accept that version, because you're asking her to accept that he had no inkling. I don't think she can help.

40 MS ELLSON: Mrs Davidson, do you accept that by 19 January 2016 Mr Stevenson had not been spoken to about the possibility that Option 1 was on the cards?---I believe he had, Ms Ellson.

But you don't remember when?---Not the date, no.

45 You don't remember in front of whom?---Yes, I do. It was the Lord Mayor, the Deputy Lord Mayor and myself and Mr Stevenson.

The conversation wasn't documented, was it?---No.

The conversation didn't occur until 20 January 2016, isn't that right?---I believe it was earlier than that.

5

Mrs Davidson, did you meet with Mr Stevenson on 20 January 2016 in the morning?---I don't recall, vaguely, whether it was 8.30 so I'm not sure as regards the date or time.

10 Did you meet with Mr Stevenson with the Lord Mayor and Deputy Lord Mayor on 20 January 2016?---This was before the Council meeting?

Yes?---I don't recall specifically but I think that would be a possibility.

15 What is your best memory of a meeting on 20 January 2016, with Mr Stevenson?---I don't recall the contents of that meeting.

Madam Associate, could you bring up, please, 14.1087?---I accept that note.

20 When you say, "I accept that note", Mrs Davidson, was Mr Stevenson advised that Option 1 was agreed by Councillors at a meeting on 20 January 2016 with yourself, the Lord Mayor and Deputy Lord Mayor Linnios?---Not agreed by Councillors because Councillors hadn't met until 9.30. I'm assuming this was, when I mentioned the 8.30 time, that the Special Council Meeting obviously was  
25 to agree to an Option 1.

Who spoke at the meeting, Mrs Davidson, to Mr Stevenson?---I think we probably all did, Ms Ellson.

30 What did you say?---I can't recall exactly but it would be - - -

Please don't guess?---Sorry. All I can say is Option 1 had been accepted.

35 Did you say that to Mr Stevenson in the meeting on 20 January 2016?---I do believe I did.

40 COMMISSIONER: Sorry, none of this evidence is really helpful to me because it's assumption and belief and what I really need is recollection of facts. So far we haven't really dealt with that. All I know from what I've heard is that Ms Davidson does not recall the time or date of a meeting that took place before the Council meeting, but she does recall a meeting, as I understand her evidence, at which she, the Lord Mayor and Deputy Lord Mayor Linnios were present with Mr Stevenson and those are the facts which, as I understand it, you can recall, is that right,  
45 Ms Davidson?---Yes, and I did think it was earlier, Commissioner. Seeing this obviously - - -

There's a danger in looking at this - - ?---I know there is. I know.

- - - because all I'm interested in is your recollection?---Right

[2.30 pm]

5

What I do not want you to do, and you should not be asked to do is to look at a note made by somebody else and construe things from that note, or even look at that note and use it to refresh your memory because it's not your note. So what do you recall, that's really what I'm interested in?---Yes.

10

If you don't recall any more than you've told me, so be it?---That's fine. Not nominating the date or time, a gathering of the CEO Performance Review members, the Lord Mayor, Deputy Lord Mayor and myself, with Mr Stevenson and the discussion was to accept his Option 1.

15

That's a conclusion. What I want to know is what you recall?---I believe that - - -

I don't want to know what you believe, I want to know what you remember?---Sorry, as Presiding Member, I said to Mr Stevenson that Option 1 would be accepted because I can recall, whether this date or otherwise, he left the meeting reasonably quickly. We had agreed, whether this meeting or otherwise, that we would undertake the deed as sensitively and satisfactorily as we could, and that we would also do a mutual media statement and a letter prepared for Mr Stevenson.

25

Who agreed?---The members of the Performance Review Committee.

I'm going to ask Ms Ellson to ask you some further questions but she will confine her questions to your recollection of the facts and you will do your best, if you don't mind, Ms Davidson. Thank you, Ms Ellson.

30

MS ELLSON: Madam Associate, the document on the screen can be taken down, thank you. Mrs Davidson, you said, "I said to Gary Stevenson Option 1 would be accepted." That was the first time Mr Stevenson had been advised by you or any of the members of the CEO Performance Review Committee that Option 1 would be accepted, wasn't it?

35

MR YELDON: When is "that", sorry?

40

COMMISSIONER: It's pretty obvious, Mr Yeldon.

MR YELDON: Is it? Well - - -

COMMISSIONER: It is to me.

45

MR YELDON: Well, to me it's not.

COMMISSIONER: It is to me and I'm the one that matters, Mr Yeldon. I understand the purport of the question.

MR YELDON: Does the witness understand?

5

COMMISSIONER: Mr Yeldon.

MR YELDON: Yes, Commissioner.

10 COMMISSIONER: Take a seat, please.

MR YELDON: Yes.

15 COMMISSIONER: Ms Davidson, do you understand you're being asked about the meeting on 20 January?---Yes, I am, thank you, Commissioner.

Thank you.

MR YELDON: Thank you.

20

COMMISSIONER: I'm not going to enter into argument with you, Mr Yeldon. Okay?

MR YELDON: No. I accept that.

25

WITNESS: Previously I had said that I thought that meeting of members and CEO Gary Stevenson had taken place before then but in terms of process, I accept that it was the 20th.

30 MS ELLSON: You accept that it was 20 January when Option 1 was raised as accepted with Mr Stevenson?---That he had offered Option 1, yes.

35 Mrs Davidson, you said that you accept that in the meeting on 20 January 2016 you said to Mr Stevenson Option 1 would be accepted and that you had previously said you thought that was at a meeting of members before then?---I thought it was.

But it wasn't, was it?---He went away on leave, so we are probably looking towards the January meeting when things were taking an actual course.

40 And it was at the 20 January 2016 meeting that Option 1 being accepted was first raised with Mr Stevenson, isn't that right?---I can't recall totally. I still maintain that I thought we had had discussions before that date.

45 Could you be mistaken about that?---I don't know, Ms Ellson, because he had responded with his 16 page document in November, so I'm surprised that it would have gone on for that long before we hadn't had that verbal discussion.

In Mr Stevenson's 16 page document, he wasn't responding to a possibility of an option being taken up, was he?---He was offering two options.

5 And his preferred option, as you've already told the Commissioner, was Option 2, isn't that right?---Yes.

10 And up until 20 January 2016, Mr Stevenson had never expressed a preference for anything other than Option 2, had he?---No, other than as a pragmatist, he could see the likelihood of Option 1.

15 He had never expressed for Option 1 to occur, had he?---Not agreement but he had offered the two options.

20 In the meeting on 20 January 2016, Mr Stevenson did not indicate he agreed with Option 1, did he?---No, he left, if that was the date. He left fairly quickly.

25 On 20 January 2016 Mr Stevenson received very little explanation about what was going on, is that right?---Other than the acceptance of his Option 1 offer and to take it to a Deed of Agreement, a mutual media, et cetera.

30 What authority did the CEO Performance Review Committee members have to ask Mr Stevenson to sign a Deed of Settlement in the meeting at 8.30 in the morning on 20 January 2016?---I don't think the members of the committee asked him to sign an agreement, it was just the process going forward to prepare a Deed of Agreement.

35 Mr Stevenson refused to sign a Deed of Settlement in the meeting on 20 January 2016, didn't he?---There was nothing prepared, Ms Ellson, as far as I know.

40 The officers in the WALGA, Mrs Davidson, had provided you with a Deed of Settlement, hadn't they?---They had done some preparation for us, yes.

45 So in that sense, something had been prepared, isn't that right?---In terms of getting things lined up, yes.

A deed was given to Mr Stevenson in the meeting on 20 January 2016, wasn't it?---That I don't recall at all.

50 The meeting was a very quick one, isn't that right?---Yes.

55 Five to 10 minutes long?---Yes, 15 minutes tops.

60 How did Mr Stevenson appear to you when he left the meeting on 20 January 2016?---Fairly silent and giving no response.

65 Mrs Davidson, you and the CEO Performance Review Committee members had sprung on Mr Stevenson the possibility of Option 1 on 20 January 2016, hadn't



you?---Sprung on, I think, is a fairly strong word. I think that he would - well, I believe he was aware of the possibility of the Option 1 being accepted.

5 And he was notified of the decision on 20 January 2016 at 8.30 am for the first time, isn't that right?---I will accept that meeting date but I'm not too sure whether there was another meeting earlier than that, but - - -

10 It was only after Mr Stevenson had left the meeting 20 January 2016 that the matter was raised before Council, isn't that right?---Yes.

COMMISSIONER: What is the matter you're talking about?

MS ELLSON: Commissioner.

15 COMMISSIONER: I'm just saving Mr Yeldon the objection because he will object if you ask questions like that.

20 MS ELLSON: Mrs Davidson, it was only after the meeting with Mr Stevenson on 20 January 2016 that Mr Stevenson's termination was raised with Council, isn't that right?---The documents had prepared for that Special Council Meeting, yes.

And it was at the Special Council Meeting for the first time that Council were advised of the possibility of accepting Option 1, do you accept that?---Yes

25 [2.45 pm]

30 The day before the Special Council Meeting, Mrs Davidson, did you speak to any Councillors about what might happen during a Special Council Meeting on 20 January 2016?---Yes. Listening last week, I know that - well, Dr Green said I had a conversation with her.

35 Mrs Davidson, I'm asking you about your recollection?---Right, okay. I recall that we divided up the Elected Members to speak to them to say that this Special Council Meeting was going to take place and therefore, would they be able to attend.

Who did you speak to, Mrs Davidson?---I think it would have been Dr Green and - - -

40 It would have, or you did?---I can't recall, Ms Ellson, but - I can't recall who I spoke to. It would have been at least two of the Elected Members.

But you can't recall?---No.

45 Do you know what you said on either or any call?---That there was a Special Council Meeting with regard to the CEO and I think that would have been as much as I would have said. I remained fairly - well, more than circumspect on the

phone.

You said "would have" said?---I did say. Very little would have been said, or I did say very little, and that this meeting was to take place.

5

Did you attend the Special Council Meeting in the morning of 20 January 2016?---Yes.

10 Did you speak to the meeting?---As the Presiding Member of the CEO Performance Review Committee, I did probably detail those recommendations from that particular committee.

You said "probably", Mrs Davidson; did you?---I think the Lord Mayor would have nominated me to say a few words.

15

You said "the Lord Mayor would have"; did she?---I can't recall specifically, Ms Ellson.

20 What happened at the meeting, Mrs Davidson?---I know you've got a set of minutes, that CEO Performance Review Committee recommendations were put up and the vote was unanimous.

Was paperwork provided to the Elected Members who attended the meeting?---Yes.

25

Who was responsible for arranging that?---I think - I'm not sure, that would have been organised through the Lord Mayor's office.

Do you know?---Not for sure.

30

Did Governance attend, or did any officers from Governance attend?---I think the minutes say that there was no-one from Governance.

35 Putting the minutes to one side, Mrs Davidson, did you see any Governance Officers at the Special Council Meeting on 20 January 2016?---No.

40 Do you accept they did not attend - do you accept that no Governance Officers attended the Special Council Meeting on 20 January 2016?---I do accept, but the minutes would document who was present.

40

Putting the minutes to one side, Mrs Davidson, do you accept that no Governance Officers attended the Special Council Meeting on 20 January 2016?---I accept.

45 Why were they not there?---Again, it was a very sensitive issue. It was not an easy one to undertake and again, trying to contain the situation.

Governance Officers attend at meetings where very sensitive issues are discussed

all the time, don't they?---Yes, they do.

So it makes no difference that a very sensitive issue was being discussed at the 20 January 2016 Special Council Meeting, does it?---No.

5

Do you accept a Governance Officer should have attended the meeting on 20 January 2016?---In hindsight, yes.

10 You mentioned the decision was not an easy one; it was a very important one for the City of Perth, wasn't it?---It was.

That in itself makes it even more important for Governance Officers to attend, do you accept that?---Yes.

15 You also mentioned that one of the reasons that Governance Officers didn't attend was that the situation needed to be contained. Governance Officers can be trusted to keep confidential information to themselves, can't they?---Yes.

That was certainly the case on 20 January 2016, wasn't it?---Yes.

20

So it makes no sense for Governance Officers to have been excluded from the meeting on 20 January 2016 to contain the situation, does it?---No.

25 Was it the case, Mrs Davidson, that Governance Officers were excluded from this meeting so you could just get the job done?---No.

It was, wasn't it?---No.

30 You've mentioned minutes, Mrs Davidson; who took them?---I believe Angela Smith.

Ms Smith was the Lord Mayor's personal assistant, is that right?---Yes.

35 Was it the Lord Mayor's idea for her personal assistant to take minutes - I withdraw the question. Did you speak to the Lord Mayor about using Ms Pernat to take the minutes?---Yes, as she had already taken the minutes for the CEO Performance Review Committee.

40 A Governance Officer should have taken the minutes for the CEO Performance Review Committee on 19 January 2016, shouldn't they?---In hindsight, yes.

They should have in January 2016, shouldn't they?---Yes?

45 And a Governance Officer should have taken the minutes at the Special Council Meeting on 20 January 2016, shouldn't they?---Yes.

Governance weren't involved in the CEO Performance Review Committee meeting

on 19 January 2016 because you just wanted to get the job done, isn't that right?---No.

5 Mrs Davidson, were any papers provided to the Elected Members who attended the Special Council Meeting on 20 January 2016?---Yes.

What?---Well, I know that you've got a set because I've seen them come up, so a set was given to them.

10 What was in the papers given to the Elected Members on 20 January 2016 for the Special Council Meeting?---Probably recommendations from the CEO - - -

15 I'm sorry, Mrs Davidson, did you say "probably"?---Sorry. The recommendations from the CEO Performance Review Committee on the 19th, their recommendations, the acceptance of Option 1 and without looking at the documents, that's as far as I can remember.

20 When you say the recommendations of the committee from 19 January 2016, to what are you referring?---The minutes of that meeting is documented, so whatever those recommendations were came up to the Special Council Meeting on the 20th.

You mentioned an acceptance of Option 1; is that a document?---Only contained in the 16 page document of Mr Gary Stevenson.

25 Anything else, Mrs Davidson?---It refers to the - - -

Sorry, what refers?---The Option 1 offer, to accept termination.

Mrs Davidson - - -

30 COMMISSIONER: I don't understand that answer.

MS ELLSON: No, Commissioner. I'm about to ask a question which hopefully will clear this up.

35 Mrs Davidson, I'm asking you about the documents that were provided to the Elected Members at the meeting.

COMMISSIONER: Which meeting?

40 MS ELLSON: On 20 January 2016 for the Special Council Meeting?---Yes. It would have been an agenda - - -

Not "would have been"?---Sorry. It was an agenda and recommendations.

45 Are you referring to recommendations in a document in addition to an agenda, Mrs Davidson?---I thought it was all part of the agenda but I know you have

brought them up on the screen before now.

5 So you don't know?---I can't recall specifically but it would have been the document that was given to the Elected Members for the Special Council Meeting on 20 January 2016.

You've said "would have been", Mrs Davidson; you don't know?---Sorry, was.

10 You don't know?---Yes, I do.

You do, it was?---Yes.

An agenda?---Yes.

15 An agenda for the Special Council Meeting on 20 January 2016?---Yes.

And nothing else? If you don't remember, please tell me?---I don't recall any other documentation

20 [3.00 pm]

Madam Associate, could you please bring up 9.0207, TRIM 17352.

25 COMMISSIONER: Thank you.

MS ELLSON: Mrs Davidson, do you see here an agenda approved for release by the Lord Mayor, Deputy Lord Mayor Davidson, and is that your signature in the middle?---It was Deputy Lord Mayor Linnios.

30 And yours is at the end, I'm sorry?---Yes.

On the right-hand side?---Yes.

35 9.0208, please, Madam Associate. This is agenda confirmed 20 January 2016, do you see that, Mrs Davidson?---Yes.

9.0209. An order of business for the meeting on 20 January 2016, do you see that?---Yes.

40 So far do you accept that these are the agenda papers for the meeting on 20 January 2016, a Special Council Meeting?---Yes.

Madam Associate, 9.0210. Do you see here an agenda?---Yes.

45 It refers to members in attendance?---Yes.

You accept that you attended the meeting on 20 January 2016?---Yes.

9.0211. Do you see here, Mrs Davidson, the item for discussion?---Yes.

And what purports to be a resolution that:

5

*Council endorses the minutes or recommendations of the CEO  
Performance Review Committee held on Tuesday, 19 January 2016.*

Do you see that?---Yes.

10

Do you recognise this as the agenda papers for the Special Council Meeting, 20 January 2016?---Yes.

And you accept this was the document provided to the Elected Members for the meeting on 20 January 2016?---Yes.

15

Mrs Davidson, did anyone address the meeting?---The Lord Mayor would have declared the meeting open.

You said "would have"?---Sorry, did declare the meeting open and I cannot recall but she would have - did defer to me as Presiding Member of the CEO Performance Review Committee to say a few words, but I am not specifically sure of that.

20

You're not sure of the fact that she deferred to you or you're not sure of the fact that you said a few words?---Not sure if she deferred or if I said a few words.

25

Did you speak to the meeting on 20 January 2016?---I believe that I did.

You did or you believe you did?---I believe I did.

30

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

Did anyone else speak to the meeting, Mrs Davidson?---I don't recall, Ms Ellson.

35

Was a motion put to the meeting, Mrs Davidson?---Yes, I'm sure there are some extra papers on here.

Agenda papers?---I think so.

40

Madam Associate, 9.0212. It's a blank page, Mrs Davidson, there's no more papers for the agenda. Was a motion moved at the meeting on 20 January 2016?---I can't believe then they had the full set of documents, Ms Ellson.

That's not my question, Mrs Davidson, my question is, was a motion moved at the meeting on 20 January 2016?---I believe so, and it would have been documented.

45

You said, "I believe so"; was it or not?---Yes, because there are some documented minutes of 20 January 2016 meeting.

5 Are you saying that you only believe that a motion was moved because you've seen some minutes sitting through the Inquiry?---No, I know we dealt with them on the 20th.

"We", who?---The Council meeting.

10 Dealt with what?---Just what you've put up there is not, you know, the full amount of documentation that we dealt with. There are minutes of that Special Council Meeting from the 20th that defines exactly what the Special Council Meeting did.

15 9.0213, please, Madam Associate. Do you see here some minutes, Mrs Davidson, that have been certified as confirmed?---Yes.

For a Special Council Meeting on 20 January 2016. 9.0214, please, Madam Associate, TRIM - I don't have that, sorry, Commissioner.

20 COMMISSIONER: That's all right.

MS ELLSON: Do you see here, Mrs Davidson, an order of business for the Special Council Meeting on 20 January 2016?---Yes.

25 9.0215. Minutes, presiding members, Ms Smith's in attendance. Lord Mayor took the Chair, Lord Mayor declared the meeting open, do you see that?---Yes.

30 Do you accept that this document is the minutes of the Special Council Meeting on 20 January 2016?---Yes.

9.0216, "Council resolves to go behind closed doors to consider a confidential matter"?---Yes.

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

That was moved by yourself?---Yes.

40 Do you now recall moving the motion that, "Council endorses the minutes/recommendations of the CEO Performance Review Committee held on Tuesday, 19 January 2016"?---Yes.

45 What does "minutes/recommendations" mean, Mrs Davidson?---What was recorded at the CEO Performance Review Committee held on Tuesday, 19 January.

Were recommendations of the CEO Performance Review Committee placed before Council at the Special Council Meeting on 20 January 2016?---Yes.

In what form?---A set of minutes.

5

That's not correct, is it, Mrs Davidson?---That's all I've got to go on, I'm sorry, Ms Ellson, but the minutes/recommendations of the CEO Performance Review Committee went forward for a Council decision on 20 January 2016.

10

Is that your recollection, Mrs Davidson, or are you basing that on reading the resolution in the document at 9.0216?---No, the Council resolved to accept the recommendations of the CEO Performance Review Committee and I'm not too sure what other documents there are that could be missing.

15

COMMISSIONER: That's not counsel's question. Would you ask the question again, please, Ms Ellson.

20

MS ELLSON: Mrs Davidson, the recommendations you're referring to, is that what you recollect or is that what you believe based on documents that you've seen?---I believe the Council - - -

25

Not you believe?---Sorry. I accept that the CEO Performance Review Committee recommendations were given to the Special Council Meeting to endorse and act on.

COMMISSIONER: That's not really an answer either, Ms Ellson. I wonder if it might be helpful for Ms Davidson to have a short break. I'm going to adjourn for 10 minutes.

30

**WITNESS WITHDREW**

(Short adjournment).

35

HEARING RECOMMENCED AT 3.23 PM.

**MS Janet Elizabeth DAVIDSON, recalled on former affirmation:**

COMMISSIONER: Thank you, Ms Ellson.

40

MS ELLSON: Mrs Davidson, on or about 15 January 2016, did you speak to the Lord Mayor about the results of an internal review Mr Stevenson had conducted in relation to gifted travel?---I don't recall, Ms Ellson.

45

You know the review I'm referring to?---I think the other day the discussion was - - -

Sorry, are you referring to something that happened in the Inquiry?---Yesterday,



when I was here, because of my document on the Performance Review referred to CCC and travel with regard to annual returns.

5 Did you become aware between June 2013 and 12 October 2015 that Mr Stevenson was conducting an internal review into gifted travel matters concerning Elected Members and others?---I wasn't aware.

10 Did you become aware in October 2015?---I'm not too sure of the time but I know CEO Gary Stevenson spoke to me concerning one of my travels and the annual return.

15 At some stage, Mrs Davidson, did you become aware that Mr Stevenson had reported some gifted travel concerning a trip you took to Malacca to the CCC?---He discussed it with me, CEO Gary Stevenson, and asked to - gave me a paragraph to sign-off on, to add to the annual return that referred to that travel and the discussion I had was that I couldn't see how it could be done retrospectively. The annual return had been signed off by the City, had gone to the Department and that had been signed off with non-compliance, so I did not agree with the paragraph that he was asking me to sign-off on. The CEO - sorry, not the CEO, 20 the CCC referred back to the CEO and the CEO Gary Stevenson referred them to the Department.

25 Mrs Davidson, in around 14 or 15 January 2016, did you speak to the Lord Mayor about her having been reported to the CCC?---I don't recall that. I don't recall, Ms Ellson.

30 Around the 14th or between 14 January 2016 and 20 January 2016, did the Lord Mayor show you a document containing a table that Mr Stevenson - I withdraw the question. Between 14 January 2016 and 20 January 2016 did the Lord Mayor show you the results of Mr Stevenson's internal review into gifted travel he had reported to the CCC?---I don't recall.

35 With respect to Mr Stevenson, Mrs Davidson, you voted in the same way as the Lord Mayor, didn't you?---For what, Ms Ellson?

For Mr Stevenson's termination. You voted at the Special Council Meeting on 20 January 2016 the same way as the Lord Mayor, didn't you?---Yes, and all other Elected Members.

40 You vote in the same way as the Lord Mayor a large proportion of the time, don't you?---The voting pattern at Council usually is 99.9 per cent unanimous, Ms Ellson. So the reference to the Lord Mayor, voting specifically along with her, I reject that I voted because she voted the same way.

45 That's not my question, Mrs Davidson. I'm asking you - - -?---The answer is - - -  
- - - how - - -?---Sorry, the answer is yes, then

[3.30 pm]

5 You voted in the same way as the Lord Mayor with respect to terminating Mr Stevenson's employment, didn't you?---Yes.

Because you always voted the same way as the Lord Mayor, isn't that right?---No.

10 Mrs Davidson, your evidence before the Inquiry is - you were asked a question on 4 July 2019:

*How often would you vote in the same way as the Lord Mayor?---A large proportion.*

15 *Sorry?---A large proportion.*

*A light proportion?---A large proportion.*

20 *A large, yes. Can you think of any occasion when you did not, when she voted one way and you voted the other?---No.*

?---That would be correct. As I said, the voting would be usually 99.9 per cent unanimous in Council decision-making.

25 Mrs Davidson, do you understand what a proxy is?---Yes.

You're a proxy for the Lord Mayor, are you not?---In what respects?

30 Between 14 January 2016 and 20 January 2016, you did the Lord Mayor's bidding, didn't you?---No. No, and a proxy is not a position in Council.

That wasn't my question, Mrs Davidson?---Thank you, Ms Ellson.

35 14.1327, please, Madam Associate. Mrs Davidson, do you see here some CEO Performance Review Committee minutes dated 7 March and 8 March 2017?---Yes.

40 14.1329, please, Madam Associate. Do you see here, Mrs Davidson, some minutes from the CEO Performance Review Committee for 7 March 2017?---Yes.

45 You see here a motion in the middle of the page moved by the Lord Mayor, seconded by Deputy Lord Mayor Linnios that, "The minutes of the meetings of the CEO Performance Review Committee held on 28 October 2014 and 19 January 2016 be confirmed as a true and correct report" was put and carried and you voted in favour of the motion?---Yes.

Do you accept that's what happened at the CEO Performance Review Committee

meeting on 7 March 2017?---Yes.

As at 7 March 2017, Mrs Davidson, were you aware of the requirement for minutes to be confirmed at the next meeting?---That was the normal process.

5

It's a requirement, isn't it?---Yes.

And you were aware of that on 7 March 2017?---Yes.

10 And you were aware of the requirement on 19 January 2016?---Yes.

The minutes from 28 October 2014 ought to have been confirmed at the meeting on 19 January 2016, do you accept that?---Yes.

15 Can you tell me why that didn't happen, Mrs Davidson?---The topic on 19 January, which was to make recommendations to Special Council Meeting for the 20th, it was an oversight that the minutes of 28 October were not signed off.

20 Was it because the documentation was not complete?---The minutes of 28 October 2014 had not been put on the agenda.

Was the fact that the minutes of 19 January 2016 meeting not before the meeting in October because the minutes were lost?---Which minutes?

25 COMMISSIONER: Sorry, I don't understand that question, Ms Ellson.

MS ELLSON: I apologise, Commissioner. I will move on, Commissioner.

30 I would like to talk you to now, Mrs Davidson, about the ultimate termination of Mr Stevenson's employment. If Council were told that Mr Stevenson's termination was mutual, Council were misled, isn't that right?---Not misled. The information given to them was Option 1 had been offered by the CEO Gary Stevenson and that the termination was by mutual consent.

35 Mrs Davidson, if Council were told at a Special Council Meeting on 20 January 2016 that Mr Stevenson had resigned, they were misled, weren't they?---He hadn't resigned.

40 So they were misled if they were told that, weren't they?---I don't think they were told that.

That wasn't my question, Mrs Davidson. If Council were told Mr Stevenson resigned on 20 January 2016, that's when they were told that, they were misled, weren't they?---If they were told that?

45

Yes?---Yes.

If that occurred, Mrs Davidson, and you didn't say anything, you allowed Council to be misled, isn't that right?---I have to say no to that because I don't - in all my time, I didn't mislead the Council on any topics, but on that one - - -

5 I'm not asking if you did, Mrs Davidson, I'm asking whether you allowed it to occur. My question is, if Council were told on 20 January 2016 that Mr Stevenson had resigned, and you said nothing, you allowed Council to be misled, didn't you?---It didn't happen, Ms Ellson, though.

10 If it did?---If it did - - -

And you said nothing?---Yes.

15 You allowed Council to be misled?---But it didn't happen, so I can't see why I would have misled them.

COMMISSIONER: What's being put to you is an hypothetical?---It's a possibility.

20 No, well - - -?---Hypothetical, okay. Sorry, Commissioner.

Let me finish, it will be easier?---Yes.

25 What's being put to you at the moment is some facts which you are being asked to assume. Whether those assumed facts are proven or not at the end of the day is another matter?---Right.

30 But you're being asked to assume, first of all, that Council was told that Mr Stevenson had resigned and it was told this at the meeting on 20 January 2016, that's the first fact you're being asked to assume, okay?---Well - - -

35 The second fact you're being asked to assume is that you didn't say anything when that had been said and what you are being asked now is if you assume those two facts to be true, and I'm not asking you to say whether they are true or not, but if you assumed those two facts to be true, you are now being asked whether, if you had said nothing, you would have allowed Council to be misled, that's the question?---Thank you, Commissioner. In terms of the hypothetical, the answer obviously is yes.

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

MS ELLSON: Commissioner.

45 Mrs Davidson, if Mr Stevenson was not terminated by the City by mutual consent and Council were told that that occurred, you accept that that misled Council, do you?---That's another hypothetical, then I will have to say yes.

If Council were misled about Mr Stevenson's termination being by mutual consent and you didn't say anything, you allowed Council to be misled, didn't you?---Yes, on your assumption or hypothetical.

5 Mrs Davidson, do you appreciate that both of my questions asked you to assume facts that existed as at 20 January 2016 Special Council Meeting?---You will have to detail me the facts.

10 Perhaps I will rephrase my questions and I do apologise to you, Mrs Davidson. If Council were told on 20 January 2016 at the Special Council Meeting that Mr Stevenson had been terminated by mutual consent, but that was not the case, that misled Council, didn't it?---Yes, if that - yes, if that was the case.

15 If Council were misled by the information provided to it at the Special Council Meeting on 20 January 2016 and you didn't say anything, you allowed Council to be misled on 20 January 2016, didn't you?---Yes, on that assumption.

20 I'm going to change topics with you now, Mrs Davidson?---Before you do, Ms Ellson. Commissioner, could I put something on the record?

COMMISSIONER: Well - - -?---It's to do with the CEO Gary Stevenson.

25 There's an opportunity for that later when your counsel will make an application, Ms Davidson, and I will hear his application and make a decision then. There's a process to be followed?---Well, I would have liked to have just clarified a few things.

30 Your counsel will have an opportunity to make an application to clarify a few things with you, Mrs Davidson.

MS ELLSON: The document can be removed from the screen, please, Madam Associate.

35 Mrs Davidson, do you have a memory of attending a Council meeting on 17 March 2015 where an item concerning the Grand Central Hotel was dealt with?---I don't recall but I'm sure the minutes will probably say that I did. So if I'm there, I'm there, and I obviously have seen documents coming up in the last two weeks, but if you reference me the minutes of the 17th, and I'm there, I will accept that

40 [3.45 pm]

I will take the opportunity to show you some, Mrs Davidson?---Thank you.

45 Madam Associate, 27.0501, TRIM 17167. Mrs Davidson, do you see on the screen some minutes certified from the Council meeting on 17 March 2015?---Yes.

Madam Associate, 27.0502. You see there an item at the bottom of the page, "83/15. Proposed principles of new City Planning Scheme No 2" and it goes on?---Yes.

5 27.0504, please, Madam Associate. Do you see here a list of Councillors present at the meeting and you're among them?---Yes.

Do you accept that you attended the Council meeting on 17 March 2015?---Six Elected Members present and no apologies.

10

And you're among them?---I'm amongst those attending.

Do you accept you attended?---I did.

15 Madam Associate, 27.0507. Under the heading, "83/15. Proposed principles of new City Planning Scheme No 2 - Planning Provisions and Policy, Heritage Assessments and Registrations", do you see that?---Yes.

20 Do you accept that the material under that heading is an officer's report from the Sustainable City and Development Unit?---Yes.

Madam Associate, 27.0512, please. Under the heading, "New Planning Policy", Mrs Davidson, could you read that to yourself, please?---Is the last paragraph on the page?

25

Yes, it is?---Thank you.

27.0513, please, Madam Associate?---Do you wish me to read all of this?

30 Yes, including material up to "Financial implications"?---Yes.

Under the section, "Comments", Mrs Davidson, could you read those as well, please?---Yes.

35 Madam Associate, 27.0514?---Yes.

Madam Associate, if you could turn, please, to page 27.0518. Do you see, Mrs Davidson, a Confidential Schedule 11. It's on the right-hand side of the page vertically?---Yes.

40

Do you see among the properties being considered are Rosie O'Grady's, Motor House, Grand Central Hotel and Kastellorizo?---Yes.

45 Turning back, please, Madam Associate, to 27.0514. The motion, Mrs Davidson, was to refer the matter back to the Planning Committee, is that right?---Yes.

And that was at odds with the recommendation made by the City's officers, isn't

that right?---Yes.

You voted in favour of the motion, to refer the matter back to the Planning Committee?---Yes.

5

You did?---Yes.

Can you tell me why you did that?---Councillor Limnios moved and seconded by Councillor McEvoy; I can only assume that the Planning Committee wanted some further information or, you know, work on it. I wasn't on the Planning Committee so I believe that - well, not I believed, I'm assuming that was the case, that they obviously wanted - the Planning Committee wanted to do some more work in that arena.

15 You said "assume", Mrs Davidson?---M'mm.

Had you spoken to anyone - - -?---No.

- - - before the meeting on 17 March 2015 on the Planning Committee to ascertain what their views were with respect to the officers' recommendation?---No.

20 Had you spoken to anyone before 17 March 2015 about how you would vote on this item on that date?---No.

25 Before it occurred?---Not that I recall, no.

No, or you don't recall?---I'm going to say no.

30 Had you spoken to Councillor Limnios about the motion that he moved before the meeting on 17 March 2015?---I don't believe I did.

You don't believe you did or you didn't or you don't know?---I will have to say that I don't recall speaking to him.

35 Madam Associate, 27.0515.

COMMISSIONER: Before you go there, do you recall why you voted in favour of the motion? If you don't, just say so?---Now I'll probably not say anything, Commissioner, because I've already assumed that it would be, the Planning Committee wanted to do some more work but that's me assuming. So therefore I won't, so I'll say no.

40 You don't recall?---I don't recall.

45 Thank you.

MS ELLSON: Madam Associate, 27.0515. Do you see under the heading,

"Reason", Mrs Davidson, an indication that:

5                    *Council are concerned that consultation with the people affected or potentially affected had not taken place and therefore agreed that the item should be referred back to the Planning Committee for further consideration.*

10 Does reading that assist you to recall why you voted in favour of the motion?---Yes. That would be a reasonable reason.

15 Was it your reason?---That reason given would allow me to make a decision to refer back to Planning.

15 You say "would"?---Did, did give me - - -

Mrs Davidson, just look at me for the moment, away from the page?---Right.

20 On 17 March 2015, did you vote to return the consideration of the draft Heritage Registrations Planning Policy and matters concerning the further assessment and consultation with affected landowners of properties in Confidential Schedule 11 back to the Planning Committee for further consultation?---Yes.

Why?---Because further consultation was required.

25 Why?---It was a process that had normally taken place.

30 COMMISSIONER: Ms Ellson, I think you need to be fair to Ms Davidson here. I asked Ms Davidson, before the page was turned, whether she recalled why she voted the way she did and she said no, quite candidly to me, and I appreciated that. She's then taken to the next page where a reason was written. The problem with taking a witness to that page and then asking about the reason is, sometimes looking at a reason like this adulterates the witness' recollection of events. The unaided recollection of Ms Davidson is that she doesn't recall the reason. It's appropriate to refresh a witness' memory from her contemporaneous record but this is not a contemporaneous record made by her. So the difficulty is we then confuse the evidence. So it's late in the day and everyone is getting a little tired, so I would caution against a line of examination like this where it might be unfair to Ms Davidson. While I've interrupted you, I might just ask Ms Davidson something of my own, if you don't mind, Ms Davidson?---Mm hmm.

40 Earlier, in fact, about 10 minutes or so ago, you asked me if you were able to say something about Gary Stevenson?---Yes.

45 We are obviously not going to finish your evidence today and I what I would like you to do, without telling me what you're going to say, is to give me, if you're able to, the topics on which you wish to address me?---Yes.



Can you do that? So it might be, for example, termination or it might be, for example, employment or it might be relationship with Councillors, something like that; do you understand what I'm getting at?---Yes.

5 If you can give me the topic headings, then what I will do, in fairness to you, is I will give consideration as to whether you should be saying anything more about those matters, I will give that consideration overnight, of course, and it may be that I come to the same view that they are matters for your counsel to take up with you, should he be successful in his application, or I may allow you to speak to them  
10 yourself, unaided, or I may ask Counsel Assisting to assist you with some questions on those topics. If you can give me the topics, I'd appreciate it?---Right. Simple topic, Commissioner.

15 Yes?---My referral or summons by the CCC regarding CEO Gary Stevenson.

Is that the only matter?---It is.

Thank you for that. I will give that consideration overnight?---Thank you.

20 Thank you. Ms Ellson, do you wish to continue?

MS ELLSON: Commissioner.

COMMISSIONER: Thank you.

25 MS ELLSON: The document can be taken down, please, Madam Associate. Before 17 March 2015, Mrs Davidson, were you aware that the Lord Mayor had a financial interest in the Grand Central Hotel?---I did not.

30 Did you become aware on or after 17 March 2015 that she had a financial interest in the property?---I don't recall that time slot.

Madam Associate, if you could please bring up again Council minutes for 17  
35 March 2015, page 27.0506. You see there, Mrs Davidson, a disclosure of a member's interest included the Lord Mayor at 83/15 relating to the item, "Proposed principles of new City Planning Scheme No 2 Planning Provisions"?---Yes, and I would have noted that disclosure.

[4.00 pm]

40 When you say, "I would have noted that disclosure"?---I noted that disclosure in the papers.

In the Council agenda papers?---Yes.

45 Noting the disclosure, Mrs Davidson, did you appreciate what it related to specifically in or about 17 March 2015?---Not specifically, Ms Ellson. If she had a

financial interest, it meant that she would leave the Chamber.

5 Did you know as at 17 March 2015 that her financial interest related to the Grand Central Hotel?---Only by reading this paper, but I didn't know before, but I realised that she had obviously declared an interest, a financial interest.

She's declared an interest in the item, Mrs Davidson, do you see that from what's written on the page?---Yes.

10 It doesn't refer specifically to the Grand Central Hotel, do you see that?---True.

Did you know as at 17 March 2015 that the Lord Mayor had a financial interest in the Grand Central Hotel?---No.

15 Did it become apparent to you at a later date?---It would have been a much later date.

20 You've said "would have"?---Sorry - much later date, and I'm only going to a set of minutes some time in November but it's only because I've seen them come up, and - - -

So you don't know?---And circulation of some photographs.

25 So you don't know?---No.

The document can be taken down, Madam Associate. Mrs Davidson, I would like to talk to you now about the topic concerning the Code of Conduct and some amendments that were made to it in June 2017.

30 COMMISSIONER: By this do you mean the City of Perth's Code of Conduct?

MS ELLSON: Yes, I do, Commissioner.

35 Mrs Davidson, in June 2017 was the City's Code of Conduct amended to insert some provisions with respect to bullying?---I don't recall specifically but only because I've heard the discussion take place and I can accept that the City's Code of Conduct did have inserted bullying into it.

40 Do you know why the City's Code of Conduct was amended to insert bullying provisions in June 2017?---I don't remember the rationale behind it. That would have been - I shouldn't say "would". CEO - I'm going to say I don't recall because I was just going to say that the CEO would have apprised us but I know you don't like "would" so I'll say I don't recall.

45 Mrs Davidson, do you remember a time in late 2017 when Mr Mileham introduced the CEO Inbox?---I do.

What was your experience - did you use it?---Virtually zero.

5 Why?---I might have done on one occasion. I felt that I have no need to use it, appreciated the process of the issue and escalated so that a question and answer routine and that question and answer was circulated the all Elected Members.

10 You said you appreciated the process of the issue. Did you understand why Mr Mileham introduced the CEO Inbox?---To refine the queries that were being directed to some of the Directors in terms of enquiries on particular topics.

15 Mrs Davidson, from the middle of 2017, was there some tension between Elected Members and the Administration with respect to their respective roles?---Tension that I didn't feel, so I can only comment on what I was feeling and I was feeling no tension.

20 Mrs Davidson, in your time with the City of Perth - I withdraw the question. From the middle of 2016 to the end of 2017, did you see or hear any behaviour on the part of an Elected Member that you formed a concern about?---I don't recall specific topics or specific Elected Members.

25 Commissioner, that completes my questions with respect to that topic. The next topic I plan to take Mrs Davidson to is somewhat lengthier.

COMMISSIONER: How much more time do you think you'll need?

MS ELLSON: One to two hours, Commissioner, I think.

30 COMMISSIONER: Right. We are not going to finish that today. Would any counsel at the Bar table have any difficulty with starting earlier than 10 am tomorrow? What I have in mind is 9.30 am. If anyone has any difficulty with that, would you please let me know now.

35 MS SARACENI: Commissioner, I'm chairing a board meeting tomorrow morning at breakfast. If I happen to be a bit late, I'm sure my instructing solicitor could sit in, with your leave, to represent Mr Mileham.

40 COMMISSIONER: I don't imagine there would be any difficulty with that, Ms Saraceni. Thank you for letting me know. Anyone else? Thank you very much for your obliging attitude. In that case, what I will do now, because it has been a long day, is I will adjourn this Inquiry until 9.30 am tomorrow morning. Thank you.

45 **WITNESS WITHDREW  
AT 4.10 PM THE MATTER WAS ADJOURNED  
UNTIL WEDNESDAY, 11 SEPTEMBER 2019**