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INQUIRY INTO THE CITY OF PERTH

PUBLIC HEARING - DAY 110

TUESDAY, 17 SEPTEMBER 2019

INQUIRY PANEL:

COMMISSIONER ANTHONY (TONY) POWER

COUNSEL ASSISTING:

**MR PHILIP URQUHART
MR CHEYNE BEETHAM**

COUNSEL APPEARING:

**MR ALEN SINANOVIC (Ms Michelle HOWELLS)
MR ALAN SKINNER and MR PETER MARIOTTO (Mr Dimitrios LIMNIOS)
MR PETER van der ZANDEN (Ms Lisa SCAFFIDI)
MR GERALD YIN (MR Yit-Kee YONG)
MS ALENA ZORIC (Mr Gary STEVENSON)
MR NICK MALONE (Mr Reece HARLEY)
MR MATTHEW CORNISH (Dr Jemma GREEN)
MR JOEL YELDON and MS EMILY CHAPPELOW(Ms Janet DAVIDSON)
MR TOBIAS BARRIE (Ms Judith McEVOY)
CAV. MARIA SARACINI (MR Martin Mileham)
MR TOM FOTHERINGHAM (MR Robert MIANICH)
MS SARAH HARRISON and MR MICHAEL HARRIS (MS Erica BARRENGER)
MR TIM RUSSELL (MR Paul CROSETTA)
MS JUSTINE SIAVELIS (MS Annaliese BATTISTA)
MR JONATHAN WYATT (MS Rebecca MOORE)
MS RACHAEL YOUNG (MR Stephen HASLUCK)
MS BROWYN WAUGH (MS Lexi BARTON)**

HEARING COMMENCED AT 10.06 AM:

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

10 Mr Urquhart.

MR URQUHART: Thank you very much, Commissioner. I recall Ms Scaffidi now, thank you.

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

MS Lisa-Michelle SCAFFIDI, recalled on former oath:

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

MR SINANOVIC: Yes, Commissioner, I appear for Michelle Howells.

25 COMMISSIONER: Yes. Mr Skinner, you continue to appear for Mr Limnios?

MR SKINNER: May it please the Inquiry.

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

MR van der ZANDEN: May it please you, Commissioner.

35 COMMISSIONER: Mr Yin, you continue to appear for Mr Yong?

MR YIN: Yes, sir.

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

40 MS ZORIC: I do, thank you, Commissioner.

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

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

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

MR CORNISH: Yes, thank you, Commissioner.

COMMISSIONER: Ms Chappelow, you continue to appear for Ms Davidson?

5 MS CHAPPELOW: Yes, please, Commissioner.

COMMISSIONER: Mr Barrie, you continue to appear for Ms McEvoy?

MR BARRIE: Thank you, Commissioner.

10

COMMISSIONER: Thank you. Yes, Mr Urquhart.

MR URQUHART: Thank you very much, Commissioner.

15 Ms Scaffidi, I just want to just go back to one matter we went over on Friday and it was regarding this hypothetical Option 1/Option 2 that I said, do you remember that, and you had some difficulty grasping what if it were the case if Mr Stevenson wanted Option 2; do you remember that?---I remember us talking about hypotheticals and Option 1 and Option 2, yes.

20

Yes. In fairness to you, I just want to show you a document now which would suggest it actually wasn't that much of an hypothetical. That's 14.0927, thank you, Madam Associate. The TRIM number, sir, 13560.

25 COMMISSIONER: Thank you.

MR URQUHART: There we go, Ms Scaffidi. You're familiar with this particular document, aren't you?---I am.

30 I just want to take you now to the penultimate paragraph on that page?---Yes.

So this has been written by Mr Stevenson and he actually states:

35 *It is clearly my preference that Council opts for Option 2 and that all energy is focused on ensuring a constructive outlook for 2016 which will see the bedding in of the new organisational structure, boundary changes in Crawley, the commencement of the Capital City Committee and many other positive milestones.*

40 So we can see there, clearly his preference was Option 2, wasn't it?---But the last paragraph on the next page is also very telling.

No, I'm just asking you about that paragraph?---Well, it connects to the last paragraph on page 16.

45

Yes. Why? It doesn't change what his preference is, does it? I'm asking you about his preference?---I understand.

His preference was Option 2?---I think it was - - -

5 Let's just answer that question first. Clearly, his option was for, or his preference was for Option 2, yes?---Yes, on that page.

You tell me then - we will go over the page, we will go to that last paragraph there, you tell me where his option or his preference changes?

10 MR van der ZANDEN: Could we have blown up, please, Madam Associate.

MR URQUHART: It reads:

15 *If, however, it is Council's preference to terminate my employment contract in accordance with clause 8.5 (termination by the City, any reason) then I will respect that decision and I will work with constructively with Council to ensure that such a transition can be implemented in a respectful and efficient manner which minimises impact on the organisation and maintains its reputation.*

20 Do you see that?---Yes.

I can assure you, Ms Scaffidi, I was going to bring to your attention that paragraph?---Okay.

25 But do you agree with me that changes nothing about what his preference was?---I don't agree.

30 I'm sorry. We will go back to the page, 14.0927, second last paragraph. Just in case there was any ambiguity about it all, Mr Stevenson states:

It is clearly my preference that Council opts for Option 2.

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

MR URQUHART: See?---I see it.

40 That was his preference, wasn't it?---His stated preference.

Which is his preference, wasn't it, stated or otherwise?---I don't entirely agree.

45 You don't entirely agree that Mr Stevenson was conveying to you that it was clearly his preference that Council opts for Option 2?---No.

Then the final page with that paragraph that we both wanted to go to, he sets out there a manner in which the transition can be implemented if Council's preference

is to adopt Option 1, do you see that?---Yes.

5 Was the transition implemented in a respectful manner?---It was as respectful as we felt we could be at the time. My view is the governance wasn't fully correct but we did the best we could.

So do you agree with me then from your answer that the transition could have been implemented in a far more respectful manner?---No, it was respectful.

10 Do you agree with me it could be implemented in a far more respectful manner?---No.

You don't?---I've answered no.

15 Do you recall that Mr Stevenson actually set out the timetable in which the transition "could be implemented in a respectful and efficient manner that minimises impact on the organisation and maintains its reputation"?---No.

20 You don't recall?---I recall but the Council didn't agree.

That's the answer, you can recall?---Yes, I can.

25 That he put forward a proposal? It's either yes or a no; can you recall - - -?---I'm sorry, a proposal.

- - - that he actually put forward a proposal in which the transition, if you opted for Option 1, could be done - - -?---No, I don't recall a proposal.

30 - - - in an efficient and respectful manner. It was one that he proposed that same day of 30 November 2015?---Right

[10.15 am]

35 You don't recall?---I don't recall that.

You don't recall Mrs Davidson forwarding to you, or at least speaking to you about an email she received from Mr Stevenson that evening?---I don't recall but if you show me the email it might trigger a memory. I just don't recall it at the moment.

40 Madam Associate, 14.0947, TRIM number, sir, 13559.

COMMISSIONER: Thank you.

45 MR URQUHART: This is an email that Mr Stevenson sent Ms Davidson on 30 November 2015 at 7.32 pm?---Right.

And he sent the other material on the morning of that day. In the top paragraph

there:

This is a difficult email to send. While it is clearly my preference for Option 2 to be pursued.

5

So reinforcing his view yet again. Do you now accept that that was clearly his preference, or not?---I agree it was his preference but I also - - -

10 As a - sorry, did you want to finish?---I was about to say, I agree it was his preference but I feel that it was almost like he needed to be seen to be putting that in and why did he put Option 1 as termination? It should have been the other way around so I think there's an element of - - -

15 He wanted to be seen to be putting that in and he wanted to be seen to be stating that? Really, is that your - - -?---That is my opinion.

That was your assessment of these emails back on 30 November 2015?---Not just on 30 November, when I reflected on it.

20 When you reflected on it when?---Since then.

What, on 14 January the following year?---All the time since then.

25 On 14 January the following year?---No.

You didn't reflect on it then?---I've answered the question.

30 So you reflected on it since then but not on that particular day?---I think my answer would be that there was an element of acceptance on Mr Stevenson's part because he knew the poor Performance Appraisal Review had been unanimous, I suppose is the word and that the relationship was so difficult for everybody.

35 Just going back to - there's no need to bring it up, Madam Associate - but 14.0927. I'm just going to read out another paragraph there. This is the page that set out Option 1 and Option 2?---Mm hmm.

So I gather then you did not think this is what his state of mind was when he said:

40 *At this time, due to my commitment to fully implementing structural and other organisational development initiatives, and in consideration of my family commitments, I am not seeking alternative employment. Hence, I do not intend to terminate the employment contract under clause 8.4 (termination by the officer, any reason).*

45 So again, did you believe that when he said that he wasn't telling you the truth?---May I speak to the genesis of - - -

No. Did you - - -?---No, I don't believe it.

So you believe he was telling the truth when he wrote that paragraph?---I'm not saying he wasn't telling the truth.

5

So you believed he was telling the truth?---May I add to the answer?

Did you believe he was telling the truth?---May I add to the answer?

10

I just want an answer to that question: did you believe he was telling the truth?---Yes, I'm happy that he was telling the truth but the genesis of this document has not been discussed.

15

Let's go back to - I'm more interested in 0947 now, please. He's confirmed again that it's clearly his preference for Option 2 to be pursued. Had you chosen, what option did you want taken as of 30 November 2015?---Option 1 was the preferred option by a majority, if not a unanimous cohort of Councillors.

20

As of 30 November 2015?---My recollection of the discussions from people was that - and staff that were approaching me, that Mr Stevenson had lost the respect of people.

25

So it was going to be a pretty straightforward exercise as of 30 November 2015, was it?---We were conscious of him going on leave - - -

Because according to you, both parties wanted Option 1?---But I don't make the decision on my own and we needed to go through the processes.

30

Certainly, but it seems like the process is all but done?---No, it wasn't all but done.

You see, do you recall receiving this email now from Ms Davidson?---No, I don't.

He continues here:

35

Therefore, if Option 1 is ultimately going to be chosen by Council, I would appreciate a very quick response of decision-making for the following reasons.

40

And then he sets out the fact that he's got his daughter's wedding in the USA, point 1. Point number 2, he has some "very difficult discussions to have with my family which I would prefer to commence ASAP and not have such bad news dropped on them immediately prior to Christmas", which again, I would suggest to you, is further evidence that he clearly didn't want Option 1, but nevertheless, we will go on. Point 3:

45

Operational arrangements could be commenced before Christmas for a transition that might have effect in the New Year.

Do you see that?---Yes.

Then he says, if we just go a bit further down the page now, Madam Associate:

5

If Option 1 is imminent, I propose the following to achieve a firm and quick decision that we can all work from.

Do you see that?---Yes.

10

And he sets out a number of dot points. Does this now jog your memory that you did sight this email?---I do not recall the document right now but if you're telling me it was forwarded to me, it must have been.

15

We will just go down further on the page. If you could just go to the end of the page now, Madam Associate:

20

I understand that you need to discuss this all with the LM and DLM but given your role as Chair of the committee, I felt it appropriate to put it directly to you in the first instance without prejudice.

Do you see that?---And you're saying this document was forwarded to me?

25

I'm going to say to you that it's almost inevitable that it would have been forwarded to you by Mrs Davidson; that would be fair to say, wouldn't it?---One would presume.

30

I understand it's nearly four years ago and you might not have a specific recollection of it. If we can go back now to what Mr Stevenson proposed, that if option one is imminent. He said in the first dot point:

CEO Performance Review Committee could meet informally again without me tomorrow, to determine if it recommends Option 1.

35

That didn't take place in December, did it?---No.

The next dot point:

40

As Chair you would advise me immediately after that meeting and I would then work constructively with you to prepare a confidential report for Council's consideration, obviating the need for another officer's involvement.

45

That sounds like a good idea, doesn't it?---It didn't happen.

It sounds like a good idea though, doesn't it?---It's an idea.

It's a good idea, isn't it?---It's an idea.

It's a good idea, isn't it, Ms Scaffidi? It's a good idea, isn't it?---It's an idea.

5 Yes. Do you agree with me - the question's not going to go away so I will ask for the fourth or fifth time: it's a good idea, isn't it?---It's a relevant suggestion.

I will ask for a sixth time: do you agree with me that it is a good idea?---No, I don't agree with you.

10

Why not? Why would that not be a good idea?---Because - - -

Because he would work constructively with you to prepare a confidential report for Council's consideration. Didn't you want to work constructively with him?---I don't believe that's the answer.

15

Did you want to work constructively with him?---Councillor Davidson - - -

Did you want to work constructively with Mr Stevenson in the termination of his employment?---Of course.

20

So why wouldn't this be a good idea?---I don't recall, as I do not recall these dot points.

25 That may be so. I want to know why you've disagreed with me that this would not be a good idea - disagree with me that this would be a good idea rather?---That's an open question.

You tell me why. I asked you whether it's a good idea or not and you disagreed with me and now I'm asking you why. Why do you disagree that this would be a good idea?---My recollection of the discussion with Mr Stevenson around this date, with the other members of the committee, was that we had told Mr Stevenson that we wouldn't be renewing his five year contract which actually was the start of this whole discussion, and we suggested to him that we would be very happy in light of the obvious interest it would attract, if he took his time and looked for another role - - -

30

35

Ms Scaffidi, I'm going to stop you there. Are you going to answer my question or not?---Please repeat your question.

40

Do you want me to repeat the question for the seventh time, do you?---You start to allow me to answer and then I forget the question.

Yes, but you haven't answered the question. I allow you to go on and on and then I'm waiting for you to answer the question and you don't. That's when I stop you because you're giving a non-responsive answer and the proof that it is a non-responsive answer is because you are never going to answer my question

45

because you ask me to repeat it when I cut you off?---You do.

Okay?---You do cut me off.

5 Yes. So if you were going to answer my question, can you then please do so?---So please repeat the question.

Yes, that's the whole point I'm making, you've forgotten what my question was of you, so you had no intention of answering it, did you?---No, that's not correct.

10

So would you like to answer my question?---Please repeat the question.

The question is, why don't you think this is a good idea?---Because we had suggested another idea at that point in time.

15

This is a good idea though, isn't it?---It's an idea.

Why isn't it a good idea?---Because we had suggested another idea.

20 That might well be the case. You can have two good ideas, but this is a good idea as well though, isn't it? This is a good idea, surely:

25 *I would work constructively with you to prepare a confidential report for Council's consideration, obviating the need for another officer's involvement.*

It's a good idea, isn't it?---I don't recall having seen this document.

30 Yes, I know all that, Ms Scaffidi, I know all that. Now that you've seen it, it's a good idea, isn't it?---Yes.

Third dot point:

35 *A Special Council Meeting could be conducted instead of the strategic workshop scheduled for this Thursday afternoon where a Council decision on Option 1 could be made.*

That actually took place, did it not, albeit six weeks later, is that right?---Sorry, the strategic workshop?

40

No, the Special Council Meeting?---Yes.

And the next dot point:

45 *The special meeting item (CEO Performance Review) would be confidential and the resolution would simply authorise the Lord Mayor or the CEO Performance Review Committee to give effect to the*

outcome of the CEO Performance Review, that is to terminate my contract in accordance with clause 8.5, without publishing the detail.

That's a good idea, isn't it?---Yes.

5

One that was done, yes?---Sorry, I didn't hear what you just said then.

It was a good idea because that was done. That's what was done six weeks - seven weeks later now, wasn't it?---Yes.

10

Then the next dot point, he would arrange to take leave from, say, 10 December. The next dot point:

An announcement of the decision could then be made while I'm on leave in the US to minimise scope for media exploitation. An agreed statement confirming the mutually agreed separation could be released.

15

Next dot point:

On return from leave, 28 December, I would constructively contribute to transition until the date of termination, to be set by Council, although I would recommend some time in February.

20

So that proposal he put forward, would you agree with me, sounds like a reasonable plan?---Yes.

25

It would certainly minimise disruption, wouldn't it?---Not necessarily, but yes, I will agree with you for the sake of - - -

30

It can't eliminate disruption but it would minimise it, wouldn't it?---Yes.

Didn't happen though, did it?---No.

Thank you, Madam Associate, that can come down. Ms Scaffidi, there is one other matter I just need to go back to, hopefully albeit briefly, that we went through last week. Madam Associate, this is 27.0706. TRIM number, sir, 19657. Ms Scaffidi, this is those emails you sent to Mr Lee. So you remember these emails?---Yes.

35

40

Thank you. I just want to now go to 705, thank you, Madam Associate. About halfway down, Madam Associate, if we can just see the people that Ms Scaffidi sent this email to on 12 January 2016. Thank you. Do you remember I asked you some questions about this?---Yes.

45

Who you CCed this email to. Firstly, would you agree with me there's clearly a power imbalance between yourself and Mr Lee?---Sorry, a power imbalance between?

You and Mr Lee?---Yes.

5 For any person, it would be concerning enough to receive an email from someone higher up the chain suggesting that they have made a mistake but - do you agree with that?

MR van der ZANDEN: Objection.

10 MR URQUHART: Okay, I won't pursue that.

Hypothetically now, someone in the organisation, in their work organisation, receives an email from someone at the top of the chain in that organisation, pointing out that a decision they have made might have been an error. Do you
15 agree with me that that would be of some concern to them?

MR van der ZANDEN: Objection.

20 COMMISSIONER: I will hear the objection. What's the objection, Mr van der Zanden?

MR van der ZANDEN: It might be better, sorry, otherwise - - -

25 MR URQUHART: Shall we confer?

MR van der ZANDEN: Yes, perhaps if we confer, that might be the first - - -

30 MR URQUHART: Thank you very much, Commissioner, for that. We will just put everybody in the picture and we will just go back to the previous page now so we can see the reason behind that email from Ms Scaffidi. So 0706.

COMMISSIONER: Thank you.

35 MR URQUHART: So your counsel just wanted me to clarify, Ms Scaffidi, what the subject matter was for that email you sent through to Mr Lee and just have a look there at the top of that page and refresh your memory on that, and the second paragraph in particular.

40 MR van der ZANDEN: Sorry, Madam Associate, could you blow that up a little, please?

MR URQUHART: Second paragraph there. I think that will be big enough because I can read it from here:

45 *The manager of the premises had applied for a health approval for a cafe to be established in the hostel. He was advised to seek Planning Approval for a change of use as required before works can be*

undertaken. The City received an email today from Geoff Boughton of DABS due to an inspection his officers conducted on 11 January 2016.

5 That refers to something else regarding the emergency systems. Ms Scaffidi, am I right in saying that the email you sent on to Mr Lee after he sent that one that I took you to earlier, was to do with the fact that your view was that a change of use application wasn't necessary?---I honestly don't recall. When I look at it now, I think I was so emotional with what I had heard - - -

10 I know all that, yes?---Okay.

But do you agree with me that your email - we go now to 705 and I understood we went through all this last week, but never mind:

15 *Thanks, Eugene. There was already a cafe there in the beginning. If the CoP checks their records, it was already there. Can you do that? Please update me. I don't believe a change of use is therefore warranted.*

20 So what you were referring to there, weren't you was the City's advice to the manager that Planning Approval was required for a change of use, okay?---Yes.

25 So therefore the initial question I was asking you to agree with me, if Mr Lee, a middle manager within the Administration is to receive an email from the Lord Mayor suggesting he had made an error, that would be of some concern for him?---Yes, concern. I wasn't suggesting he'd made an error, I was just clarifying.

It doesn't matter, we went all through this last week but you say:

30 *I don't believe a change of use is therefore warranted.*

35 So you were expressing an opinion that the application for a change of use was unnecessary. I think after a little while you admitted that last week, but getting back to what I'm wanting to put to you, would you agree with me that Mr Lee's concern would not be lessened once he noted that you had CCed in the CEO and his boss, Mr Mileham?---I don't know if I'm constructing now with my answer but my answer would be that it was to show him transparency, that I wasn't trying to do anything, you know, on the quiet, but I was actually open about it. It wasn't your inference that I was trying to CC in the boss.

40 The answer to my question is?---I feel I have answered the question.

45 You think his concerns would be lessened once he'd noted who you had CCed in?---I hope his concerns would not be lessened or heightened. I was trying to show my transparency.

You don't think his concerns would be heightened?---No, I don't think they would

be heightened.

Isn't that the reason why you CCed the CEO, Mr Mileham, in on this email?---I feel I explained.

5

It was your highly emotive state?---Correct, and it wasn't to - - -

But Ms Scaffidi, the fact of whether a change of use application had to be made or not wasn't a very emotive issue for you, was it?---The undermining that was continuing to occur was.

10

No, the question is, the application - whether or not an application had been made for a change of use was not putting you in a highly emotive state, was it?---The undermining was around that very issue.

15

Can you answer the question?---I can't answer the question because I just find you're not giving enough weighting to my concern.

You've said that it was all to do with Mr Harley's interference with this matter?---Yes.

20

But these emails don't refer to any interference by Mr Harley. It is confined - - -?---On the face of it, no.

25

Let me finish: it is confined to a visit the City of Perth officers had made to the site a little while earlier, wasn't it?---Yes, I'm happy to accept that.

And then your email to Mr Lee is confined solely to this question of whether a change of use application had to be made or not?---Yes.

30

Thank you, Madam Associate, that can come down. One moment, please, Commissioner.

COMMISSIONER: Yes, of course.

35

MR URQUHART: Just finally before we move on to a new area, you'll be relieved to hear, in fairness to you, regarding the 26 July conversation that you had with Mr Mileham that you have no recollection of?---Mm hmm.

40

Remember I took that through with you in some detail. I just need - as I said, it is in fairness to you, you might not think so, but I can assure you it is?---No problem.

Mr Mileham gave a description of that conversation and, sir, I'm referring to page 77 of the transcript from 28 August of 2019, line 20.

45

COMMISSIONER: Thank you.

MR URQUHART: That he referred to "the call was adversarial in nature"?---Mm hmm.

5 Given you have no recollection of that conversation, I gather then you can neither agree nor disagree with Mr Mileham's description that it was an adversarial call?---May I comment or just a yes or no answer?

You don't have a recollection of the call?---I don't.

10 He has a recollection of it. He has a recollection of the contents of the call. He's described the call as adversarial. Are you able to agree or disagree with that?---I can't answer because I don't recall the conversation but I would add a comment, but you don't want to hear that.

15 No. I would like to give you the opportunity to comment, Ms Scaffidi, but I don't think - - -?---I thought you wouldn't

[10.45 am]

20 So if we can move now forward in time to 29 August of 2016 and just to put all this in context, that was the second round of interviews for the CEO position. Three candidates had been selected from the first round, one then withdrew and that just left Mr Mileham and a female candidate for the second round. Does that put things in context for you?---Yes.

25 Do you recall whether the female candidate, what her CV was like, without going into the details, please?---Not specifically, no.

30 Okay then, but you personally felt Mr Mileham was better qualified for the position, clearly because you supported his appointment?---Far stronger.

Was the decision made by Council that same day, on 29 August?---I don't recall the date.

35 But it was some time very, very shortly after the second round?---I'm not sure now if I'm just remembering it from the transcript. Was it 1 September?

40 Yes. All right then. I would like to take you now to an email from Ms Howells who was the Manager of Human Resources with the City at the time. Madam Associate, this is 9.0731. So to put it in context, this is the same day as the second round of interviews and it was sent through to you, Mr Linnios and Ms Davidson at 6.36 pm on that day:

45 *Dear LM, DLM, Councillor Davidson, I have just met with Mark regarding the CEO interviews and Council's preferred candidate being Martin Mileham.*

So if we just stop there, so it looks like a decision had been made?---Yes.

As of 29 August. It continues:

5 *Mark has recommended that we push the appointment of Martin to Council next Tuesday.*

That would have been 6 September, Ms Scaffidi?---Right.

10 :

Between the two committee meetings. This would mean that not all Councillors are required to come in specifically for the meeting and would allow sufficient time for the following tasks to be completed.

15

Then Ms Howells sets out five tasks that could be completed in that timeframe and I just want to draw your attention to the third dot point, "Negotiation with Martin regarding the terms and conditions of the contract", do you see that?---Yes.

20 Just go back to the references to Mark in the first two paragraphs?---Yes.

That would be Mark Ridgwell, would it not?---Yes, correct.

25 Thank you. Then the fourth matter that Ms Howells suggested could be completed within that time frame is the "development of the contract of employment", do you see that?---Yes.

Then she says:

30 *Can I suggest that when we meet tomorrow we can discuss these elements and ascertain the most appropriate timing. Additionally in this meeting we can formulate a CEO recommendation of the committee to enable the CEO Recruitment Committee that will arrange to meet with Martin later tomorrow, informing him that he is the preferred candidate.*

35

Again, there's a reference by the first name, Mark; again, that would be Mark Ridgwell, would it not?---Yes.

40 :

Mark recommends this as it will ensure good governance and ensures that all of the relevant activities have been completed prior to Council appointment. Happy to discuss in more detail at 2 pm. Mark will join us for this meeting, Kind regards, Michelle.

45

Does that help jog your memory as to the contents of that email?---Yes.

Would I be right in saying that good governance should always be first and foremost?---Yes.

5 Am I right in saying though that timetable that Ms Howells suggested was not followed?---Yes, because again, I see that we had the meeting on the 1st and not the 6th.

10 So we go now to the next document, please, Madam Associate, 0737 and this is a memo forwarded the next day to yourself and the other members of the CEO Performance Review Committee?---Mm hmm.

15 So that's Monday, 30 August. Sir, incidentally, the TRIM number for the last document there, 731, was 17411. This one is 17413. Sorry about that, Ms Scaffidi. If we go back here we can see the title of this memo is, "CEO recruitment". Mr Ridgwell's been CCed in and it's from Ms Howells and it's dated Tuesday, 30 August 2016 at 2 pm?---Mm hmm.

20 It seems to be that this might be an agenda for matters to be discussed at that meeting, does that sound right or not?---I'm happy to accept that.

Good. Then she refers to five dot points that need to be, or she suggests should be dealt with at that meeting?---Yes.

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

And also refers, further on down the page, under the heading, "Reference check", Ms Howells states:

30 *Due to new requirements under the Local Government Act the City will need to conduct reference checks on the following items.*

And she gives a list of them?---Yes.

35 At the bottom of the page:

This will take approximately one week to complete by an external agency, CV Checker, at a cost of \$400.

40 Yes?---Yes.

And then over the page, 0738, thank you, Madam Associate, there's a first paragraph under, "Council paper." I just want to draw your attention to the second sentence there:

45

Due to the need for reference checks and the negotiation with Mr Mileham on his contract which needs to commence, it is

recommended by the Manager, Governance, that a Special Council Meeting be held on Tuesday, 6 September.

5 So again there is that reference to that being the appropriate date, do you see that, Ms Scaffidi?---Yes.

:

10 *Based on this, the Manager, Human Resources, will have the recommendation paper to the CEO Recruitment Committee on Thursday, 1 September.*

15 So again, Ms Howells has emphasised the timeframe in which Administration would like to complete matters that they need to complete?---Mm hmm.

And she proposed 6 September but again, that wasn't accepted by the committee, was it?---No, and I don't remember why not.

20 There seems to be some sound reasons as to why that further timeframe would be required, would you agree with that?---Yes.

Most relevantly, development of the contract of employment?---Yes.

25 We then go to the CEO Recruitment Committee meeting which took place on that day, it seems, 30 August 2016, do you recall that meeting?---Not very well, no.

Madam Associate, if we can go now, please, to 9.1387, TRIM number, sir, 22090.

30 COMMISSIONER: Thank you.

MR URQUHART: That's just confirmation that these are the correct minutes we are talking about. If we could go, please, now to 09.1391, thank you, Madam Associate?---Right.

35 So do you have a recollection now of that motion being put and carried?---Only from what I see before me. I'm happy to accept it.

Moved by Lord Mayor Scaffidi, seconded by Councillor Limnios:

40 *Council, in accordance with section 5.36 of the Local Government Act 1995, by an absolute majority decision, appoints Mr Martin Mileham to the position of Chief Executive Officer for a period of five years under the contract of employment for a Chief Executive Officer. The motion was put and carried.*

45

But there was no contract drawn up at that stage, was there?---I don't know but I presume not from having read that other document.

Yes, which was the same day?---Right.

That was going to be a problem, wasn't it?---I can see that, yes.

5

May I ask why, then, did the committee move that motion?---To accept - sorry, moved which motion? This one that we have just got on the page now?

Yes?---We were accepting by majority decision to appoint Mr Mileham.

10

Yes, but it could not possibly go before Council until such time as the contract of employment had been drawn up and agreed?---Yes.

Do you agree with that?---Yes.

15

So obviously then, what was required following this meeting was sufficient time for a contract of employment to be drawn up and agreed?---Yes.

Would you agree with that?---Yes.

20

Can you recall when the Special Council Meeting was convened?---Convened, no; held, yes.

Held when?---1 September.

25

Two days later?---Yes.

But without the contract of employment having been agreed?---Yes.

30

Which meant then that the motion put by the committee couldn't be passed, could it ?---I don't know the details.

We will go now to 9.0791. Sir, TRIM number 17416.

35

COMMISSIONER: Thank you.

MR URQUHART: This is again the front page, just confirmation that this is the Council meeting we are talking about and if we go, please, to 0793, just so we can see who is in attendance?---Mm hmm.

40

Yourself and Councillors Adamos, Davidson, Green, Limnios, McEvoy and Yong?---Yes.

And Councillors Harley and Chen are absent and we can see that from the bottom of the page?---Yes.

45

Thank you. If we go to 9.0795, thank you, Madam Associate. I will just give you

an opportunity of having a look at that. I think this document might have been provided to your lawyers a little while ago, do you remember that?---I don't recall, no, I'm sorry

5 [11.00 am]

Do you recall looking at these minutes in the last couple of weeks?---You mean the pre-reading?

10 Yes, pre-reading?---I'm sorry, yes I do.

Homework?---Homework, that's right.

15 So there is a different motion that has been put and passed and you would accept though that it couldn't be the same motion that the committee had proposed?---Yes.

So it was moved by Councillor Davidson, seconded by Councillor Linnios, that:

20 *Council: 1. In accordance with section 5.36 of the Local Government Act 1995, by an absolute majority, accepts the CEO Recruitment Committee's recommendation to appoint the preferred candidate as detailed in Confidential Schedule 1, to the position of Chief Executive Officer for a period of five years under the contract of employment for a Chief Executive Officer;*

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

30 *The motion was put and carried by an absolute majority.*

Ms Scaffidi, can I ask why was the hurry to have this Special Council Meeting convened?---I have no idea.

35 Why couldn't the contract be negotiated before the Special Council Meeting was called or convened?---I don't know.

The Administration was only seeking five days from 1 September?---Correct.

40 You don't know?---No.

No idea at all?---No, I don't recollect it at all.

A complete blank?---Not a complete blank. Do you wish me to elaborate?

45 What recollection have you got as to why it was that this Special Council Meeting was convened on 1 September rather than 6 September?---I showed me earlier today an email from Mark Ridgwell. If we could just bring that up and there were

some specific words there.

I didn't show you an email from Mr Ridgwell?---Was it from Ms Howells, sorry.

5 I showed you from Ms Howells?---Yes, mentioning Mr Ridgwell.

Yes?---And I feel there's an indicator there that triggers a memory to me.

10 Are you then talking about the email she sent to you or the agenda?---I think it's the email.

We will go back, Madam Associate, to 0731, thank you. TRIM number, sir, 17411?---Yes. The second paragraph:

15 *Mark has recommended that we are push the appointment of Martin to Council next Tuesday between the two committee meetings.*

Yes, next Tuesday being 6 September 2019?---The 6th, right.

20 Yes?---Okay. So "to Council", to me implies a full complement of Councillors. I think there was a misunderstanding and my recollection is this: on that Tuesday there would have been a Marketing and Sponsorship Committee meeting and a Works Committee meeting and if my memory serves me correctly, the members of the Sponsorship Committee were Limnios, Yong and Chen and of the Works
25 Committee it would have been Limnios, me and McEvoy. I think Yong was an absentee or a leave of absence, which left five Councillors. So it wouldn't have mattered if you had the meeting on the Tuesday or at another date, all Councillors were not going to be there the following Tuesday. So I feel a recollection - I have a recollection that that was a discussion point.

30

That all Councillors weren't going to be present on 6 September?---Correct.

2019. But all - - -?---Only four or five.

35 - - - Councillors weren't present on 1 September 2016?---So my point being to call them in but I'm not sure that I wanted to call them in. I wasn't worried one way or the other. There was no urgency from my perspective, as I recall it.

Might your recollection be wrong?---Of course.

40

Yes, because Ms Howells has a very clear recollection of matters surrounding these days because of course, Ms Howells was the one urging more time?---Right.

Sir, this is from an examination on 22 August.

45

COMMISSIONER: Thank you.

MR URQUHART: This year, at page 34. This is Ms Howells' evidence regarding this?---Right.

Line 10, sir:

5

The culture in the City of Perth was very much, as we have mentioned in the other meetings, of a bullying style culture whereby you don't really have an opportunity to question and you just do. You can make recommendations and you can try and provide push-back but fundamentally there was very little respect for processes and for what was actually required to be done. So in pushing these types of things, you often felt there was not much avenue to not do what was being required of you, even if you outlined the reasons for that.

10

15 She was then asked:

So where was this pressure coming from, or who was this pressure coming from to do this?

20 You would have figured out that Ms Howells is referring to this matter we are discussing now?---Of course, yes.

She answered, "The CEO Committee." She was then asked:

25

There were three on that committee, which ones?---As I mentioned earlier, the same or the more so the Lord Mayor, Councillor Davidson and to a much lesser point, the Deputy Lord Mayor. The Lord Mayor was very, very keen to get this moving as quickly as possible.

30 Ms Howells' recollection, in fact her evidence is that it was you that was pushing this?---Mm hmm.

Does that help jog your memory?---No, it does not at all.

35 Would you disagree with that account that she's given?---I do.

Regarding who it was who was pushing the matter?---I do disagree.

40 Was it somebody else then on the committee?---The committee was working well together so there's no reason for me to think that there was one over another pushing a certain aspect to it.

45 Can you recall whether it was Councillor Davidson or Councillor Limnios who was saying, "This must go through before 6 September"?---I don't think it was a case of it having to go through before 6 September. My recollection, based on what I just explained a moment ago, was why it might have occurred on the 1st and not the 6th, but - - -

I'm pointing out to you there wasn't a full complement of Councillors on the 1st?---Yes, so - - -

5 So we can rule that one out then, can't we?---Exactly.

All right, so?---I just don't recall it at all. I feel now, and that's not the feeling you want, that five days is neither here nor there with a weekend probably in between.

10 Exactly?---So I don't recall it.

That's the point I was going to make. We are on the same page here, what was five days? It was going to make no difference whatsoever?---Unless there was not going to be a full complement of people next week available and I don't know if that was a consideration.

15

We have just gone over that?---Not fully, because - - -

Then it can be delayed by another day or two to give the Administration more time to do what needed to be done?---I just don't recall.

20

And that way, you could wait for that week of 6 September or the week commencing 5 September to have the contract all ready to go?---I don't recall enough of it.

25

Don't recall or don't want to recall?---No, I want to if I could but I just do not recall.

Ms Howells also uses this as an example of the bullying style culture that existed within the City of Perth - remember what I read out to you earlier?---Yes.

30

So she's just citing this as one example?---Mm hmm.

That might be a reason why you don't want to recall - - -?---Not at all.

35

- - - this particular matter?---Not at all.

Because it is an example of Council overbearing upon admin staff to get what they wanted?---No, that's an opinion being expressed.

40

No, that's just - it's not my opinion, it is one given by someone at the coalface, Ms Howells?---Well, by someone who had a very close friendship with another person that I believe was an influence.

I see. So is that the explanation, you say, for her - - -?---No, it's my - - -

45

Let me finish - for her to not give a truthful account under oath as to what

happened back on 30 August 2015 and the days after; is that your explanation?---I'm not suggesting Ms Howells is not giving truthful evidence. What I'm suggesting is - - -

5 You are saying to us that her recollection might not be accurate because of some relationship which she has with somebody else, isn't that the reason why you proffered that last bit of evidence?---My recollection is - - -

10 Isn't that the reason why you proffered that last bit of evidence?---There was a background of issues.

Is that the reason why you proffered that last bit of evidence?---Yes.

15 She's either accurate or she's not accurate in her recollection and it seems she has a lot better recollection of this matter than you do, would you agree with that?---Of the timeline, yes, but not of the other details.

Was there a bullying culture at the City?---With some Councillors, yes.

20 Let me guess, the Councillors you are going to name are those that are not part of your team?---Correct.

But this instance here, Ms Howells is stating that there was bullying by a committee that comprised of you and two of your allies.

25

MR van der ZANDEN: Objection.

COMMISSIONER: Yes.

30 MR van der ZANDEN: Could this be dealt with in the absence of the witness, please?

COMMISSIONER: Yes, of course. Ms Scaffidi, I'm going to ask you to excuse yourself from the hearing room.

35

WITNESS WITHDREW.

COMMISSIONER: Yes, Mr van der Zanden.

40 MR van der ZANDEN: Commissioner, I have some difficulty with this line of questioning and all I can do is go on what my friend recites was said by Ms Howells at what I understand was a private hearing, but she seemed to give some general comment about bullying within the City, but she didn't give any direct or particular evidence about there being bullying in this particular instance.
45 I don't know whether that's the inference to be drawn from all the evidence but my concern is that the question be fair to this witness in circumstances where my friend knows the full of the evidence and has had a chance to consider this but all

we get is a chance to make a quick note on what - that's my objection.

COMMISSIONER: I understand the point, Mr van der Zanden. Thank you.

5 MR van der ZANDEN: Thank you.

COMMISSIONER: Mr Urquhart.

10 MR URQUHART: That's why, sir, I put into full context that answer given by Ms Howells in her examination. She referred to the bullying style culture and then she went on to give an example of the lack of respect given for process, and she named this one as one such example

[11.15 am]

15

COMMISSIONER: So the parts you have recited to Ms Scaffidi are those parts of the evidence of Ms Howells which relate directly to the topic about which you are questioning now?

20 MR URQUHART: Precisely, yes.

COMMISSIONER: Thank you. Mr van der Zanden, do you wish to respond to that?

25 MR van der ZANDEN: Yes. I'm not sure a lack of respect for process amounts to bullying. We could argue about that but I'm concerned that it be put to the witness as bullying because I don't think it necessarily does.

30 COMMISSIONER: You may well be right about that but more than that was recited to the witness. It was a literal recitation of the evidence and it was put in a way which, in my view, was fair to the witness, and the witness could, if she wished to, disagree with that. She didn't seem to have any difficulty with answering the questions, I must say. That, of course, doesn't deal with your objection in its entirety but your objection was that the evidence of Ms Howells about bullying, if I can just use that term.

35

MR van der ZANDEN: Yes.

40 COMMISSIONER: Needed to relate to the topic on which your client was being examined and you've been given that assurance. I can tell you, Mr van der Zanden, that I'm conscious of the evidence to which Mr Urquhart was referring and I know the context.

45 MR van der ZANDEN: Yes.

COMMISSIONER: And it is that context.

MR van der ZANDEN: Thank you, Commissioner.

COMMISSIONER: Thank you, but feel free to rise if you think at any point in time that you have some concerns about the evidence, the way it's being put.

5

MR van der ZANDEN: Yes, thank you.

COMMISSIONER: Thank you, Mr van der Zanden. Madam Associate, would you bring Ms Scaffidi back in, please. While that's happening,

10

Mr van der Zanden, if at any point in time you feel it might be more efficient or appropriate to signal some difficulty with the evidence and approach Mr Urquhart at the Bar table, I'm quite happy for that to occur as well.

MR van der ZANDEN: Yes.

15

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

MS Lisa-Michelle SCAFFIDI, recalled on former oath:

20

COMMISSIONER: Ms Scaffidi, you're probably used to me saying this to you by now but in your absence, an objection by your counsel was heard and resolved?---Yes.

25

And of course, again I say your exclusion from the hearing room is no reflection on you. Mr Urquhart.

30

MR URQUHART: Sir, thank you very much, Commissioner. While there's been a few minutes break, Ms Scaffidi. I've read out that transcript of Ms Howells' evidence once to you before; I will do that again so everybody is clear where we are coming from and I shall also include a question that was asked of her before I started reading out this transcript to you. Sir, again, page 34, 22 of August of this year, line 5:

35

Ms Howells, you don't strike me as the sort of person who would take shortcuts so I'm wondering what sort of pressure was being applied to you to have you take this kind of approach. It would be helpful for me to understand that?---I can appreciate that.

40

The subject matter that was being spoken about was this subject matter that I'm questioning you on:

45

If you can tell me that, please, and your candor would be appreciated?---The culture in the City of Perth was very much, as we have mentioned in the other meetings, of a bullying style culture whereby you don't really have an opportunity to question and you just do. You can make recommendations and you can try and provide push-back but fundamentally there was very little respect for the

processes and for what was actually required to be done. So in pushing these types of things, you often felt that there was not much avenue to not do what was being required of you, even if you outlined the reasons for that.

5

So where was this pressure coming from or who was this pressure coming from to do this?---The CEO Committee.

10

There were three on that committee, which ones?---As I mentioned earlier, the same or the more so the Lord Mayor, Councillor Davidson and to a much lesser point, the Deputy Lord Mayor. The Lord Mayor was very, very keen to get this moving as quickly as possible.

15 So what Ms Howells was essentially saying is that she wanted time in which to go through all the processes, making sure the appointment of Mr Mileham was done in a proper manner. She wanted time to check all those matters that she outlined to you in her email and also her file note or memo, okay?---Mm hmm.

20 She wasn't given that time. The reason she says for not being given that time is that 'the CEO Committee was wanting to get this moving along as quickly as possible', okay? You've agreed with me that, what's five days? Exactly. Ms Howells is asking for that five days which she did not get. She has stated this as "the bullying style culture where you don't really have an opportunity to question and you just do." That's how she described the culture. She's attributed 25 this example of that culture to not those Councillors who were not part of your team, but actually you and two Councillors that were in your team. So you dispute that account given by Ms Howells with respect to how this matter was dealt with?---I can't dispute her evidence but I don't agree with it.

30 I see. Interestingly she says this:

You don't really have an opportunity to question and you just do.

35 That is remarkably similar to that WhatsApp message you posted that I took you to last week, remember, where, regarding Mr Stevenson, you said, "Do what we say and not what he thinks." Do you see the parallels there?---No, I don't.

40 You don't? She's saying, "You don't really have an opportunity to question and you just do"; you don't think there's some similarities between what you stated in that WhatsApp message to her view as to the relationship between the Administration and Council?---No, I don't accept it.

45 I know you don't accept it but I'm just asking you whether you agree there are parallels there?---May I expand on my answer or not?

You can agree or disagree first?---I don't agree.

5 You don't agree that there aren't parallels through what you said in your WhatsApp message to what she's saying there, okay. Do you at least accept, Ms Scaffidi, that a senior employee stating that insofar as she's concerned "the culture at the City of Perth was a bullying one", that doesn't reflect well on Council, does it?---It doesn't reflect well on Council but the bullying culture was not from the Council alone.

No matter where it's from, it doesn't reflect well on the City?---No, I answered that.

10 It doesn't reflect well on the City?---I said it doesn't reflect well on the City, or the Council. No, it doesn't, I accept that.

Then at the bottom of that same page in her evidence she was asked this at line 45, sir:

15

So are you saying to me that you let her know that by taking this approach set out in the document we are looking at now -

These are one of the documents that I showed you earlier today -

20

- that corners were being cut ?---Yes. Yes, from the beginning of the process I told them about the things that need to be done. There was a lot of - there's a lot red tape around these things and it's - over the page, sir - about trying and I told them from the beginning that I had concerns about the timing and things, and there's a lot of steps to take and that there would be issues with that. I did let them know from the beginning, as I said, from the first instance of that. I guess the point is, as I mentioned before, it wasn't a situation where I felt - in hindsight, it was probably a situation where, because of the level of support I was presuming I was getting, the manipulation of me was easier.

30

?---I don't understand that last comment.

35 No. Never mind, but she is reinforcing the point that all she was asking was for some time to complete the processes that needed to be completed and she wasn't afforded that time and she says it was you that wanted to move this process on as quickly as possible?---She said it was myself and Councillor Davidson and to a lesser extent, Councillor Limnios.

40 "The Lord Mayor was very, very keen to get this moving as quickly as possible", and you can't offer us an explanation as to why it was that you were very, very keen to get this moving as quickly as possible?---The only explanation I can offer is my concern of who would or would not be available on the week of the 6th. I can't see that that time line was an issue and I don't believe there was the pressure that is expressed there.

45

Not just expressed there but also expressed in an email and the other memo she

sent to you on 30 August?---To all of us, not just to me.

5 Yes. If I can go now, please, Madam Associate, to 9.0797. There was reference to that last page of the minutes, Ms Scaffidi, from that meeting on 1 September, to a Confidential Schedule 1. So I just want to ask you something regarding that item. There we go, there's a front page of it. If we just go now, please, Madam Associate, to 0799, just under the heading, "Financial implications"?---Yes.

10 Do you see that?---Yes.

COMMISSIONER: Please enlarge that, Madam Associate.

15 MR URQUHART: It's only the second half of the page I need to take the witness to, thank you, Madam Associate. The second paragraph there it sets out salary bands as set by the Salaries and Allowances Tribunal and the salary is subsequently determined within the band by Council?---Mm hmm.

20 The City of Perth is categorised as Band 1, being the highest classification within the Local Government, with a remuneration package between, and it sets out two amounts?---Yes.

25 Do you agree with me that Mr Mileham's CEO's salary could be no higher than between those two amounts?---I agree that the CEO of the City of Perth was a Band 1 package, yes

[11.30 am]

30 And do you agree with me that his salary could not be any higher than the outer limit of that band cited there?---Yes.

Can you recall the committee, that is the CEO Performance Committee, advising Ms Howells that it wanted Mr Mileham paid at the top of the band?---No, I do not recall.

35 Do you agree with me, or can you recall whether that total package amount that appears at the bottom of that page was the salary that Mr Mileham was getting as an Acting CEO or you can't remember?---I wouldn't know.

40 Do you at least agree with me then that that is towards the top of the band, when you compare that amount with the amount that appears - - -?---Yes. Between 247 and 375, yes, it's nearer to the top.

45 That can come down, thank you, Madam Associate. Ms Scaffidi, I'm going to ask you some questions regarding the contract that was eventually drawn up for Mr Mileham. Did you as a member of the CEO Performance Review Committee settle the terms of that contract?---No.

Did you at least read them and make sure that it accords with what the Council wanted?---I don't recall reading them and I don't recall ever setting terms for any CEO contract I've been involved in.

5 I asked whether you settled the terms?---Settled?

That is, that you read through the contract?---I don't recall.

10 Do you remember signing this contract?---I don't have a memory of signing it at the moment, no.

It would have been you as the Lord Mayor though, wouldn't it have?---Yes.

15 And one would expect that any diligent - - -?---Of course.

- - - careful Lord Mayor would read the contents of the contract?---Yes.

To make sure it was all agreed?---Mm hmm. Yes.

20 You would have done that on this occasion?---Yes.

We will just have a look now, Madam Associate, at 9.0857. TRIM number, sir, 17424. Just before we do that, sir, I'm mindful of the time. Should we have our usual morning break now?

25

COMMISSIONER: Yes. I will adjourn for 15 minutes.

WITNESS WITHDREW

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(Short adjournment)

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40

45

HEARING RECOMMENCED AT 11.57 AM

MS Lisa-Michelle SCAFFIDI, recalled on former oath:

5 COMMISSIONER: Mr van der Zanden, it's now almost 12 o'clock. I understand that the Inquiry was waiting to recommence as a result of you and your client not being in the hearing room; would you tell me why?

MR van der ZANDEN: Yes. I was with my client and at the request of the
10 Inquiry, we were downloading or trying to download some documents for a USB for the Inquiry.

COMMISSIONER: I see. Who made the request of you?

15 MR van der ZANDEN: Mr Parkinson.

MR PARKINSON: That's correct, Commissioner. I apologise for the delay to the Inquiry.

20 COMMISSIONER: Perhaps the next time the Inquiry can be informed if there's going to be a delay beyond the adjourned time.

MR PARKINSON: I apologise, Commissioner, and that will be done in future.

25 COMMISSIONER: Thank you, Mr van der Zanden. Thank you, Mr Parkinson. Let's resume.

MR van der ZANDEN: Commissioner, I apologise for my part in not making sure that the Inquiry was aware of what was going on.

30 COMMISSIONER: Thank you, Mr van der Zanden. That's appreciated. Mr Urquhart.

[12 noon]

35 MR URQUHART: Thank you very much, sir.

Ms Scaffidi, I was going to now take you to the employment contract for Mr Mileham. Madam Associate, if we could have a look at now 9.0857, 17424
40 being the TRIM number, sir.

COMMISSIONER: Thank you.

45 MR URQUHART: Just have a look at that document, please, Ms Scaffidi. You will see that appears to be the contract of employment?---Yes.

Between the City and Mr Mileham. I don't want to go through each and every

clause of that. I just want to take you now to the page at which it has been signed. That's now 9.0868. You see your signature there?---Yes.

And your name, Lisa M Scaffidi?---Correct.

5

And at the bottom it's been signed by Mr Mileham?---Yes.

Do you have a recollection of signing this document?---No.

10 It reads towards the top of the page:

The common seal of the City of Perth was affixed by authority of a resolution of the Council in the presence of.

15 Then you've signed it, Ms Scaffidi. Why is there no common seal?---I don't know.

But you've signed this document to state that it has been affixed by authority of a resolution of the Council in your presence?---Correct.

20 So I must ask again, why is there no common seal?---The signing page. My recollection with common seals was they were more external documents. I don't recall them but I see it written here, but I don't have a recollection as to why it wasn't used and I don't recall who Gail Wicking is either.

25 It doesn't say that the common seal was affixed in her presence?---No.

It's your presence?---M'mm.

30 I've got the original if you want to have a look at it. There's no common seal on the original either?---I accept that. I don't understand why there isn't. If there was meant to be, it was normally - I mean, if there was a process of common seal, there was always one place where the common seal was used, it was on the reception desk in the front of my office.

35 That might well be so, but it's not there on that page, is it?---No.

This is a somewhat cavalier approach to take, wasn't it?---It's an oversight but I don't recall it clearly enough to be able to say what occurred.

40 Ms Scaffidi, how can it be an oversight when immediately above where you've signed it says, "The common seal of the City of Perth was affixed by authority of a resolution of the Council in the presence of"?---Yes.

45 I will give you a clue as to maybe why there's no common seal, I've just read it out?---Sorry, you've just?

I've given you a clue, "The common seal of the City of Perth was affixed by

authority of a resolution of the Council"?---I hear what you say.

There was no resolution of Council, was there?---I do not recall - I mean, there's no date here of the signing either so I don't know or recall the date of the signing.

5

The date of the document, I took you to the first page, the employment contract was made on 21 September 2016. I'm not so much interested in dates though. What I'm interested in is the fact that there was no resolution of the Council, was there?---I don't know to be able to answer that question.

10

You accept that there was not?---Sorry, have I missed something? What date are you saying this signature of mine went on to that page?

You tell me, I wasn't there?---I don't know. It says 27th of the 10th on the side but I don't know - - -

15

That doesn't matter. There's no common seal and the reason why there's no common seal is that there was no authority of a resolution of the Council in agreeing to this contract, was there?---I don't know the answer to that.

20

I'm saying to you that there's not. Can you recall when the Council passed a resolution accepting the terms of the contract?---The meeting was held on the 1st, subject to, with the dot point 2, and as I don't know the date that this was signed, I don't believe I can answer your question.

25

There was no resolution of Council, was there?---I'm sorry, I'm not avoiding the question, I've answered the question.

Will tell me where it is. Where is the resolution of Council?---Well, there's no date on this - - -

30

It doesn't matter about dates. I'm now asking you where did Council pass a resolution accepting the terms of this contract?---We had the Special Council Meeting on 1 September.

35

Yes?---Yes.

The contract wasn't in existence then?---Right, okay. So - - -

There was no resolution, was there?---No.

40

And the Local Government Act required that, didn't it?---Yes.

Let's have a look now at section 5.36 of the Local Government Act, thank you, Madam Associate. I think this would be around page 150.

45

COMMISSIONER: 148.

MR URQUHART: 148, thank you, sir.

COMMISSIONER: Madam Associate has a different edition, so it's 153.

5

MR URQUHART: The provision is exactly the same, sir.

COMMISSIONER: It is the same.

10 MR URQUHART: Section 5.36. Division 4, Local Government employees.

COMMISSIONER: Just enlarge that, Madam Associate, because some of the counsel at the Bar table are some distance from the screens. Thank you.

15 MR URQUHART: 5.36(2) I think is the relevant subsection, Ms Scaffidi:

A person is not to be employed in the position of CEO unless the Council: (a), believes that the person is suitably qualified for the position.

20

No problems, that was done, wasn't it?---Not by me, but - - -

Yes, by the Council?---Reference checks that means.

25 Yes?---Yes.

"And", and we go now to (b):

The Council is satisfied with the provisions of the proposed employment contract.

30

Asterisk after "satisfied", it says, "Absolute majority required"?---Right. So there should have been another Council meeting is what you're saying?

35 It's not what I'm saying, it's what the Local Government Act says?---By the Act, yes.

Yes?---Yes.

40 The provisions of which you were very much aware of, isn't that right?---Yes.

So the contract wasn't properly executed, was it?---No.

Mr Mileham therefore was not properly appointed, was he?---No.

45

This was all done too hastily, wasn't it?---Not - you're asking me to take entire blame for the haste, I don't believe I can but yes, clearly there's an error there.

I'm not blaming you, all I asked was, this was all done too hastily?---It would appear so.

5 Well, it was so?---M'mm.

Wasn't it?---Yes.

No common seal, no?---No.

10

Even though you signed to the effect that there was, and no resolution of Council, even though you signed to the effect that there was, do you see that? We can go back now to 9.0868, thank you, Madam Associate. So would you agree with me, when I first put it to you, that this was all a very cavalier approach taken?---You and I have an issue with word choices but I'm happy to accept it.

15

A cavalier approach taken by you individually, isn't that the case?---No, I don't accept individually because there are three people there signing that document at the same time and I don't know if there was a Governance Officer who brought the document up to sign at the time either.

20

But Ms Scaffidi, you would have read the document?---Sorry, I was the?

You would have read the document?---Yes.

25

And you've signed immediately below the words, "The common seal of the City of Perth was affixed by authority of a resolution of the Council", in your presence and you knew at the time that a resolution of Council had not been passed?---I don't recall the circumstances surrounding that document being signed but I do recall Martin's presence. We were there together, and that's all I recall.

30

I'm not asking you about that?---Yes, but I'm just trying to envisage the time.

But you knew when you signed that document that no resolution had been passed by Council?---Clearly I wasn't focusing on that point at the time.

35

I'm going to ask the question again: you knew there was no resolution passed by Council?---I don't feel I can answer that, Mr Urquhart, because I don't know the date on which I signed that document.

40

There is no resolution from Council so therefore, you signed that knowing there was no resolution passed by Council. It's just logical?---Because there wasn't a Special Council Meeting for that document sign-off, that's what you're saying. Yes, I accept that, yes.

45

So why weren't you complying with proper procedure?---I don't recall.

You don't recall?---I don't recall enough of that incident or signing to know.

5 You are signing something that says a resolution of Council was passed in your presence. You're signing a contract of employment, knowing that no resolution of Council had been passed. I'm offering you an explanation as to why you would do that?---I don't recall enough of the circumstances around it. I see what's written there but I just don't recall the situation that it was even brought up to my office and that Martin and Ms Wicking were there and that it proceeded.

10 Do you agree with me that a responsible Lord Mayor would never do that?---On the face of it, yes, but clearly the fact that three people were there and the document was presented, I just don't have a satisfactory explanation to assist you further

15 [12.15 pm]

Are you blaming the other two, are you?---No, I'm not blaming anybody. I'm trying to work out what occurred for us to all be present and for it to be seen as being appropriate for that document signing to continue.

20 Who, out of those three people, was responsible for ensuring a resolution of the Council had been passed? Who out of those three?---Me.

25 You, yes. Thank you, Madam Associate, that can come down now. Am I right in saying that all of the Councillors and all of the City's Directors were involved in the Performance Review assessments of Mr Stevenson?---I believe, yes.

And there's a very good reason for that, isn't there? You have to answer?---Yes.

30 Because you're seeking the input of not just all the Council but also, senior administrative staff?---Correct.

As to how they see the CEO performing his or her role, yes?---Yes.

35 So was that done for Mr Mileham's first Performance Review?---I don't recall the date, so it would have been - can you give me the date? Nothing's jogging my memory on that.

40 So do you know whether that was done for Mr Mileham's - - -?---I don't have a recollection.

There would be no reason why it ought not have been done, is there?---No.

45 I will jog your memory. The only persons who conducted Mr Mileham's first Performance Review were those members of the CEO Performance Review Committee; you don't have a recollection of that?---Not specifically at this point, no.

Madam Associate, if we can go to 9.0951, thank you. This was a document that was provided to your lawyers earlier, Ms Scaffidi. It is the minutes of the Review Committee's meeting on 7 March of 2017. So we are just there at the front page to confirm that's the document we are talking about?---Yes.

TRIM number, sir, 17431.

COMMISSIONER: Thank you.

MR URQUHART: The CEO Performance Review Committee members were still the same at this point in time, yourself, Ms Davidson and Mr Limnios?---Yes.

So we go now to 9.0954 and this was Mr Mileham's probation review?---Right.

Okay?---Yes.

I gather you've had a read of this document in the last couple of weeks?---Yes.

Go to the bottom of the page?---Right.

8 March 2017, the meeting reconvened, okay?---Sorry, where's this.

Underneath the heading?---8 March, 3 pm.

Yes?---Yes, got it.

And this was at the request of Mr Limnios?---Correct.

Do you have a recollection of that now?---Only from what I'm reading, but yes.

Those last two paragraphs there on that page:

The Deputy Lord Mayor indicated that the rationale for "Qualifying period not yet satisfactory, further review needed" was that the agreed KPIs had not been met. The Deputy Lord Mayor stated it prudent to give the CEO the opportunity of further time to meet the KPIs set. It was acknowledged that the CEO had faced difficult challenges over the qualifying period and that despite him not achieving the KPI - it then reads "is" but I think it should read "it" - was appropriate to extend the probationary period.

It continues:

The Deputy Lord Mayor also raised concern that the review was restricted to the opinion of just three Elected Members and the CEO himself, whereas 360 feedback from the Executive and allowing an

opportunity for other Elected Members to provide input was also his preference.

5 That's a fair enough point for Mr Limnios to make, was it not?---Yes, of course.

But that wasn't done?---I note the Manager of Governance was in attendance and is it possible to see the next page?

10 No, just stay there. Why wasn't that done, to your recollection?---I don't recall.

You don't recall at all?---I do not.

Go now to 955, thank you, Madam Associate:

15 *The Deputy Lord Mayor further stated that, "The Council was under siege on a daily basis. We have been threatened to be sacked in the media negatively. We are not sure of the fate of the leadership of the City. The morale is at an all time low. We are having the torch and microscope on us every day so it's important now more than ever that*
20 *we are following best practice and due process. We should not be relying on our three personal opinions, Martin's description of himself and his achievements to then put a recommendation to our fellow*
Councillors to approve the making of the CEO permanent."

25 That's a fair enough observation to make, is it not?---It's an observation of one person.

It's a fair enough observation to make though, isn't it?---It's an observation of one person.

30 And I'm asking you whether it's a fair enough observation?---With the background that perhaps Councillor Limnios was not as satisfied - - -

So you disagree?---I disagree.

35

:

40 *The other Councillors have not been consulted, nor have they been given a chance to give their feedback or have we had the opportunity to discuss and receive feedback from the CEO's colleagues.*

That's a pertinent point to make, is it not?---It's a point he made.

It's a pertinent point to - - -?---It's a fair point.

45

It is a fair point or it's not?---He's allowed to make his opinions.

And it's a pertinent and fair point to make, isn't it?---It's a point.

5 All he is asking is to do what was done for Mr Stevenson, is he not?---Mr Stevenson's was an annual Performance Appraisal, as opposed to the probation appraisal, so I'm not sure if there was a difference but I feel that is the answer.

10 He is simply asking to adopt the same process that was used for the previous CEO, isn't he?---Correct.

He continues:

15 *Normally when a motion is put to Council there is a thorough and well-researched report put together by Administration supporting the particular recommendation. In this instance, we are responsible to provide the thorough research, seek as much information as possible and make our recommendation based on solid evidence and well-researched information.*

20 He continues:

25 *We should have been given the opportunity to discuss our thoughts and seek the thoughts of the leaders, manager, and if not only the Directors of the organisation as well as the Councillors. We are obligated to do a proper and thorough due diligence.*

They are sensible observations to make, are they not?---Fine observations to make and forgive me for reading on, but I have read on.

30 No, just stay with those for the moment. We will get to the others, don't worry. Just stay with those?---M'mm.

All very sensible, isn't it?---It's an opinion.

35 It's all a very sensible approach, it's the approach of, do as we have done before, is it not?---Yes.

40 And what was wrong with what was done before?---Nothing was wrong with what was done before.

:

45 *As a result the Deputy Lord Mayor was not prepared to support permanency at this time. The Presiding Member, Councillor Davidson, reaffirmed that it was in fact the role of CEO Performance Committee members to put forward a recommendation to Council and that was outlined in the Terms of Reference. The Presiding Member stated that*

360 feedback was not stipulated to the CEO as a required measure and that it would not be appropriate to introduce it at this late stage. Councillor Davidson also advised that her feedback had been provided in the probation review document.

5

?---Right.

10 Insofar as her observation of the Presiding Member stating that "360 feedback was not stipulated to the CEO as a required measure", there was no need to do that, was there?---I can't answer for the Presiding Member at that juncture. She was making that - - -

15 Yes, but there was no need for the 360 feedback to be stipulated to the CEO as a required measure before it could be undertaken?---I accept that.

15

Because it was the practice that had been done before, hadn't it?---For a Performance Appraisal as opposed to a probationary appraisal, but yes, I accept that.

20 So Mr Mileham wouldn't be taken by surprise, would he, should in fact there be a 360 feedback undertaken?---I can't answer for him.

25 Well, he wouldn't be because he would have known of the processes for the previous CEO?---Mm hmm.

25

It's logical, isn't it?

MS SARACENI: Commissioner, I rise.

30 COMMISSIONER: Yes, I think there's a difficulty, Ms Saraceni. You don't need to articulate the objection. Can you recast that, Mr Urquhart? It's just the last question that's the problem.

35 MR URQUHART: I probably don't need to, sir.

35

COMMISSIONER: Very well.

MR URQUHART: Then we go on to what you stated, according to the minutes:

40

The Lord Mayor advised that the KPIs and the CEO's overall performance needed to be put into context of a challenging period which included two workplace deaths, a plane crash - - -

45 COMMISSIONER: Madam Associate.

45

MR URQUHART: :

And subsequent cancellation of the City of Perth's largest community event which he handled extremely well.

Thank you, sir, I've overlooked that.

5

COMMISSIONER: It's all right.

MR URQUHART: We are just waiting for the screen to go back up a little bit more. Thank you, Madam Associate. I will start again then:

10

The Lord Mayor advised that the KPIs and the CEO's overall performance needed to be put into context of a challenging period which included two workplace deaths, a plane crash and subsequent cancellation of the City of Perth's largest community event which he handled extremely well. Successes have been highlighted by the CEO, including reduction of overtime expenses, the Terms of Reference of the Organisational Capability and Compliance Assessment is only a matter of weeks away from completion. The CEO has provided an organisational chart that shows both greater transparency and

15

20

Is that an accurate account of what you said?---Yes.

Then the original officer recommendation was that:

25

The CEO Performance Review Committee considers the completion of the probationary period of the Chief Executive Officer.

Do you see that, but that recommendation wasn't taken up, was it?---Yes.

30

It wasn't taken up?---No.

And instead, the alternative recommendation was:

35

The Council approves the satisfactory conclusion of the review period of six months for Martin Mileham, Chief Executive Officer.

So this is one of those examples where the officer recommendation was declined, as was the committee's right?---Correct

40

[12.30 pm]

Why was it?---Because Councillor Davidson and myself clearly voted to approve it and Councillor Limnios voted against which meant it was a two/one vote ^ .

45

Yes, I want to know why. Why did you vote that way?---For the reasons aforementioned the paragraph that I've said is why I voted that way and I presume

Councillor Davidson had her own views that were similar.

5 But why couldn't a wider assessment be done of Mr Mileham, has had been done in the past?---I don't recall any more than what is shown to me here. I can give you my thoughts or my feelings on it.

You've said that he has done very, very well?---Correct.

10 Ms Davidson has put up some reasons which I don't think - I think you agree with me, it doesn't really matter. Do you want to have a look at those again?---I can see them, can't I?

15 Yes. She's saying that she's already provided her feedback?---Clearly we, Janet and I, were satisfied with his performance over what had been, I believe, a period that enabled Mr Mileham to show his suitability to the role and we didn't have the same concern that Mr Limnios did but Mr Limnios, or Councillor Limnios I should say, the Deputy Lord Mayor, clearly was expressing views that perhaps he and one or two other Councillors felt.

20 What about Directors?---Directors - you haven't asked me specifically about the Directors at this point in time.

25 There was no formal feedback obtained from the Directors?---But I do recall Mr Mileham speaking often and quite strongly about his good working relationship with a majority of the Directors. So yes, I don't have an answer as to why they weren't consulted.

30 They weren't consulted because you disagreed with what Mr Limnios wanted?---Yes.

So we do know why they weren't consulted?---Yes.

35 So why couldn't they be?---I don't know, but I would just go back to, "The Presiding Member, Councillor Davidson reaffirmed that it was in fact the role of the Performance Committee to put forward a recommendation to Council and that was outlined in the Terms of Reference", so was there something there? I just don't recall.

40 Absolutely, yes. You can put forward a recommendation but what Mr Limnios was saying, "Let's get feedback from all the people who have provided feedback in the past so that we can make a full and comprehensive recommendation to Council", that's the point he was making and it gets back to what I've said to you earlier: it seems to be a sensible approach to take and you and Councillor Davidson have taken a different approach and I know you say, yes, you two were
45 delighted with his performance, but are just two of a Council of nine. Wouldn't it fairer to everybody to have their say in this review?---There was a Governance Officer in the meeting and it was quite usual for the Governance Officer to express

an opinion if he thought that there was something being missed.

He's not - I'm asking you though. I'm just asking you as to why it was - - -?---I don't recall.

5

- - - that you and Councillor Davidson decided not to take that course of action?---It's our prerogative to have that opinion.

Of course it is, and I'm not disagreeing with you, I would just like to know why?---We were satisfied.

10

Yes, I know that?---So why we were satisfied, is that what you're asking me?

Hold on, I just want to know, you are two of nine members of Council?---Right.

15

Why not give the opportunity for other Councillors to conduct a review themselves - for themselves like had been does in the past and also extend that opportunity to Directors?---I don't recall enough detail of it. I know it's a probation review and I just don't recall enough of the - - -

20

It just smacks of you and one other Councillor making a recommendation without a wide consultation process?---If it smacked of that, there was a Governance Officer present who could have suggested that it smacked and maybe we would have - - -

25

And, what would have happened then?---Well, no - - -

What would have happened then? Would you have listened to Mr Ridgwell, would you?---Yes, indeed. I find Mr Ridgwell a very competent officer.

30

Mr Ridgwell, if you go back a few months earlier, was recommending a course of action regarding the appointment of Mr Mileham which the committee ignored. We went through that this morning. Why would Mr Ridgwell think that his recommendations would be taken any differently?---Well, you're going back to that issue or do you want me to answer - - -

35

No, I'm just saying, I'm giving you an example of why Mr Ridgwell might not have said anything?---There's not enough information in the minutes here for me to feel comfortable in replying to that because - - -

40

It doesn't matter because you said, well, why didn't Mr Ridgwell do something. I'm asking you as to why it was that you and Councillor Davidson decided to take this process and not the one that had been followed by Council for the previous CEO ?---I don't recall but it could have been because it was a probation review. He had already been acting in the role before he had been given the role with six months probation. I just don't have a strong enough recollection.

45

Do you agree with me at least then that the recommendation that was made to Council was based on the opinions of far less people than previous recommendations that had been made by this committee?---Yes, I'm happy to accept that.

5

The ever diligent Mr Parkinson has just provided me a note, because you asked this question of me and I can now provide you with an answer. Apparently the probation review for Mr Stevenson did include feedback from all Councillors and Directors. Does that seem to jog your memory on that one?---No, but I'm accepting of it, yes.

10

There was no distinction made between probationary review and subsequent reviews for Mr Stevenson?---Right.

15

You broke with procedure that had occurred for the previous CEO and you're saying that the reasons for that are essentially that Councillor Davidson and myself were very happy with his performance; is that essentially it?---Well, no. I don't accept "essentially it." It's a shame that the City didn't have a template or a process there that we could have been reminded that that had been the process for Mr Stevenson so we could have ticked that off. So I don't think it was a deliberate oversight, which is an inference there. I think it was the procedural oversight, I accept that and it's regrettable, based on the comparison to Mr Stevenson but again, these are highlighting some of the systemic holes that existed and I'm happy to accept that we were part of the problem there by not ensuring that it was done exactly how it had been done for Mr Stevenson.

20

25

But essentially what I'm putting to you is correct?---And essentially you're putting to me what?

30

This wasn't even a unanimous decision of the committee, it was two/one to deal with it this way?---That's often - often committee decisions are not unanimous.

Yes, but you're breaking with the processes that were put in place or had been put in place for some years?---Okay, so breaking with the processes that had been put in place for years, such a oversight could have been reminded to me and or Councillor Davidson at the time.

35

Hold on, Ms Scaffidi - - -?---I'm happy to accept my fault.

40

The Deputy Lord Mayor had reminded you of what the process had been. He reminded you. Do you want to go back up to the top of the page there?---No, no, I'm fine.

It's there?---I know, it's right here in front of my face.

45

So you knew about it?---Yes, I can see it.

So you were reminded about what had taken place in the past?---Yes.

But you still chose to ignore that?---"Chose to ignore it" is an interesting choice of words.

5

All right, you decided not to follow the process?---"Decided not to follow", I accept.

10 How's that? Okay. The reason for that is?---My reason for that is that there was definitely a perception that Councillor Limnios was not as keen on the appointment of Mr Mileham as perhaps myself and Councillor Davidson in the first instance were, and others to a broader extent, but that wasn't tested at that point.

15 The reason for not following what had been put in place in the past was because you and Councillor Davidson had decided that Mr Mileham was doing a good job?---Yes.

20 Is that essentially it?---Yes, I'm happy with that, an excellent job at that point.

That being the case, wouldn't it be all the more reason to get feedback from as many people as possible to support your position?---That conversation point wasn't had so therefore it wasn't considered in quite that term.

25 I don't suppose I need to show you the next page of the minutes because we know that yourself and Councillor Davidson adopted that alternative - - -?---I can work it out.

30 - - - recommendation and Mr Limnios opposed it, didn't he?---Mm hmm.

We will go then now to the Ordinary Council Meeting on 14 March, so that's six days after that second instalment of the committee meeting. Madam Associate, 9.1007, thank you. Just confirmation there that this is the meeting we are talking about and the relevant minutes?---Mm hmm.

35

If we could just go now, please, to 9.1013 - sorry, maybe in context, we will just go to 1012, Ms Scaffidi, because we better look at what happened there. There we go, underneath the heading, "Confidential 13.20, CEO probationary review"?---Yes.

40

It sets out what the alternative recommendation was that we have been through and what the original officer recommendation was and then we see at the bottom of the page, "Moved by Councillor Davidson, seconded by Councillor McEvoy", that same motion that was moved and adopted by majority at the committee meeting.

45 So now we go to 1013 and there's a motion to amend moved by Councillor Harley, seconded by Councillor Limnios that:

Council notes the initial probationary review period and extends the probationary period for up to a further six months to allow for the satisfactory completion of all KPIs.

5 The motion was put and lost and we see there the votes. So essentially it was along those aligned lines, wasn't it?---Yes.

Then, "The primary motion was put and carried. The votes were recorded as follows." So it was six/three against. So you certainly didn't have unanimous
10 support from Council, did you?---No

[12.45 pm]

15 With the advantage of hindsight, do you think now it would have been more appropriate to have conducted a more comprehensive review?---No.

No? You stand by that?---Yes.

20 Thank you, Madam Associate, that can come down now. Last area, Ms Scaffidi. The Inquiry is aware that what have been referred to as bullying provisions were inserted into the City of Perth's Code of Conduct in June of 2017?---Right.

Is that your recollection?---Yes.

25 Why was it, insofar as you were concerned, that those provisions were inserted?---Martin had indicated to me - - -

30 So that's Mr Mileham?---I'm sorry, Mr Martin Mileham had indicated to me his strong views that certain Councillors were very strong in their requests to him and other Directors. As I think I've already given evidence in this Inquiry generally and I can't recall if it was in private or public hearing, there had been a culture of Councillors dealing directly to a director and possibly even a manager level for many years, and whilst I appreciate the need to have amended that to more correct behaviour in these recent times, there was non-acceptance of that by some and a
35 style by others that probably led Mr Mileham to believe that it was of that nature.

So it's from Mr Mileham was stating to you, these requests that were being made were very strong?---Yes.

40 And overly strong?---Yes.

Confronting in nature?---Yes.

45 Maybe even adversarial?---Maybe even.

So from mid 2017, a CEO Inbox was introduced, do you remember that?---Okay, mid 2017. I thought it would have been later but if you're saying - - -

Okay, but some time in 2017?---Yes.

Did you use that inbox?---Yes, I did. I actually tried to embrace it.

5

And did you see that inbox as an effective way for Elected Members to perform their role?---Will you allow me to speak a little bit on this?

No, I'm asking you, yes?---Okay, so - - -

10

By all means, Ms Scaffidi, I'm perfectly happy for you to give an answer that responds to the question. So yes, I'm asking you whether you saw the inbox - do you want me to repeat the question or are you right?---No, I've got it.

15

You've got it, okay good?---If we keep talking I might forget it.

Fair enough?---I was the one that probably got most outside requests for all kinds of things, from stakeholders and ratepayers and I was very quick to always refer them on, with the old methodology to perhaps Directors and with the new methodology, happy to abide by the CEO Inbox and because I truly believed that when someone comes to emailing of an issue and concern that they have, that they want a quick turnaround with that. So I was happy to accept the CEO Inbox and I then started to keep a separate notebook myself on how many emails I was sending to the CEO Inbox, because it could be many in a day and there was a concern initially about the turnaround time of five works days. I felt that was too long, it should have been two to three working days at max and it was a new system that was really going against how we'd dealt for a long, long time and it was difficult for people to accept the change, particularly the Deputy Lord Mayor, Councillor Limnios, and I think a couple of other Councillors.

20

25

30

So you did see it as an effective way?---I did, because, if I can just add one more point.

Certainly?---I saw it as effective because I never knew in the past, there was a lot of doubling up on these because when a stakeholder emails you, often they might just email Lisa Scaffidi, you don't know that they are also sending eight individual emails to eight Elected Members, but some of them would actually email us all and CC everyone in the same. Whether it was a tactic or what, I don't know. So sometimes there would be a lot of double-up. I would often copy my colleagues in on these things so that they knew that I had replied, in case when were separately copied in and I saw it as an opportunity to really streamline what was a cumbersome system but something that was never going to go away, in that we were the face of the City and the enquiries of that nature were always coming to Elected Members.

35

40

45

And did you CC all your colleagues or just a select group?---I would have CC all Councillors.

All Councillors?---There was an option there "all Councillors".

And you mentioned the turnaround time in the previous answer?---Yes.

5

What was the turnaround time? Was it satisfactory for you?---I think initially it was quoted as being five works days, which I did not think was satisfactory. I think it needed to be, ideally - ideally 24 to 36 hours but I would have been happy with two to three working days, at least it was in the same work week.

10

And did that happen, as a general rule?---I can't say as a general rule because some of the enquiries are quite easy to fix and some aren't and I understand many have to go to different departments, so it's not a general rule thing, but I think there should have been a prioritisation and there should have been a system set up on the other side of the CEO Inbox to look at urgent, less urgent and non-urgent and really get a system working. I don't know if that occurred.

15

One way of resolving that would have been maybe for the Elected Member to put in the title box whether it was urgent or non-urgent; do you know if that was done?---Not all our call. I think - - -

20

But it's what you wanted - the Elected Members wanted a response?---Everyone would have said urgent because they would have thought their requests were urgent. I think that's kind of a subjective thing. I think, you know, if it was regarding a broken drain and water flooding into a street, that's urgent. If it was regarding a more generic request that wasn't time sensitive, that's non-urgent but we are talking generically here.

25

But were you satisfied that Mr Mileham did prioritise the emails accordingly?---I can't answer that because I don't know how the CEO Inbox was actually working from the administrative side. I've got a feeling that there was an officer tasked with it, to forward it on and it wasn't necessarily Martin, but he might have had vision, I don't know.

30

But from your observation of how it worked, were you satisfied?---Early on, no.

35

Subsequently?---More so. We needed to be respectful of the big change it was, the paradigm shift that it was and I think we needed to be more open with our own views on where things could have been improved, but the Council was suspended before we got an opportunity to do that.

40

Thank you, Ms Scaffidi. Can I just confer one moment with Mr Parkinson, sir, with your leave, to see if there are any other matters.

45

COMMISSIONER: Certainly.

MR URQUHART: Yes, thank you. I'm obliged to my learned friend, sir.

Ms Scaffidi, again I've just been reminded of something that Mr Limnios said regarding that CEO Performance Review Committee meeting back in March of 2017, the one that I took you to?---M'mm.

5

He has described that meeting as you and Mrs Davidson railroading him and that whenever he tried to say something, he was very quickly shut down?---My response to that would be that Mr Limnios' style was also very noticeably strong, but I've not been able to elaborate on that previously.

10

I'm just talking to you about this particular meeting?---I understand you are talking to me about this particular meeting and my response is his style is extremely unique and it was aggressive.

15

I'm only asking about this particular meeting. In that meeting, given the fact that he was in the minority, was his argument being shut down?---No.

He was given the opportunity to have his say?---At all times.

20

So by this stage the relationship that you had with Mr Limnios wasn't as good as it had been, is that fair to say?---I'm more professional than that. Yes, you are correct in saying that but I still was professional in meeting situations. His style is very aggressive and Janet and I were cognisant of that.

25

Were you and Janet then being - - ?---Sorry, Councillor Davidson.

Yes, were you and Councillor Davidson being railroaded by Mr Limnios at this particular meeting in March of 2017?---You see, railroaded, we clearly weren't railroaded because the vote shows otherwise, but, you know, you can't dismiss - he's given an opinion and I have another opinion about his style.

30

So was that meeting conducted in a proper manner?---It was.

At all times?---Yes.

35

Thank you, Ms Scaffidi. That's all the questions I have for you. Thank you, Commissioner. I do note the time now.

40

COMMISSIONER: Thank you, Mr Urquhart. I might just get an indication from counsel at the Bar table as to whether there are any applications and if so, if permitted, in full, how long they might take. Mr Barrie, are you likely to have an application?

45

MR BARRIE: Commissioner, I may have an application. However, it may be an issue on which Mr van der Zanden addresses Ms Scaffidi. To the extent that it's not and to the extent that it's allowed, it will take approximately five minutes.

COMMISSIONER: All right. Ms Chappelow?

MS CHAPPELOW: No application.

5 COMMISSIONER: Thank you. Mr Cornish, are you likely to have one?

MR CORNISH: No, Commissioner.

COMMISSIONER: Thank you. Mr Malone, are you likely to have one?

10

MR MALONE: No application, thank you, Commissioner.

COMMISSIONER: Ms Zoric, are you likely to have one?

15

MS ZORIC: No, Commissioner.

COMMISSIONER: Mr Yin, are you likely to have one?

MR YIN: No, sir.

20

COMMISSIONER: Mr Sinanovic, are you likely to have one?

MR SINANOVIC: No, sir.

25

COMMISSIONER: Mr Skinner, are you likely to have one?

MR SKINNER: Not at all, sir, thank you.

COMMISSIONER: Ms Saraceni, are you likely to have one?

30

MS SARACENI: Yes, sir, but I can't imagine it would take more than five to 10 minutes, absolute max, more likely five than 10.

COMMISSIONER: I'm going to write that down, Ms Saraceni.

35

MR URQUHART: I already have, sir.

COMMISSIONER: Thank you, Ms Saraceni, that's helpful. Mr van der Zanden, are you likely to have one?

40

MR van der ZANDEN: Yes, I will have one, Commissioner.

COMMISSIONER: If allowed in full, how long do you think it might take?

45

MR van der ZANDEN: My best guesstimate is maybe 30 minutes.

COMMISSIONER: Thank you for that. In that case what I will do shortly is I

will adjourn this Inquiry until 2.15 pm but before I do that, I'm just going to note something for the record and it's simply for the transcript, Ms Saraceni. It's not a complaint and there's nothing in it more than me recording this for the transcript so that the transcript's not misleading. I'm just going to record that you entered the hearing room and took up your seat at the Bar table at, I'm told by my Associate, about 10.15 am and that you have been present in the hearing since that point in time.

MS SARACENI: Thank you, sir. I apologise.

COMMISSIONER: There's no need for an apology, I was just recording it for the transcript. I'm now going to adjourn the Inquiry until 2.15 pm.

WITNESS WITHDREW

(Luncheon Adjournment)

HEARING RECOMMENCED AT 2.16 PM.

MS Lisa-Michelle SCAFFIDI, recalled on former oath:

5

COMMISSIONER: Mr Yeldon, you appear in place of Ms Chappelow?

MR YELDON: I do, and before the break, she indicated that there was no application to be made, if I'm correct.

10

COMMISSIONER: You are correct.

MR YELDON: I wish to reverse that position and ask one question.

15

COMMISSIONER: All right.

MR YELDON: If that is permissible.

COMMISSIONER: I haven't heard applications yet.

20

MR YELDON: Jolly good.

COMMISSIONER: All that's happened, Mr Yeldon, in your absence is that those at the Bar table have indicated whether they propose to make an application.

25

MR YELDON: I see.

COMMISSIONER: Mr Barrie, to your right has indicated that he might make an application depending on what happens with Mr van der Zanden. So now that you're standing, I will hear your application.

30

MR YELDON: It would be appropriate if the witness was excused.

COMMISSIONER: Yes, of course. Thank you, Ms Scaffidi.

35

WITNESS WITHDREW.

COMMISSIONER: Yes, Mr Yeldon.

40

MR YELDON: Thank you, Commissioner, I'm grateful. It's to do with the topic of Mr Stevenson - - -

COMMISSIONER: Just hold on a moment, I can't hear you above the chatter at the Bar table. Yes, Mr Yeldon.

45

MR YELDON: It's to do with Mr Stevenson and his proposal concerning Option 1 and Option 2 on 30 November and Counsel Assisting was examining the witness

as to whether or not Mr Stevenson had communicated to her saying that he wanted a response and her answer to that was, "No, I don't recall", and then Counsel Assisting suggested that there was no sense of urgency. That is my handwritten note, Counsel Assisting could correct me if I'm mistaken.

5

That question did not ask whether anybody else had communicated with the witness concerning what Mr Stevenson wanted and of course, there is evidence that Mr Stevenson did email my client, ex-Councillor Janet Davidson on that date and he does use the phrase in there that he wants "a timely decision" or words to that effect. That page is 14.0947.

10

COMMISSIONER: Madam Associate, please bring it up.

MR YELDON: If I'm not mistaken.

15

COMMISSIONER: 947, did you say?

MR YELDON: Yes, 14.0947. It's an email from Mr Stevenson to Janet Davidson of 30 November.

20

COMMISSIONER: Which part do you want me to look at?

MR YELDON: If I could have that blown up again, Madam Associate.

25

COMMISSIONER: Yes, which part of it?

MR YELDON: It's the sentence beginning, "Therefore", do you see that, Commissioner?

30

COMMISSIONER: In the second paragraph?

MR YELDON: Yes, indeed.

COMMISSIONER: Yes.

35

MR YELDON: He says:

I would appreciate a very quick process of decision-making.

40

Janet Davidson was the Chair of the CEO Performance Review Committee and the question was not asked whether anybody else had communicated, it's whether he had communicated. So my question to the witness is, well, did anyone else communicate what Mr Stevenson wanted with respect to his options to you, after 30 November.

45

COMMISSIONER: You mean communicated orally?

MR YELDON: Yes. That will assist the Inquiry because it will better reflect the events, in my submission.

5 COMMISSIONER: Thank you, Mr Yeldon. Mr Urquhart.

MR URQUHART: Thank you, sir. My learned friend might not be aware but this document was shown to Ms Scaffidi and we went through it in some detail, including that very same sentence that he cited to you, sir.

10 COMMISSIONER: Yes, Mr Yeldon.

MR YELDON: Yes, I'm not aware of that. I'm grateful. I've obviously missed a step. That must have been this morning.

15 COMMISSIONER: That's all right.

MR URQUHART: As I've said, it was this morning.

20 MR YELDON: Yes. Then I make no application, if that's the case. I've been labouring under a misapprehension. I don't have access to the daily transcript.

COMMISSIONER: That's all right, Mr Yeldon.

MR YELDON: I'm sorry for wasting your time.

25

COMMISSIONER: So that's withdrawn, is it?

MR YELDON: Yes.

30 COMMISSIONER: Thank you. Mr van der Zanden, I will hear your application now.

MR van der ZANDEN: Commissioner, I seek leave to examine the witness - perhaps before I start, I understand that in circumstances where I seek to put three documents to the witness, which the Inquiry I understand does not have on its system, if that's the correct terminology, then it's appropriate that I seek leave to tender those documents in the first instance. So I'm happy to do that before I commence, or it might become clear during my - it should become clear when I explain my questions how each document is - - -

40

COMMISSIONER: That might be the better way to go.

MR van der ZANDEN: Yes.

45 COMMISSIONER: So how many topics did you want to examine?

MR van der ZANDEN: There's nine, Commissioner.

COMMISSIONER: Nine?

MR van der ZANDEN: Yes.

5

COMMISSIONER: All right.

MR van der ZANDEN: The first topic is the handling of the Heirisson Island incident, or situation, if I could call it that, by Mr Stevenson. There was a line of questioning by Counsel Assisting suggesting Mr Stevenson handled that issue adequately and I want to explore with the witness whether or not on her observations that was the case.

10

COMMISSIONER: So that's the first one?

15

MR van der ZANDEN: Yes. The second one - - -

COMMISSIONER: Before you go any further, tell me how that will advance the purposes of the Inquiry.

20

MR van der ZANDEN: To the extent that it was put by my friend that the handling was appropriate and the suggestion seems to be that he had done the right thing in that instance and that wasn't a reason why he should be marked down, if you like, it's appropriate that the Inquiry hear of any other evidence which goes the other way.

25

COMMISSIONER: I will just hear from Mr Urquhart on each of those points as you raise them because that will be a much easier way to deal with them.

30

MR van der ZANDEN: Yes, I appreciate that.

COMMISSIONER: Mr Urquhart.

MR URQUHART: Thank you, sir. As I recall the evidence of Ms Scaffidi, she did in fact give evidence regarding that matter quite adequately and explained and disagreed with me as to whether he handled the Heirisson Island incident adequately. So I'm not certain what further evidence my learned friend wants from the witness in that regard.

35

COMMISSIONER: There certainly was a response to your questioning on that topic, Mr Urquhart, but my sense of the way in which Ms Scaffidi was giving her evidence and in some of her answers, I got an indication that she wanted to say a bit more about that, so I'm going to allow that.

40

MR URQUHART: Certainly, sir.

45

COMMISSIONER: So leave is granted on that one, Mr van der Zanden.

MR van der ZANDEN: The second point, Commissioner, is in relation to Ms Scaffidi's relationship with Mr Stevenson. It was put to her that the problem with the relationship between the witness and Mr Stevenson was that he didn't do what he was asked to do and I want to explore with Ms Scaffidi what she says the problem was, if that's the case, with their relationship, what she saw was the short coming on his part in that regard.

COMMISSIONER: Yes. Thank you. You don't need to tell me how that will advance the purposes of the Inquiry. Mr Urquhart.

MR URQUHART: Again, sir, it's my recollection that the witness went into some detail as to the shortcomings of Mr Stevenson, not just in my examination but also the examination of Counsel Assisting, Ms Ellson. Sir, if you're of the view that the Inquiry would be assisted by a repetition of that evidence - - -

COMMISSIONER: Thank you, Mr Urquhart. Mr van der Zanden, is it your submission that your client had indicated a desire during her evidence to say more than that she did in fact say, because I certainly recall her being given an opportunity to reflect on his weaknesses and it seemed to me like a fair opportunity as well.

MR van der ZANDEN: My recollection is that she wanted to say a bit more, but that was the sense. I'm trying to recall the - - -

COMMISSIONER: What does your note of the evidence say?

MR van der ZANDEN: Just bear with me for a moment.

COMMISSIONER: Of course. Feel free to read it to me literally, if you wish.

MR van der ZANDEN: Yes. My notes don't assist me in that regard, so I won't advance that point.

COMMISSIONER: You say you withdraw that one?

MR van der ZANDEN: Yes

[2.30 pm]

COMMISSIONER: Thank you. What's topic number three?

MR van der ZANDEN: Topic number three, this concerns - there's a few parts to this and I will take you through them, Commissioner. So this concerns the meeting or the events leading up to and the meeting on 4 December 2015 with Mr Stevenson and there's two additional - two of the documents that I'd seek to tender go to this point.

COMMISSIONER: Can you tell me which documents you're referring to now, so I can look at them?

5 MR van der ZANDEN: Yes.

COMMISSIONER: Now, before you address me so that it makes more sense to me as you address me.

10 MR van der ZANDEN: Yes, sir, certainly.

COMMISSIONER: Thank you.

15 MR van der ZANDEN: The first of the documents is an email from Ms Scaffidi to Mrs Davidson of 3 December 2015 that's sent at 5.10 am.

COMMISSIONER: Yes, I have that, thank you. Just give me a moment to read it. Yes. Do you want to develop that point now?

20 MR van der ZANDEN: Yes. So my note of the evidence is that Ms Scaffidi wasn't able to recall what occurred at that meeting on 4 December 2015 and what I would seek to do is ask her whether or not this document, which was not put to her, refreshes her memory about what was said at that meeting.

25 COMMISSIONER: How is it going to do that?

MR van der ZANDEN: Because the note at the end of the email is a note about what the witness - well, she's saying that, "We should tell Mr Stevenson" - - -

30 COMMISSIONER: Just let me read it again. Yes. Do you want to develop the second point? Which document is it?

35 MR van der ZANDEN: Perhaps before I move on to the next email, Commissioner, I also would seek to ask her about whether or not that email jogs her memory about whether she spoke to anyone else at that time, whether it might have been Mr Poulson or Mrs Davidson.

COMMISSIONER: Yes.

40 MR van der ZANDEN: Then the second email, which in some respects follows on from the point that I raised with this first email, so this is the email from Mark Cox to Ms Scaffidi of 14 January 2016 at 4.13 pm.

COMMISSIONER: Let me just read that, please. Yes, I've read it.

45

MR van der ZANDEN: There's also an email, a part of the chain, an earlier email from Ms Scaffidi to Mr Cox of 14 January.

COMMISSIONER: Yes, I'm reading that now. Yes.

5 MR van der ZANDEN: I want to ask the witness if she can recall instructing
solicitors and if so, when, and to the extent necessary to put this document to her
to refresh her memory. You might recall that during her evidence, and there may
have been others, I think there's a misconception that the contact with the lawyers
occurred on 15 January and that may have arisen, I think, out of a note of
10 Mr Linnios, people trying to decipher what his notes meant, so obviously this
email chain is relevant to that point, Commissioner.

COMMISSIONER: Thank you. Is there anything else you wish to say in relation
to the third topic?

15 MR van der ZANDEN: Yes, there is. I apologise. This has probably been split
up into some subcategories.

COMMISSIONER: Okay.

20 MR van der ZANDEN: Part of this topic is the question of Ms Scaffidi as to
whether she recalls when she returned from leave. The last part of this topic is a
document - this is the letter from Mr Stevenson to the CCC and the Inquiry's
document reference 14.2087.

25 COMMISSIONER: Madam Associate, please bring that up. 14.2087. Just
enlarge the middle section of that, please, Madam Associate, so everyone can read
it. Thank you.

30 MR van der ZANDEN: Madam Associate - - -

COMMISSIONER: Just give me a moment.

MR van der ZANDEN: Yes. Sorry, Commissioner.

35 COMMISSIONER: Yes.

40 MR van der ZANDEN: Madam Associate, if you could just go to the next page,
please, and then the following page, and the last page. So this was the document
that Mr Stevenson left for Ms Scaffidi and she received on 14 January and what I
want to question her about is, she gave evidence on 26 August 2019 about a
conversation she had with Mr Stevenson when he discussed with her what he had
reported to the CCC and I want to ask her whether - what he told her during that
meeting, how that then is reflected in that document or otherwise.

45 COMMISSIONER: It will be important here, obviously, and I hardly need to tell
you this, Mr van der Zanden, not to lead the witness.

MR van der ZANDEN: Yes, I understand.

COMMISSIONER: Are those all the subcategories of the topic?

5 MR van der ZANDEN: Yes, sorry, sir.

COMMISSIONER: That's all right.

MR van der ZANDEN: I could move on to point 4, if I may.

10

COMMISSIONER: Before you do, we have agreed a procedure.

MR van der ZANDEN: Yes, of course.

15 COMMISSIONER: Mr Urquhart, what do you wish to say about topic 3?

MR URQUHART: Yes, sir, topic 3A, B and C. So it would appear insofar as topics 3A and B are concerned, my learned friend wishes to produce some documents before the Inquiry. I'm having a look at Practice Direction 8. It may be it would have to be interpreted somewhat widely and leave would have to be given to my learned friend for not complying with that provision because there is a requirement that an application form be completed, specifically for my friend, 8.5 there.

20

25 COMMISSIONER: Mr van der Zanden, do you have a copy of the Practice Directions?

MR van der ZANDEN: Yes, I do.

30 COMMISSIONER: Thank you. Yes, Mr Urquhart.

MR URQUHART: So:

35

The production applicant must apply in writing using the application form available on the Inquiry's website and provide a copy of the document to the Counsel Assisting: (a), as soon as practical after its existence and its potential relevance to the Inquiry becomes known; and (b), within a reasonable time before the hearing.

40 Sir, I can advise you that these documents were made available to the solicitor assisting this morning.

COMMISSIONER: I see.

45 MR URQUHART: If you, Commissioner, are prepared to waive the requirements of 8 there, then I suppose we can deal with the matter. I have been given notice of this application, so I'm prepared to proceed on the basis that the application in

writing in accordance with the form that's found on the website has not been completed, in order to save time.

5 Sir, with respect to the first email that my learned friend refers to, I don't have any objection to that first page being provided to the witness. I would have some concerns about what appears on the second page because it's unclear as to the provenance of those three lines. It doesn't seem to make any connection with the material that's provided on the first page.

10 COMMISSIONER: No, there's no obvious linkage, is there?

MR URQUHART: No. If my friend is prepared to confine his questioning to the first page, then I don't have any objection.

15 COMMISSIONER: Yes.

MR URQUHART: As to 3B, the second email that my learned friend has referred to, the emails taking place on 14 January 2016.

20 COMMISSIONER: Yes.

25 MR URQUHART: Once again, there is no objection made by myself for the questioning that my learned friend proposes there although I do state on the record that the Inquiry did not have access to these emails. That would hardly be surprising, sir, because it's been sent from Ms Scaffidi's personal email address and not from her City of Perth email address.

30 COMMISSIONER: Would you also be of the view that these two emails of 3 December and 14 January, 15 and 16 respectively, were not captured by the terms of any notice to produce? I think Mr Parkinson might be writing you a note.

35 MR URQUHART: Yes. The other note he's provided me was that this particular second email was provided at the mid-morning adjournment today. So again, I don't take issue with any suggestion that there's non-compliance with Practice Direction 8, I'm prepared to waive that. As to that matter raised by you, sir, Mr Parkinson is now looking at the relevant document requiring the notice to produce.

40 COMMISSIONER: We can come back to that.

MR van der ZANDEN: Commissioner - - -

COMMISSIONER: Just a moment, just let Mr Urquhart finish first.

45 MR van der ZANDEN: Yes.

COMMISSIONER: Mr Urquhart.

5 MR URQUHART: As to 3C as I've phrased it, it would seem that my learned friend wishes to make an application in relation to evidence that was given on 26 August and in my respectful submission he had the opportunity of dealing with that at the conclusion of Ms Scaffidi's evidence on 28 August but he elected to make no application, so he would have to require the Inquiry's leave to make that application, in my submission.

10 COMMISSIONER: Yes. Thank you. Is there anything else at this point?

MR URQUHART: There's not, sir.

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

15 MR van der ZANDEN: Sir, in relation to the two emails, my instructions are that they are and were on my client's phone which was produced pursuant to a notice by the Inquiry to produce that device. This is a case where we don't know what documents the Inquiry has or is going to indeed put up during the course of the evidence and it's only when matters are dealt with that it's apparent that certain
20 documents haven't been put to a witness.

COMMISSIONER: That can be checked, I'm sure.

25 MR URQUHART: Mr Parkinson assures me that the 3 December 2015 email is not in our custody. I suppose further enquiries would have to be made regarding the other one.

COMMISSIONER: That can happen while I'm hearing the rest of the argument. Yes, Mr van der Zanden, you had other submissions to make?

30 MR van der ZANDEN: Yes. In relation to the provenance of the first email.

COMMISSIONER: Yes, the 3 December one.

35 MR van der ZANDEN: 3 December, on the second page.

COMMISSIONER: Yes.

40 MR van der ZANDEN: That - - -

COMMISSIONER: It does look very odd, doesn't it?

45 MR van der ZANDEN: What it involves is, there's a cut and paste. So it's Ms Scaffidi to Mrs Davidson who's cut and paste text from Mr Poulson and then she's got her own text at the end. The Inquiry has - this was the reason for our delaying the Inquiry in the mid-morning break, is the Inquiry's staff sighted these emails and they were forwarded to an email address provided by the Inquiry. So

the provenance can be established. So I seek to - - -

5 COMMISSIONER: That may or may not be right. Whether the Inquiry has them or not, in particular these two emails and this chain in this document, that might be established but the provenance of page 2 might not be established.

MR van der ZANDEN: It is to the extent that my client has the original email and so I suppose short of - on the paper - - -

10 COMMISSIONER: Provenance goes to origin, doesn't it?

MR van der ZANDEN: Yes.

15 COMMISSIONER: So it may not be a complete answer, that's the point I'm making to you.

MR van der ZANDEN: Yes, I suppose.

20 COMMISSIONER: Because if you look at page 2, what you have on page 2 is a paragraph which has text in it. It has a salutation but it has no header and it's attached to page 1 and when you look at page 1, at the bottom of page 1 there's no header.

25 MR van der ZANDEN: It has no header because it's part of the same email.

COMMISSIONER: That may or may not be right, I don't know yet.

MR van der ZANDEN: I'm not sure I can take this any further.

30 COMMISSIONER: I think that's right, I think you can't take it any further than that. We will make some enquiries and no doubt establish what the situation is as best can be done.

35 MR van der ZANDEN: Yes. The only other thing I wanted to say is my friend's point, that this should have been the subject of an application after my client gave evidence on the first occasion, this issue of Mr Stevenson providing the - - -

40 COMMISSIONER: I imagine what you are going to submit to me is the relevance of it was not apparent at that time, or not fully apparent.

MR van der ZANDEN: Not fully, no. I mean, it's - - -

COMMISSIONER: I understand that.

45 MR van der ZANDEN: I don't intend to say anything further at this point. Thank you, Commissioner.

COMMISSIONER: That's all right. Mr Urquhart, is there any more to add about the provenance?

MR URQUHART: There's not, thank you, sir.

5

COMMISSIONER: What I'm going to do, Mr van der Zanden, is I'm going to grant you leave to ask questions on topic 3, subcategories A, B and C, and I'm going to do it on this basis in relation to 3A, as it's been described by Mr Urquhart.

10 MR van der ZANDEN: Yes.

COMMISSIONER: If at some later point in time information comes to hand which has a bearing on the provenance of page 2, then that might well be the subject of some further examination by the Inquiry.

15

MR van der ZANDEN: Certainly.

COMMISSIONER: That would seem only fair.

20 MR van der ZANDEN: Yes, I accept that.

COMMISSIONER: Topic 4, please.

25 MR van der ZANDEN: Topic 4, commissioner, is the third document, third additional document if I can call it that.

COMMISSIONER: Yes.

30 MR van der ZANDEN: Which is a report of the Inquiry into the Lord Mayor of the City of Perth by the Department of, as it was then known Local Government and Communities.

COMMISSIONER: Yes.

35 MR van der ZANDEN: So that's dated May 2016.

COMMISSIONER: Yes.

40 MR van der ZANDEN: The relevance of that is in particular paragraph 3.

COMMISSIONER: The one beginning, "On 26 November"?

MR van der ZANDEN: Yes.

45 COMMISSIONER: Yes, I have it.

MR van der ZANDEN: You might recall Ms Scaffidi was questioned by Counsel

Assisting about whether she believed the matter was over after the CCC handed down its report in early October 2015.

COMMISSIONER: Yes.

5

MR van der ZANDEN: As part of her evidence, she said that the matter was - the note I have is - "pretty quickly referred to the Department", so I wanted to ask her whether or not this is what she was referring to when she said "referred to the Department".

10

COMMISSIONER: Is that all you wish to say on topic 4?

MR van der ZANDEN: Yes.

15

COMMISSIONER: Thank you. Mr Urquhart.

MR URQUHART: Paragraph 6 might be of relevance to the application being made by my learned friend. Sir, you can see that on the same page.

20

COMMISSIONER: Yes, I'm looking at it now.

MR URQUHART: Making an authorised person's extended invitation through her solicitor to the Lord Mayor of the City of Perth, Ms Scaffidi, to attend a voluntary interview, that being 16 February 2016. There's actually no evidence with respect to this document that she was actually aware that this Inquiry was underway as of 26 November of 2015. Of course, my questioning of her related to what her state of mind was between 30 November 2015 and 14 January of 2016.

25

COMMISSIONER: Yes. Thank you, Mr Urquhart. Do you wish to respond to that, Mr van der Zanden?

30

MR van der ZANDEN: Only to say that my friend identifies the line of questioning that I wish to undertake which is when she became aware of the Inquiry, whether it was - well - - -

35

COMMISSIONER: How do you propose to do that?

MR van der ZANDEN: I think a way that it can be done is to ask her whether she became aware that the Director-General had authorised an Inquiry and how and whether she was aware of that before she was extended an invitation through her solicitors, and so how far sooner than that it was.

40

COMMISSIONER: And you propose to do that in a non-leading way?

45

MR van der ZANDEN: I certainly propose to do that, Commissioner.

COMMISSIONER: I'm sure there will be others objecting if you don't.

MR van der ZANDEN: Yes, I'm sure there will be.

COMMISSIONER: Yes, I grant you leave to do that.

5

MR van der ZANDEN: Thank you, Commissioner. The fifth item, Commissioner is on the question of voting in Council. It was put to Ms Scaffidi that she and Mrs Davidson always voted the same - I'm paraphrasing it but that was the effect.

10

COMMISSIONER: I recall the evidence.

MR van der ZANDEN: Yes, and I wanted to ask her simply what percentage of voting in Council is unanimous.

15

COMMISSIONER: I'm afraid I'm not with you on that one, Mr van der Zanden. That topic has been fully explored and I don't regard any answers that she might give on that as being answers which would advance the purposes of this Inquiry. So I'm afraid I'm agreeing with you on that one. I don't need to hear from you on that one, Mr Urquhart.

20

MR URQUHART: Thank you, sir.

COMMISSIONER: The sixth?

25

MR van der ZANDEN: The sixth point is Ms Scaffidi was examined about her feelings concerning Mr Stevenson reporting matters or this internal review that he had then provided to the CCC.

30

COMMISSIONER: Yes.

MR van der ZANDEN: I wanted to ask her if she had a view on whether, if Mr Stevenson considered a matter should be reported to the CCC, what he should do in those circumstances.

35

COMMISSIONER: Is that all you wish to say about that?

MR van der ZANDEN: Yes.

40

COMMISSIONER: Mr Urquhart.

MR URQUHART: I don't have anything to add to that, sir. I'm at a bit of a loss as to exactly what way my learned friend would want to ask that would clarify the evidence that she's already given in this regard. She has said repeatedly she was happy for him to report her to the CCC, as it was his duty.

45

COMMISSIONER: That's why I asked Mr van der Zanden if he had anything

more to say.

MR URQUHART: Yes.

5 COMMISSIONER: Mr van der Zanden, I'm happy to hear you in reply but at the moment I'm not persuaded. If you wish to add more, please say so.

MR van der ZANDEN: I won't advance it any further, Commissioner.

10 COMMISSIONER: Are you indicating to me that you're withdrawing it?

MR van der ZANDEN: Yes, I will withdraw it in those circumstances.

COMMISSIONER: Thank you. Number 7?

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MR van der ZANDEN: Number 7, during the course of her evidence this morning, Ms Scaffidi referred to - she described it as the genesis for Mr Stevenson's responsive document of 30 November 2015 and I would seek to ask her what she meant when she talked about, or what indeed she considered the

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COMMISSIONER: Yes. Is there anything else you wish to say on that?

MR van der ZANDEN: No, Commissioner.

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COMMISSIONER: Mr Urquhart.

MR URQUHART: She referred to a genesis.

30 COMMISSIONER: She did, I recall that evidence.

MR URQUHART: Sorry, sir?

35 COMMISSIONER: She wanted to give you the genesis of the 30 November 2015 document and you pressed on with the next question.

MR URQUHART: Yes, I see. Mr Parkinson's given me a Post-It note on this, sir, but I can't make it out. I don't mind one way or the other on that way. I think of genesis and I think of Phil Collins.

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COMMISSIONER: That's a very unpleasant thought to sow in my mind, Mr Urquhart. Mr van der Zanden, it was clear to me that your client did wish to say something about the genesis of that document and I'm not sure at this stage whether you or I know whether that will advance the purposes of the Inquiry but in

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fairness and out of an innate sense of fairness to your client, I'm going to allow her to be questioned on that topic.

MR van der ZANDEN: Thank you, Commissioner.

COMMISSIONER: Yes. Number 8?

5 MR van der ZANDEN: Number 8 is in relation to the conversations towards the end of July 2016 between Ms Scaffidi and Mr Mileham which Mr Mileham gave evidence that he had taken a note of the conversation and then Ms Scaffidi was questioned about that and it was put to her that Mr Mileham had described the conversation as adversarial.

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COMMISSIONER: Yes.

MR van der ZANDEN: And Ms Scaffidi indicated a desire to say something about that. Perhaps if I can just say that what I propose to do - - -

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COMMISSIONER: What did she say about that?

MR van der ZANDEN: I think she said she couldn't recall.

20 COMMISSIONER: Do you have a note?

[3.00 pm]

25 MR URQUHART: Sir, I don't have a note but the purport of it was she couldn't agree or disagree with that description of the conversation because she couldn't recall the conversation.

COMMISSIONER: That is what my note says.

30 MR van der ZANDEN: Yes.

COMMISSIONER: So how is it going to advance it in the light of those answers?

35 MR van der ZANDEN: Only in this perhaps limited way, Commissioner, and that is that I propose to ask her whether or not there's anything else concerning her relationship with Mr Mileham or any other events at that time that suggests that the conversation wouldn't have been adversarial.

40 COMMISSIONER: That has a number of problems, doesn't it, Mr van der Zanden?

MR van der ZANDEN: It - - -

45 COMMISSIONER: It lends itself to a lot of construction, doesn't it, and that's the risk with that sort of question.

MR van der ZANDEN: Yes.

COMMISSIONER: I'm happy to hear you out but at this stage I have to tell you, Mr van der Zanden, I'm not won over by this one.

5 MR van der ZANDEN: No. You may have sensed my apprehension from the start and so I'm very quickly going into reverse on that, Commissioner. I will withdraw that application.

COMMISSIONER: Very well. Thank you.

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MR van der ZANDEN: The last point, Commissioner - - -

COMMISSIONER: Number 9, yes.

15 MR van der ZANDEN: - - - is in relation to some questioning of Ms Scaffidi by Counsel Assisting in relation to the fact that the CEO Performance Review Committee didn't canvass Elected Members or Directors for the purposes - - -

COMMISSIONER: I do recall that, yes. It was quite extensive.

20

MR van der ZANDEN: My questions were very simply that, and this is arguably a matter for submission, and that is that the committee's role is to make a recommendation here which goes to Council and then what happens then, which is the Council, Elected Members all have an opportunity to have their say and vote.

25

COMMISSIONER: Yes.

MR van der ZANDEN: Like I said, it's bordering on. Everybody knows the process and I don't want to take up any extra time but I'm inclined - it's a short point - to seek leave.

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COMMISSIONER: Mr van der Zanden, would I be right in apprehending some apprehension on your part again in pressing this topic?

35 MR van der ZANDEN: Certainly now that you've said that, Commissioner.

COMMISSIONER: I'm not persuaded, Mr van der Zanden, because the line of questioning was directed at the process that preceded the Council meeting.

40 MR van der ZANDEN: Yes. That's the limit of my questions.

COMMISSIONER: So I have given you leave on topics 1, 3, 4 and 7.

MR van der ZANDEN: Yes, thank you.

45

COMMISSIONER: Before you start, Mr Barrie, I'm mindful of what you foreshadowed prior to the lunch adjournment.

MR BARRIE: Thank you, sir.

COMMISSIONER: I assume you've been taking careful notes.

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MR BARRIE: I have, sir, and that's the advantage of sitting in the back row. I no longer press an application, sir.

COMMISSIONER: Very well. Thank you, Mr Barrie. Madam Associate, we can have Ms Scaffidi back in - I'm sorry.

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MR van der ZANDEN: Commissioner, I'm sorry to leap up but I understand Ms Scaffidi also has an application.

COMMISSIONER: Ms Saraceni, you mean?

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MR van der ZANDEN: Sorry, Ms Saraceni.

COMMISSIONER: Thank you. I'm sorry, Ms Saraceni.

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MS SARACENI: Thank you, sir. I think before lunch there was some comment of five to 10 minutes. I've taken some instructions and I might be closer to 10 minutes but there are seven topics, very brief, that I wish to - - -

COMMISSIONER: Seven topics?

25

MS SARACENI: Yes, to seek leave to ask of Ms Scaffidi. The first is in relation to the use of the common seal and whether the absence of the common seal or the absence of the resolution of the Council for the common seal meant that the contract invalid. There was a question, I think, from Mr Urquhart whether Mr Mileham's appointment - he was not properly appointed and I understood that was as a result of the common seal not being there and the resolution not being there. Ms Scaffidi in answering started to say something about external third parties but she was cut off in relation to that and I would seek to ask her what her understanding was in relation to a document that had been drafted internally by HR, whether there was a need for the common seal. This questioning has been asked of one other witness.

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COMMISSIONER: So you want to question her on her understanding of whether the common seal should have been affixed to the contract of employment between Mr Mileham and the City of Perth?

40

MS SARACENI: Yes.

COMMISSIONER: I will hear from Mr Urquhart on that but my sense is that's been fully explored, but I will hear from Mr Urquhart.

45

MR URQUHART: I don't think this witness is going to know the answer to that question if it was put to her in any event. The point I was trying to make as to whether there was compliance with section 5.36(2)(b) of the Local Government to which she said there was not, and my line of questioning was directed to the fact that she had signed her name to say that the common seal had been affixed. So the questioning regarding the fact that the contract might not necessarily be validated was by virtue of the fact of the non-compliance with the Local Government Act.

COMMISSIONER: Thank you, Mr Urquhart. Ms Saraceni, do you wish to be heard in response?

MS SARACENI: Commissioner, given that the contract on its face says that it was only due to start on 3 October 2016 and that date has not been made much of, the only date that has been made much of is 21 September which appears to be the date that the agreement perhaps was signed - it's not very clear - - -

COMMISSIONER: But a contract can be enforceable before its commencement date, can't it?

MS SARACENI: Not when it says, sir, that the contract very clearly starts on 3 October, not before.

COMMISSIONER: Does it give rise to legal rights at this point, at an earlier point in time when it's signed?

MS SARACENI: Not unless there was going to be withdrawal of an agreed contract, sir, I would submit.

COMMISSIONER: So this is an interesting issue of law?

MS SARACENI: No. Commissioner, the only reason that I wanted to question her in relation to - - -

COMMISSIONER: Do you agree with that, it's an interesting legal issue?

MS SARACENI: As you've put it, sir, yes.

COMMISSIONER: How's Ms Scaffidi - I'll get the name right - going to assist the Inquiry on that?

MS SARACENI: Sir, the date of the start of the contract - my questioning was going to look at whether it was her understanding that the reference checks that were to be done by internal staff had been completed by the time the contract was due to start on 3 October.

COMMISSIONER: I'm afraid I'm not being persuaded by you on this, Ms Saraceni. Do you wish to say any more about that latter point because that's a

slightly different point, Mr Urquhart?

MR URQUHART: It's a completely different point.

5 COMMISSIONER: I was trying to be gracious.

MR URQUHART: If that was going to be the second point made by my learned friend - - -

10 MS SARACENI: Yes.

MR URQUHART: Then she's now addressed it in point one, so I don't have any objection to that.

15 COMMISSIONER: So that's the second point, is it?

MS SARACENI: Yes, Commissioner, it was. I apologise, the first point I've got down is the common seal but the issue was really the validity of the contract on question 1. Question 2 was in relation to whether the checks were completed by
20 the start date of the contract of 3 October.

COMMISSIONER: I can certainly see some value in the second topic and I can see how that might advance the purposes of the Inquiry. I'm not with you on the first one.

25 MS SARACENI: Thank you, sir.

COMMISSIONER: So I will give you leave on the second, but not on the first.

30 MS SARACENI: The third point, sir, was in the relation to the probationary review and the process to be adopted. Ms Scaffidi was asked a series of questions. She was not taken to the contract of employment, Commissioner, which is document 9.0857, at clause 4 - - -

35 COMMISSIONER: Yes, I will just bring that up. Madam Associate, would you bring up 9.0857, please. Thank you. Clause 4 you said?

MS SARACENI: At clause 4 but particularly at 4.3(c).

40 COMMISSIONER: Madam Associate, go to clause 4, please. 4.3(c), you said?

MS SARACENI: Yes, so that, "Within four weeks of the commencement date", the commencement date being 3 October 2016 "the Council and the employee must discuss and agree", the first one is - (a) is the KPIs and we have heard some
45 discussion about the KPIs, (b) the measures against, it says, but (c), going to the process "how the review of the KPIs will be conducted." The witness has - there as been some evidence in relation to whether there was a process agreed and

whether there had been any change to that process.

COMMISSIONER: Yes, I agree. I recall that.

5 MS SARACENI: And I will ask the witness in relation to what she understood.

COMMISSIONER: Understood about what?

10 MS SARACENI: What had been agreed, if anything, in relation to how the Performance Review was going to be done for probation, because under the contract it was meant to have been agreed within four weeks.

COMMISSIONER: Yes. Mr Urquhart.

15 MR URQUHART: I have nothing to say on that, sir.

COMMISSIONER: Nothing to say, you don't oppose it?

20 MR URQUHART: Don't oppose it, no.

COMMISSIONER: There's an element of danger in this, Ms Saraceni, but if you seek it, I'll grant leave.

25 MS SARACENI: Thank you, sir. The fourth point is in relation to the KPIs and there's been quite a bit of evidence in relation to the KPIs. The KPIs appear - the only document that I have is attached to the CEO Recruitment Committee minutes of 16 September 2016 which is document 9.0849.

30 COMMISSIONER: I will just have Madam Associate bring it up so I can understand the submissions you're making. Yes, which page do you want Madam Associate to go to?

MS SARACENI: 53 it starts, sir.

35 COMMISSIONER: Yes.

40 MS SARACENI: The issue of KPIs, several witnesses have been asked about it, including Ms Scaffidi, but the fact that the KPIs on their face are not limited to a six month probationary period, if you look at the last column which is the timeline from 1 October - the 1st unfortunately is a weekend but the contract starts 3 October - some of those go beyond the six month period. If I look under, "Measure", the third dot point is eight months; go down towards the bottom, sir, you will see, "Ongoing" and the same appears at some of the others "presented at nine months, "presented at 12 months", "Ongoing." Those KPIs and what they
45 were to measure was not limited to a six month probationary period but an annual period.

The questions that I wish to ask or question I wish to ask this witness is the Performance Review, subject to how it had been agreed with Mr Mileham under my previous question, how it was going to be done given that these KPIs were not limited to a six month period but went beyond.

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COMMISSIONER: Just give me a moment, please, Ms Saraceni, to look at the KPIs that are greater than six months to see if that adds something to your argument or detracts from it. Madam Associate, would you please turn the page to 855 - is there an 855? Just hold it there for a moment. Go back to 853, please.

10 Yes, Mr Urquhart, do you wish to respond to that?

MR URQUHART: I don't, sir.

COMMISSIONER: I give you leave, Ms Saraceni.

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MS SARACENI: Thank you, sir. In relation to the next point, it's to do with the Annual Performance Review. Again, the contract at clause 6 deals with the Annual Performance Review, so that's document 9.0857.

20 COMMISSIONER: Yes

[3.15 pm]

MS SARACENI: At clause 6 .3 - - -

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COMMISSIONER: I will just bring it up. Madam Associate, 6.3.

MS SARACENI: Talks about Mr Mileham's performance to be reviewed annually as opposed to the probationary review, and particularly when you look at it in a descending fashion, the assessment of the employee under (a), then the organisation's performance against key performance indicators, and then (c) talks about, "Feedback from Council on the employee's overall performance." There were some questions of this witness in relation to the process for the Annual Review, and also of the probationary period, whether it should have included a 360 Review as well as obtaining comments from the Elected Members, and yet there's procedure already set in the contract, 6.3, and the witness hasn't been taken to that, sir.

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COMMISSIONER: Madam Associate, would you go to the previous page, please. Back to the page you were on, please. Scroll down. What was the contractual basis for the probationary review, Ms Saraceni?

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MS SARACENI: The basis for it?

45 COMMISSIONER: Yes, the contractual basis for it?

MS SARACENI: Clause 4, sir.

COMMISSIONER: Let's go back to clause 4.

MS SARACENI: 4(a) in particular - sorry, 4.1, not 4(a).

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COMMISSIONER: Stop there, please, Madam Associate. So it's really limited to the first sentence, isn't it?

MS SARACENI: In 4.1, sir?

10

COMMISSIONER: Yes.

MS SARACENI: Yes.

15

COMMISSIONER: How does one measure "satisfactory completion" under this contract in that first sentence?

MS SARACENI: The difficulty, sir, is in relation to the KPIs and how they are crafted, that it's not limited to a six month period. Some of them could never have been achieved in six months.

20

COMMISSIONER: But what's the answer to my question?

MS SARACENI: The measure of "satisfactory"?

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COMMISSIONER: Yes, how do you measure "satisfactory completion" under this contract of the probationary review period?

MS SARACENI: Under 4.2:

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The satisfactory completion of the review period will be determined on the employee's performance against the KPIs.

COMMISSIONER: It doesn't really take it much further, does it?

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MS SARACENI: No, but then we get back to the KPIs and some of the KPIs aren't limited to six months which is - - -

COMMISSIONER: But these are KPIs in clause 6, so if we go back to clause 6, Madam Associate. Are you referring to the ones in clause 6?

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MS SARACENI: No, sir, because under clause 4.3, 4.3 states, "Within the first four weeks after the commencement", being 3 October, what should have been done is there should have been, "The City of Perth Council and the employee must discuss and agree: (1) the KPIs for the first six months. ".

45

COMMISSIONER: Did that happen?

MS SARACENI: There appears to have been some discussion about KPIs, but they weren't just for six months, they were no longer, sir.

5 COMMISSIONER: "Must discuss and agree."

MS SARACENI: Yes.

COMMISSIONER: Did that happen?

10

MS SARACENI: It happened but they weren't limited to the six months.

COMMISSIONER: So they were discussed and agreed?

15 MS SARACENI: As KPIs but not just limited to the first six. That's my instruction, sir.

COMMISSIONER: So come back to my question, how do you, in this case, under this contract, determine satisfactory completion? That's why I asked the question in the first place. It's a problem, isn't it?

20

MS SARACENI: It is, and the evidence I think of the persons on that Review Committee are faced with it, sir.

25 COMMISSIONER: I know that.

MS SARACENI: Yes.

COMMISSIONER: All right. Is there anything more you wish to say about this topic?

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MS SARACENI: Not in relation to that, sir, but I do have two other - - -

COMMISSIONER: I will come to those in just a moment.

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MS SARACENI: Thank you.

COMMISSIONER: Mr Urquhart, what do you want to say in response, if anything?

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MR URQUHART: Sir, you've raised some very interesting questions there and if in fact Ms Saraceni's going to pursue that line of questioning, I won't oppose that.

COMMISSIONER: I think what Mr Urquhart is indicating to you, Ms Saraceni, is there might be - how can I put it - some danger in pursuing this line, not just for your client, but if you wish to press it - - -

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MS SARACENI: I have been given instructions, sir, as to what was agreed in relation to the process.

COMMISSIONER: I understand that, Ms Saraceni, but - - -

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MS SARACENI: Could I perhaps just take - - -

COMMISSIONER: - - - you are counsel at the Bar table.

10 MS SARACENI: Could I perhaps take a moment to check with my - - -

COMMISSIONER: Take as much time as you need because it might be worth your while.

15 MS SARACENI: Would you like me to deal with the other two matters, sir?

COMMISSIONER: Yes, of course.

MS SARACENI: Before I do that.

20

COMMISSIONER: Of course, that would be helpful. Thank you.

MS SARACENI: The next matter is linked to Mr Mileham's Annual Performance Review which was to be at the one year anniversary, which would have been 1
25 October 2017.

COMMISSIONER: Can we take this document down, the one that's on the screen?

30 MS SARACENI: Perhaps - - -

COMMISSIONER: Leave it up for the moment?

35 MS SARACENI: Yes, if we could move to clause 6 which is the Annual Performance Review, particularly 6.3.

COMMISSIONER: Thank you. Yes.

40 MS SARACENI: There were some questions of this witness in relation to whether the entire Council ought to have expressed a view as to Mr Mileham's performance. On my instructions, sir, for Mr Mileham's Annual Performance Review, which was started before Council was suspended, the composition of the CEO Performance Review Committee was changed and the entire Council became the CEO Performance Review Committee, and that was Chaired by the Deputy
45 Lord Mayor Green.

So in my submission, it's unfair, particularly in relation to my client, the fact that

feedback received by the Council was something that was adopted for purposes of the Annual Performance Review and that has not been addressed at all in this Inquiry as far as I'm aware, sir.

5 COMMISSIONER: Thank you. Is there anything else you wish to say about that topic?

MS SARACENI: The last point, is linked to it in relation to the Terms of Reference of that committee. I did have a very quick to the solicitor assisting before but I'm not sure that I have been given the exact correct document. On my 10 instructions, sir, the Terms of Reference of that committee changed. Initially that committee was the CEO Recruitment Committee and then somehow it changed from the CEO Recruitment Committee, the same composition, to the CEO Performance Review Committee, and I have a vague recollection and I'm sorry, sir, 15 not all the transcript is up yet, I have a vague recollection that it was a delegation by Council to the CEO Recruitment Committee to become or undertake the review of the performance of the CEO.

What I have not been able to find, despite asking my friend, solicitor assisting, in 20 relation to what were the Terms of Reference initially of that committee once it changed from recruitment to Performance Review, the solicitor assisting has provided me with reference to a document which is dated 26 April 2017 which is after Mr Mileham's probationary period and it's document 9.1104. From my quick review of it, there are Terms of Reference in relation to the Annual Performance 25 Review which would have been six months after that date.

COMMISSIONER: Do you want me to have it brought up so you can develop the argument?

30 MS SARACENI: Yes, sir. Then we get to the final point that I'm instructed on that at the time of the Annual Performance Review, that committee composition had changed and it was the entire committee looking at the Annual Performance Review. So it's just that sequence of that Terms of Reference over a period of time and how it changed.

35 COMMISSIONER: So we are looking at 1104 now.

MS SARACENI: Yes.

40 COMMISSIONER: 9.1104. Which part do you want to direct my attention to?

MS SARACENI: I believe the front page of that would show - we had a look at this very quickly.

45 COMMISSIONER: That's all right.

MS SARACENI: I think it was 26 April 2017 is that meeting.

COMMISSIONER: Yes, it looks like it.

5 MS SARACENI: At the very top, and paragraph 6 in the agenda looks at, "Interim adjustments to KPIs." I'm not sure that we have seen what those interim adjustments were but when you go over the page, sir, the Terms of Reference - - -

COMMISSIONER: 9.1104, yes, sir.

10 MS SARACENI: Yes, line 1, "Undertake an Annual Review", so that's what the then CEO Performance Review Committee was tasked to do. Its Terms of Reference was, "Undertake an Annual Review" which would have been on or about 3 October 2017. Under the provision of the Local Government Act, "2. Establish annual performance objectives and report the outcome to Council." So
15 in relation to whether they were acting within the Terms of Reference or not, Commissioner.

COMMISSIONER: Yes. Just give me a minute. How's this going to assist the Inquiry?

20 MS SARACENI: There are some inferences that have been drawn in relation to that how that committee at any point in time assessed Mr Mileham's performance and whether there was any favouritism or unfairness in the process that was adopted. In my submission, sir, to see whether the committee was acting in
25 accordance with its Terms of Reference or the delegation from Council is important, or whether they were off on a tangent of their own.

COMMISSIONER: Is there any more you wish to say, Ms Saraceni?

30 MS SARACENI: No, other than what I've said before, sir, in relation to the final iteration of that committee for the Annual Performance Review.

COMMISSIONER: Thank you. Mr Urquhart, are you in a position to respond to those points?

35 MR URQUHART: Only to say this, sir, that's points 6 and 7 as I understand my learned friend's going to get some further instructions regarding point 5, but insofar as points 6 and 7 are concerned, I did not ask any questions of Ms Scaffidi regarding those matters, particularly with respect to clause 6.3 of the contract,
40 relating to the Annual Performance Review. My friend refers to a number of matters that come up on 1 October 2017 and on 26 April 2017 but my questioning of Ms Scaffidi in this area ended with the Ordinary Council Meeting on 14 March of 2017.

45 When my learned friend refers to an inference from Counsel Assisting's questioning regarding some matter, but that didn't arise from my questioning, so therefore I can only assume that it arose from questioning by Ms Ellson. So

therefore the opportunity there has been lost. The short answer is, sir, my learned friend is embarking on a new line of enquiry. Insofar as my questioning was concerned, if the Inquiry is of the view that this will assist the Inquiry, then I wouldn't make any objections.

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COMMISSIONER: Under Practice Direction 10.4(a) it's not necessary for questions from counsel representing other persons at this Inquiry to demonstrate that his or her questions follow on, if I can use that expression, from yours. All that counsel needs to do is identify that an examination of the matters, the subject of the application, will advance the purposes of the Inquiry.

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MR URQUHART: That's what I said, sir. If the Inquiry's of the view that it will advance the purposes of the Inquiry, then I have no objection.

15

COMMISSIONER: I would have to discount immediately the contention that, if it is one, that they don't arise from matters you've examined on and I will have to concentrate on whether they would advance the purposes of the Inquiry. Ms Saraceni, I'm not at this stage convinced that they would but I'm open to any further submissions you want to make on that.

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MS SARACENI: Sir, to truncate, (a), the KPIs, some of them go beyond six months; (b), the fact that criticism of the process followed by the CEO Performance Review Committee was made by Councillor Limnios and whether that was disregarded or whether it was actually taken on board and acted upon and in my submission, the fact that at the Annual Performance Review, which is six months afterwards, that is exactly what occurred, is something that, to understand the whole picture is important, rather than just to look at it up to this point because it suits a particular case theory but not look at the entirety of the evidence.

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[3.30 pm]

COMMISSIONER: You don't need to be concerned about me looking at a particular case theory, Ms Saraceni, and the implication in that submission is not correct. This is a - - -

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MS SARACENI: I - - -

COMMISSIONER: Let me finish, please. This is an investigation conducted with an open mind, so if counsel can satisfy me that the purposes of the Inquiry will be advanced by whatever questions they wish to ask, they will get leave. Tell me this, at the end of the first six month probationary period, Ms Saraceni, is it your understanding that the probationary period was extended for another six months?

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MS SARACENI: No.

COMMISSIONER: All right.

MS SARACENI: I can't take it further, sir.

5 COMMISSIONER: But there was some suggestion that would happen, wasn't there?

MS SARACENI: I believe one of the motions that was put at the Council meeting was for that extension to occur but that motion was lost.

10 COMMISSIONER: Yes, that's right. That was on - we have heard about that in the evidence this morning.

MS SARACENI: Yes.

15 COMMISSIONER: Ms Saraceni, as I say, I'm not entirely convinced about your arguments in relation to the last two points but I'm going to grant you leave.

MS SARACENI: Thank you, sir. That just leaves me with the one question, Commissioner, if I could perhaps just consult with my instructor.

20 COMMISSIONER: This is point 5?

MS SARACENI: Can I just leave the Bar table?

25 COMMISSIONER: Yes, of course.

MS SARACENI: Thank you. Thank you, Commissioner. I'm pleased to advise that I withdraw my request to ask any questions in relation to item 5.

30 COMMISSIONER: Thank you, Ms Saraceni, that's very much appreciated. Ms Saraceni, I'm going to have you go first and then I will have you followed by Mr van der Zanden.

MS SARACENI: Thank you, sir.

35 COMMISSIONER: In case there's anything arising out of your questions that he needs to take up. Madam Associate, would you please bring Ms Scaffidi bring into the hearing room. Ms Scaffidi, please resume your seat in the witness box.

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

COMMISSIONER: Ms Scaffidi, I am sorry that you were kept out of the hearing room so long, but it was necessary for me to hear a number of applications and your counsel and Ms Saraceni, acting for Mr Mileham, have been granted leave to ask you some questions. The process which will be followed is that Ms Saraceni will ask you questions and when she has finished, then Mr van der Zanden will ask you the questions I have given him leave to ask you?---Thank you.

If there are any questions that he needs to ask as a result of those questions that Ms Saraceni has asked, I am likely to grant him leave to ask some further questions?---I understand.

5

And after that's happened, then Mr Urquhart will be given an opportunity to ask you questions?---Right.

So that's the process?---Okay.

10

Ms Saraceni.

MS SARACENI: Thank you, Commissioner

15 EXAMINATION BY MS SARACENI.

Madam Associate, would it be possible to put up document 9.0857 on the screen, which is Mr Mileham's employment contract. Ms Scaffidi, if you could look, please, at item 2 of the contract of employment, you will see that the contract was to start on Monday, 3 October 2016?---Yes.

20

Before you were asked some questions in relation to reference checks that needed to be done on Mr Mileham, do you recall those questions?---Yes.

25 My question to you is, do you recall whether the City had completed the reference checks on Mr Mileham as at the date that this contract was due to start on 3 October 2016?---No, I'm sorry, I don't.

Do you know whether the reference checks were in fact completed at all?

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COMMISSIONER: No, Ms Saraceni.

MS SARACENI: Sorry.

35 COMMISSIONER: Please.

MS SARACENI: I apologise, sorry.

The next one, Ms Scaffidi, again looking at the contract, if I could ask Madam Associate to turn to the next page, particularly clause 4 which is the review period?---Mm hmm.

40

For the probation?---4.1?

45 Yes. You will see there that it's a six month probationary period, do you see that, Ms Scaffidi?---Yes.

At clause 4.3, part (c). It says that, "Within four weeks of the commencement date", which is the date I took you to before, 3 October 2016, "the City of Perth and the employee must discuss and agree particularly how the review of the KPIs will be conducted", do you see that?---Yes, I do.

5

Are you able to advise the Inquiry what, if any, agreement had been reached about the process for review of the KPIs for Mr Mileham's probationary period?---No, I don't have a recollection of it. I can see that that was there. I know I was a member of the committee and we should have met again - - -

10

COMMISSIONER: No, Ms Scaffidi?--- - - - to discuss those KPIs but I don't recall.

Ms Scaffidi, if you don't recall, you don't recall?---No.

15

Thank you.

MS SARACENI: Thank you, Commissioner.

20 If I could take you now to another document, Madam Associate, which is found at 9.0849 at page 53, Madam Associate. Ms Scaffidi, these are attached to the minutes of the CEO Performance Review Committee of 16 September 2016?---Yes.

25 And there's been evidence given that these were the KPIs that applied to Mr Mileham?---Yes.

30 Are you able to advise the Inquiry whether these KPIs were limited to Mr Mileham's first six months probation or whether they were beyond the probationary period?

COMMISSIONER: Before you answer that, Ms Scaffidi. Ms Saraceni, it might be fairer to Ms Scaffidi to show her all the pages with all the KPIs.

35 MS SARACENI: I apologise.

Ms Scaffidi, if you look at the page that's on the screen there, particularly the last column, you will see it's headed, "Timeline from 1 October"?---Yes.

40 And if you go down that column, you will see that there are periods of time?---Yes.

Two months, six months, eight months - - -

45 COMMISSIONER: Show her all the pages, Ms Saraceni.

MS SARACENI: Yes.

Do you see that there?---Yes, I do see it.

5 I would like you to concentrate on those when we turn to the next page?---That column?

Yes, that column?---Okay.

10 So the next page is 554?---Yes.

That last column and again, if you could just look at that last column?---I see it.

And there is one more page, Madam Associate, at 55?---Correct.

15 So if I could just ask you, Ms Scaffidi, whether the KPIs that had been developed for Mr Mileham were limited to his six month probationary period or were they to continue beyond?---I would say several of them were to continue beyond.

20 Thank you. If I could just turn to another topic in relation to Mr Mileham's Annual Performance Review. So the contract was starting on 3 October 2016, so an Annual Performance Review would be the start of October 2017, yes?---Yes.

25 So had Mr Mileham's Annual Performance Review commenced when you were still at the Council?---I was on suspension from 8 September 17, and I didn't return until 8 January 18. When I returned there was a CEO Performance Review about to be undertaken, for which there was a meeting on 16 February.

30 Ms Scaffidi, do you know who formed part of the CEO Performance Review Committee when looking at the Annual Performance Review of Mr Mileham?---It would have been - it was the Deputy Lord Mayor at the time, Dr Jemma Green, but I don't know who the other two people were.

35 If I could just ask you one question: do you recall whether the CEO Performance Review Committee composition increased from three members to more than three members for the Annual Performance Review?---I don't, no.

40 Just last set of questions, Ms Scaffidi, in relation to the Terms of Reference for that particular committee. Do you have any recollection of what the Terms of Reference were for the CEO Performance Review Committee?---I haven't looked at it for a very long time, so no, I do not recall at the moment.

I don't think I can take it any further, thank you.

45 COMMISSIONER: No. Thank you, Ms Saraceni, that's been helpful. Thank you very much. Mr van der Zanden, are you ready to proceed.

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

EXAMINATION BY MR VAN DER ZANDEN

Ms Scaffidi, you might remember that you were questioned by Counsel Assisting
in relation to Mr Stevenson's handling of the Heirisson Island
5 circumstances?---Yes.

What did you observe in relation to his handling of those circumstances?

10 MR URQUHART: Which circumstances, when?

MR van der ZANDEN: I will clarify that.

You were asked about the circumstances that led up to early 2018?---Actually 17,
wasn't it? Sorry, 18?

15 MR URQUHART: 16.

WITNESS: 16, yes.

20 MR van der ZANDEN: Sorry, 16?---Yes.

So those are the circumstances that I'm asking you about?---Yes. It was a very
complex time - - -

25 MR URQUHART: Sorry, hold on. If my learned friend wants to confine the
witnesses to giving answers with respect to January of 2016, that should be what
the witness is going to answer, rather than anything else.

30 COMMISSIONER: Yes. I'm sure Mr van der Zanden will question the witness
within the terms of the grant of leave.

MR van der ZANDEN: Yes. Perhaps I will approach it a different way.

35 COMMISSIONER: I'm happy for you to do that.

MR van der ZANDEN: Did you have any concerns about how Mr Stevenson was
handling the Heirisson Island circumstances in early 2016?---Yes.

40 Can you please tell the Commissioner what they were?---There were a couple of
concerns. First of all - - -

MR URQUHART: I don't wish to rise again, but the witness' evidence was that
she believed Mr Stevenson was on leave in January, early January of 2016.

45 WITNESS: So it must have been earlier, was it? Sorry.

COMMISSIONER: Mr van der Zanden, what do you say in response to the

objection?

MR van der ZANDEN: It depends what "early January" - I'm trying to recall what the evidence was but I will ask Ms Scaffidi. Perhaps I will ask her a question to
5 reveal that.

COMMISSIONER: Yes

[3.45 pm]

10

MR van der ZANDEN: What did you see, or what was Mr Stevenson doing that concerned you whilst he was - this is obviously what you observed when he was back from leave or before he went on leave?---It was before and back, is my recollection.

15

Yes?---So before, there was significant involvement in meeting with the Elders and my description, sitting in smoke circles on Heirisson Island and engaging with them in such a way that myself and others felt that he was giving a wrong message to them, of support, and I did indicate at one stage there, making promises that were beyond his remit to make that were of a political nature of future
20 development prospects on the island for indigenous facilities and centres. Then afterwards, the questioning from Mr Urquhart was around the Skyworks dates but there were still - the majority of the camping or the campers was actually on the other side, so the more northeast side of Heirisson Island and I'm not sure if the camping that occurred near the Skyworks zone was kind of deliberative to bring
25 more media attention to the issue at the time, because the camp or the encampment that was there was a lot smaller than the encampment that was actually nearer to the Burswood site.

30

In your evidence you made reference to Mr Stevenson proposing a long term commercial arrangement involving the State Government?---Yes.

35

What did you mean? Can you provide a bit more detail about that?---My recollection is, due to the nature of the lengthy discussions he'd had with various Elders, that there had been - I don't know if "offers" is the right word but discussions at least to indicate a preparedness to broker some kind of deal for an indigenous facility. I recall there being discussions of an amphitheatre and/or places for Aboriginal cultural shows to occur there, which was way beyond the intention of removing campers from the island and the basic acceptance that
40 camping on this location was not acceptable, be they Aboriginal or any other people.

45

Madam Associate, could you bring up document 14.1594, please. If you could blow up the bottom one-fifth, please, Madam Associate. So you see the second paragraph, Ms Scaffidi?---Yes.

You say:

As you would know, Gary has taken this further than he should.

I understand that's a reference to Mr Stevenson?---Yes.

5

What did you mean by that?---I don't recall what I mean by "your employment" but "suggesting commercial arrangements" was what I was just harking to, getting into an area of promise of some sort to the Aboriginal Elders.

10 And the next page, please, Madam Associate.

MR URQUHART: Sir, I just rise here. Did your leave extend to questioning of these particular WhatsApp messages, because they certainly weren't referred to in my learned friend's application?

15

COMMISSIONER: No, they were not but as I understand it, what Mr van der Zanden is doing is using this document to give Ms Scaffidi the opportunity to expand on her previous evidence, which I'm content for him to do at this stage.

20

MR URQUHART: Thank you, sir.

MR van der ZANDEN: If you could scroll down, please, Madam Associate - no, up.

25

COMMISSIONER: Which page do you want Madam Associate to be scrolling up and down on?

MR van der ZANDEN: If you could scroll up this page, please. I've got a note for this particular document that there's a message, "Update the EMs", I can't find it at the moment but do you recall that message, Ms Scaffidi?---You mean the one about Gary Stevenson to update the EMs?

30

That's right?---Yes, I do recall seeing it during the last few days and yes, there was a concern that Gary was not communicating with us enough and - - -

35

COMMISSIONER: What topic is this on, Mr van der Zanden?

MR van der ZANDEN: This is, as I understand it, within the context of Heirisson Island?---Yes.

40

I will clarify that the witness.

COMMISSIONER: I would rather you find the relevant passage first so that we are not getting confused here.

45

WITNESS: I think it's earlier.

COMMISSIONER: Just pause for a moment, please, Ms Scaffidi.

5 MR van der ZANDEN: Would be able to tell me how much pages - is that one page, 15. - - -

COMMISSIONER: Mr van der Zanden, perhaps just take the opportunity to go and have a quick conferral with Mr Parkinson.

10 MR van der ZANDEN: I'm grateful to the solicitor instructing, it's 14.1596.

COMMISSIONER: Before you ask the question, let's find the message.

15 MR van der ZANDEN: Yes?---Yes, I see it.

COMMISSIONER: Just pause, please, Ms Scaffidi. Yes, where is it?

MR van der ZANDEN: It's the third message down, Commissioner, first line.

20 COMMISSIONER: What do you say this relates to?

MR van der ZANDEN: I understand it's part of this topic but I'm happy to clarify with the witness whether she can confirm if that's the case or not. If it's not, I won't take it any further.

25

COMMISSIONER: Just take a seat for a moment. Mr Urquhart.

30 MR URQUHART: My clear recollection is that the witness more than clearly clarified it during my examination of her, as to what she was referring to with respect to that top line.

COMMISSIONER: Yes, and was it relevant to the Heirisson Island topic?

35 MR URQUHART: Is it relevant?

COMMISSIONER: Was it relevant? Was the answer relevant to Heirisson Island?

40 MR URQUHART: My recollection of the evidence is that she was referring to his, that is Mr Stevenson's response or actions that he was taking on Heirisson Island. I don't know whether there's any matters that need to be clarified with respect to Ms Scaffidi's evidence in that regard.

45 COMMISSIONER: I know you've conflated the two names, Mr Urquhart.

MR URQUHART: Yes, you say Saraceni, we say Scaffidi, yes. My apologies sir. So, it's been clarified.

COMMISSIONER: I know who's in the witness box and who's at the Bar table, Mr Urquhart. Please proceed, Mr van der Zanden. That's a legitimate line of questioning.

5

MR van der ZANDEN: Thank you, Commissioner.

Ms Scaffidi, those words, "Each time I've said update the EMs", what did you mean by that? What was that a reference to?---That was a reference to the fact that on the occasions, and they were few, that Mr Stevenson would give me a verbal update, I would ask him to also update the EMs and I meant in writing. I realised he couldn't ring them all individually, but, you know, I was only one of nine and they equally were as concerned, particularly Councillor McEvoy, and they were as deserving of an update on his very involved nature on the island.

10
15

I will move on to the next topic now, Commissioner.

COMMISSIONER: Thank you.

MR van der ZANDEN: Ms Scaffidi, I want to talk to you or ask you some questions now about, first of all, a meeting that we have heard evidence occurred on 4 December 2015 with Mr Stevenson and yourself and Mrs Davidson, perhaps Mr Linnios. Your evidence was that you couldn't recall that meeting, is that still the case?---I don't recall it. I mean, I would have to look at my diary. I don't recall it, it's a long time ago.

20
25

I might just approach my - - -

COMMISSIONER: Yes, of course.

30

MR van der ZANDEN: I understand there's hard copies of this document, Commissioner. This is the email from Ms Scaffidi to Mrs Davidson of 3 December 2015 at 5.10 am.

COMMISSIONER: Yes. What do you want Madam Associate to do?

35

MR van der ZANDEN: Could she provide the witness with a copy, please.

COMMISSIONER: Very well. That will happen now, thank you. For the benefit of the transcript, Ms Scaffidi is now reading that document.

40

MR van der ZANDEN: You've finished that? You've read that, Ms Scaffidi?---Yes.

Do you recognise that document?---Yes.

45

How is it that the Inquiry has now been provided with a copy of this?---This

document is in my gmails in my personal laptop and my mobile.

Having read this email, does this refresh your memory in any way about what occurred on 4 December, or at the meeting on 4 December 2015?---Yes.

5 Obviously it is an email from me to Janet on the 3rd confirming our intention to talk to a number of, or to choose a law firm to talk to, to explain to him that we would be accepting Option 1.

I understand what it says, but it in any way jog a memory of you being at that meeting?---It doesn't jog a big memory for me, no.

[4.00 pm]

15

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Does it jog any memory of speaking with - - -?---Councillor Davidson?

Yes, Councillor Davidson?---Yes. I did speak to Councillor Davidson.

5 When did you speak to her? What's your recollection?---My recollection is several conversations with Councillor Davidson.

Just in relation to - - -?---Yes, that we were needing to get legal advice in regards to how best it would be to proceed for Option 1 under 8.5.

10

Do you have any recollection of when that conversation or conversations took place?---I feel it took place on 3 December but I just - - -

15

COMMISSIONER: Do you have a recollection of that?---No, I don't have a strong recollection at this time.

Thank you.

20

MR van der ZANDEN: Do you recall whether lawyers were instructed in relation to Mr Stevenson's contract?---Yes.

What do you - when did that occur?---It was in early January due to the absence of - well, mid-January due to the absence of Councillor Limnios.

25

Do you remember the date that that occurred?---Yes, 14-16, approximately.

Do you recall when you returned from, or if you were away on leave at about January 2016?---As I've explained, Council goes in recess from mid-December until mid-January every year and I don't recall if I was away, but my normal course would be to return mid-Jan.

30

Do you remember when you returned in 2016 to the office?

35

COMMISSIONER: That's not the evidence, is it? She's spoken about her normal course but has no recollection.

WITNESS: True.

40

COMMISSIONER: How can you put it to her - Ms Scaffidi, I'm not talking to you at the moment. How can you put it to her on the basis that she did return?

MR van der ZANDEN: I'm sorry, I'm not sure I understand the question, Commissioner.

45

COMMISSIONER: I will be blunt.

MR van der ZANDEN: Yes.

COMMISSIONER: Ms Scaffidi said she could not recall whether she was away in that period. She said it was her usual course. You then put a question to her on the basis that she did return.

5

MR van der ZANDEN: Sorry, that's my mistake. I wasn't listening close enough to the question, Commissioner.

COMMISSIONER: That's all right, that's probably my job.

10

MR van der ZANDEN: Could document 14.0970 be brought up, Madam Associate, please? Sorry, 970.

COMMISSIONER: Do you want this enlarged?

15

MR van der ZANDEN: The page before, please, Madam Associate. If you could enlarge the - first of all, Ms Scaffidi, can you read that? Do you see that's your email?---Yes, I can see it.

20 The email at the top is your email to Mr Stevenson of 15 January 2016?---Correct.

And then immediately below that there's an email of Mr Stevenson?---Yes.

To you at 4.52 pm?---Yes.

25

Then, Madam Associate, if you scroll right down to the bottom of that page, if you read that last paragraph, Ms Scaffidi?---Right, "As you have been away on leave, I awaited your return to the office and left documents marked as confidential for you to collect."

30

So does that jog your memory as to whether you were away on leave?

COMMISSIONER: Just stop there. Who's written this document?

35 MR van der ZANDEN: Mr Stevenson.

COMMISSIONER: So you're asking the witness to refresh her memory from a document written by somebody else?

40 MR van der ZANDEN: Yes, I am, Commissioner.

COMMISSIONER: Really?

MR van der ZANDEN: I won't take that any further, Commissioner.

45

COMMISSIONER: You know witnesses should refresh their memory from contemporaneous documents which they have made, don't you?

MR van der ZANDEN: Yes.

COMMISSIONER: How is this that kind of document?

5

MR van der ZANDEN: Well, this is not the first - there were witnesses that were referred to - - -

COMMISSIONER: Just answer my question, how is this kind of document?

10

MR van der ZANDEN: It's not.

COMMISSIONER: Right. It's not appropriate, is it?

15

MR van der ZANDEN: I won't take it any further, Commissioner.

COMMISSIONER: Thank you.

WITNESS: Can I just say leave - - -

20

COMMISSIONER: No, you can't, and the document speaks for itself anyway.

MR van der ZANDEN: Ms Scaffidi, I would like to now ask you about some evidence that you gave on 26 August 2019?---Yes.

25

Madam Associate, are you able to bring up page 39 of the transcript from that date.

ASSOCIATE: No, I don't have the transcripts on the exhibits laptop.

30

MR van der ZANDEN: Perhaps if I will read out - - -

COMMISSIONER: Yes, of course.

35

MR van der ZANDEN: There's a document which has been referred to, I don't think it's necessary to bring that up, Ms Scaffidi, but Ms Ellson says:

You see here, Ms Scaffidi, Mr Stevenson indicates that in late August he referred the results of the internal review to the CCC as he was obliged to do?---Mm hmm.

40

He also indicates that he has not yet received a reply so he understood that the matter was undergoing assessment by that authority and he believed he was not at liberty to disclose the details?---That's fine but that confirms - - -

45

Yes, it's fine?---Yes.

It should be noted, however, that Mr Stevenson discussed the potential non-disclosures with each of the relevant officers and Elected Members some months ago and provided advice to them at that time?---Yes.

5 ?---Yes.

Then Ms Ellson says:

10 *Did Mr Stevenson discuss with you some months before 11 October 2015 your accommodation and travel in New York?---Yes, he did, with Martin Mileham in the room as well.*

15 Can you please tell the Commissioner what accommodation and travel in New York in particular you discussed with Mr Stevenson at that time?---So realising that we, Mr Mileham and I, had not disclosed that travel in our annual return for the relevant 13 year - - -

20 I'm asking you, Ms Scaffidi, what particular trip you discussed with Mr Stevenson?---So it was the Bloomberg philanthropy trip to New York of 2013.

Madam Associate, could you please bring up document 14.2087. Ms Scaffidi, could you just read that first page?---Aloud or - - -

25 No, just to yourself, please?---Yes.

Madam Associate, the next page?---Yes.

And the next page?---Okay. Yes.

30 And then the last page, please?---Right.

Ms Scaffidi, did you - there's one item there - perhaps if you could bring up the page before, please, Madam Associate. There's one item there that refers to you?---Yes.

35 Did you discuss that with Mr Stevenson at any time?---Yes.

40 When?---At the time with Mr Mileham, we sat at the board room in my office and I remember it quite vividly, I just can't give you a date.

Is that the same discussion you referred to in your evidence that I just read out?---Yes.

45 A new topic, Commissioner.

COMMISSIONER: Yes, thank you.

MR van der ZANDEN: Ms Scaffidi, you might recall you were questioned by Counsel Assisting about whether you believed the, if I can call it, the matter was over after the CCC handed down its report in early October 2015?---Yes.

5 You gave some evidence that the matter was pretty quickly referred to the Department?---Yes.

10 What were you referring to then?---Because I'd always been very clear about the fact that not just the BHP trip, but all of my travel third party paid had not been disclosed, I was aware that the CCC had said they wanted the Department to look further into those items.

15 What in fact happened then?---My recollection is that I was re-elected in mid-October. By December there was a referral to the Department and it seemed to just take a long time to go anywhere, it was just kind of sitting there. My legal team at the time were trying to speak to Jennifer Matthews and ascertain what the next steps would be, and it wasn't until - and I might be wrong with the date - the New Year that there was a decision to undertake an investigation into all gifts of travel.

20 So what was happening before - you were just referring to some communications between your lawyers and the Department, was that before the matter was referred to - what happened after that? You talked about something happening in the early New Year?---Yes, because then a new investigation was started by the Department of Local Government and that took many months. If my recollection's right, that took many months to complete and - - -

Do you recall when you were first given notice?---I couldn't tell you a date.

30 Do you recall receiving an invitation to attend a voluntary interview at the Department's offices?---Yes, I do recall

[4.15 pm]

35 Do you recall in relation to the timing of that request, when you became aware of the Department's - - -?---I'm sorry, I just can't put a date on it for you, it's so long ago.

COMMISSIONER: Mr van der Zanden, may I assist?

40

MR van der ZANDEN: If you could, Commissioner.

COMMISSIONER: What Mr van der Zanden is concerned to know is whether you became aware of the Department's investigation prior to being asked to attend the voluntary interview?---I don't recall, I'm sorry.

45

Okay.

MR van der ZANDEN: Thank you, Commissioner.

COMMISSIONER: That's quite all right.

5

MR van der ZANDEN: Ms Scaffidi, this is the last topic. In your evidence this morning you made reference to - the word you used was "the genesis for Mr Stevenson's document of 30 November 2015"?---Yes.

10

What were you referring to when you talked of the "genesis"?---Throughout the early part of 2015 Mr Stevenson asked me verbally approximately two to four times about the contract renewal. My recollection is the first couple of times I just said, "We'll get to it later" or something like that but then when I actually thought about it, he was asking for a contract renewal two and a half years into a five year contract.

15

Perhaps if you just tell us about what he said to you or you said to him?---So then I said to him at that very next juncture, "Gary, it's only at the two and a half, nearly three year mark and you're asking for a contract renewal and there's an election in October; I don't think it would be appropriate for us to be, with Council's support, entering into these kinds of discussions/negotiation at this point in time because what if I'm not re-elected as the Lord Mayor? It shouldn't be a decision that I'm leading at this point in time. I really think that we need to leave it until after the October election", and I said it would be also subject to a CEO Performance Review, which we then started to undertake, if my memory serves me correctly, in that October period, via Councillor Davidson.

20
25

So that's what you meant when you talked of "the genesis"?---Correct.

30

That completes my examination, Commissioner.

COMMISSIONER: Before you sit down, Mr van der Zanden, there are some documents which were provided to me in the hearing of your application.

35

MR van der ZANDEN: Yes.

COMMISSIONER: Do you wish to tender any of them? It's a matter for you, of course.

40

MR van der ZANDEN: Yes, I do. I wasn't sure whether we were tendering documents or they were noted by the Inquiry or - - -

COMMISSIONER: That's perfectly understandable. These do not have Bates numbers, and sorry, my question of you was not a criticism of, Mr van der Zanden.

45

MR van der ZANDEN: No, I didn't take it to be.

COMMISSIONER: You gave me three documents, you might recall?

MR van der ZANDEN: Yes.

5 COMMISSIONER: How many of them do you wish to tender?

MR van der ZANDEN: I'd seek to tender all three, Commissioner. The last one may be just a matter of submission at some stage, so it's the report. I appreciate that wasn't put to the witness.

10

COMMISSIONER: No, that's all right. I understand the reason why it wasn't necessary to do that.

MR van der ZANDEN: Yes.

15

COMMISSIONER: I might just hear from Mr Urquhart on that first before I call on him to see if he has any questions for Ms Scaffidi.

20 MR URQUHART: Does my learned friend only want to put, therefore, the emails that he referred the witness to or the emails he provided to the Inquiry during his application?

COMMISSIONER: I won't speak for Mr van der Zanden. Mr van der Zanden?

25 MR van der ZANDEN: I think I may have overlooked putting one of the emails to the witness.

COMMISSIONER: You did.

30 MR van der ZANDEN: Yes.

COMMISSIONER: Do you wish to go backwards and ask some more questions or not? It's up to you.

35 MR van der ZANDEN: Yes, I do, with your leave, Commissioner.

COMMISSIONER: I will not prevent you from doing that.

MR van der ZANDEN: Thank you.

40

COMMISSIONER: That's all right. When you're ready.

45 MR van der ZANDEN: Ms Scaffidi - Madam Associate, could you please provide Ms Scaffidi with the email from - the top email is from Mr Mark Cox to Ms Scaffidi of 14 January 2016.

COMMISSIONER: Just take your time to read that, Ms Scaffidi?---Yes.

MR van der ZANDEN: So you've read both emails, Ms Scaffidi?---Yes.

5 Can you tell the Commissioner why this document is now being produced for the Commissioner?

COMMISSIONER: That's a very odd question to ask a witness, Mr van der Zanden.

10 MR van der ZANDEN: Perhaps I will just - - -

COMMISSIONER: Just take a bit of time and perhaps reframe it.

MR van der ZANDEN: Yes.

15

COMMISSIONER: Take as much time as you need.

MR van der ZANDEN: Ms Scaffidi, do you have this email, a copy of this email or this email in any form?---In?

20

In any form?---Yes, I do, I have it electronically.

And how do you have it electronically?---It is in my personal laptop and my phone because they are synced.

25

COMMISSIONER: May I assist, Mr van der Zanden?

MR van der ZANDEN: Yes, Commissioner.

30 COMMISSIONER: Thank you. Ms Scaffidi, you will see this document comprises two emails?---Yes.

The bottom email appears to be an email from you to Mr Cox dated 14 January at 3.07 pm?---Yes.

35

Was that an email that you sent to Mr Cox on that date at that time?---Was it?

Was it?---Yes.

40 Thank you. If you look at the top of the first page, you will see there's an email there from Mr Cox to you?---Yes.

Of the same date, sent at 4.13 pm?---Yes.

45 Is that an email you received from Mr Cox on that date at that time?---I believe it is.

Thank you. Mr van der Zanden, the emails seem to speak for themselves.

MR van der ZANDEN: Yes, I would just seek to tender that, I don't seek to ask any questions.

5

COMMISSIONER: Mr Urquhart, I will hear from you on the application to tender the three documents.

MR URQUHART: I'm sorry, sir, I'm just conferring here.

10

COMMISSIONER: That's all right, take your time.

MR URQUHART: So I do seek leave just to ask one or two questions.

15

COMMISSIONER: Sorry, do you oppose the tender first?

MR URQUHART: Sorry, sir, was that the question?

COMMISSIONER: That was the question.

20

MR URQUHART: No, I don't oppose the tender whatsoever, no.

COMMISSIONER: Let me just deal with the tender first.

25

MR URQUHART: Yes, thank you, sir.

COMMISSIONER: Then I will come back to you for questions.

30 #EXHIBIT LMS1 - Email chain commencing at the top of page 1 with an email from Lisa Scaffidi to Mrs Janet Davidson dated Thursday, 3/12/2015 at 5.10 am comprising two pages.

35 #EXHIBIT LMS2 - Report of the Inquiry into the Lord Mayor of the City of Perth, Ms Lisa Scaffidi, being an authorised Inquiry under Part 8, Division 1 of the Local Government Act 1995 and dated May 2006.

#EXHIBIT LMS3 - Email chain commencing at the top of page 1 with an email from Mark Cox to Lisa Scaffidi dated Thursday, 14/1/2016 at 4.13 pm.

40

COMMISSIONER: Yes, Mr Urquhart, your questions.

MR URQUHART: Do I need to seek the Inquiry's leave or not? If I do, I gather I've been granted it.

45

COMMISSIONER: You don't.

MR URQUHART: Yes, sir.

EXAMINATION BY MR URQUHART

5 Ms Scaffidi, LMS3, that email we have just seen there which was sent to Mr Cox?---This one?

Yes, that one there, on Thursday, 14 January 2016 at 3.07 pm, do you see there at the bottom of the first page?---Yes.

10 And then his response at 4.13 pm?---Correct.

15 Can I ask you this: would I be right in saying you can't recall whether you sent that email at 3.07 pm before or after you opened the envelope that Mr Stevenson had delivered to you on that day?---I can respond to that by saying I did not see the envelope on my desk until very late in the day. It was placed on my desk in an area that wasn't in my inbox and so I believe I saw it after 5 o'clock.

How certain are you of that?---Fairly certain.

20 Fairly certain? So you've got in - was this your first day back at work, or you don't know? I don't think you know whether it was your first day back at work or not?---I think it was.

25 You think it was, all right. So you get back to work, there's a mountain of material obviously for you to do?---Correct.

You've got mail to open?---Well, I don't open the mail but mail to obviously go through and that would have been in the inbox.

30 Where do you say this envelope was?---This envelope was actually in front of my keyboard, to the top right-hand side in a yellowy coloured manila envelope, so I didn't really take much notice of it until later in the day, and that is my only recollection.

35 So where was it in relation to your keyboard?---The keyboard's here.

40 Demonstrating there with the desk in front of you, for the purpose of the transcript, directly in front of you, yes?---And it was kind of off to the right-hand side. It was like, to use a colloquial expression, someone had just plonked it there at some point.

45 Just to the right-hand side of your keyboard?---Yes. So to the right-hand side of the keyboard, in front of - towards the back of the desk, whereas I had inboxes and outboxes to the left of my desk.

You're demonstrating there to the left, yes, and then to the right you've demonstrated an area just behind where your keyboard was?---Yes.

And was it marked confidential?---I don't recall what it was marked. I think - I do recall it was one of those yellow manila covered envelopes, A4 size.

5 And given the contents of it, one would have expect it would have been marked confidential?---You would expect, but I don't recall exactly.

Are you saying - so you got into the office when, that day?---I would have started - I started back at a normal office hour and I don't recall the diary appointments for
10 that day and what other outside appointments I might have had for that day.

No doubt you would have been using your keyboard regularly throughout that day?---No.

15 No?---No.

Not at all?---I can't remember but, I mean, I would use interchangeably my phone and my keyboard.

20 Ordinarily in a usual day, at Chambers at Council House, you would be on your keyboard frequently, would you not?---Yes.

On this particular day, the way you've described where this envelope was, it certainly would have been in your, at the very least, your peripheral vision?---I
25 accept that, it would have been in my peripheral, but you also need to understand there would have been other - I used to have - actually, the screens were to the right more. I had a double screen

[4.30 pm]

30 So you're actually looking in that direction?---No.

You're not looking to the direction of the right of where the screens are?---You want an exact description then, two screens would be here, the inbox/outbox
35 would be there - - -

So you're screens - sorry, I will just describe it for the transcript - you're indicating a position to your right at 3 o'clock, or between 1 and 3 o'clock where the screens are and then you're indicating on the left where the inboxes were. Yes,
40 sorry?---And then I had a number of files in piles at the top of my desk, according to - they were, you know, ongoing issues or projects that I would be dealing with and my recollection is that that manila envelope was actually on top of my one of those piles and my attention was not drawn to it until later in the day, and I have a vague recollection that I was told, either verbally or somehow that the
45 documentation was on my desk and it had obviously been there for a while, but I hadn't seen it until later in the day.

So when were you told about the documentation on the desk?---Late in the afternoon.

Late by who?---I can't recall who.

5

Someone said what to you though? Whoever that person was, what did they say to you?---Look, I don't know but I realised that my awareness to that document was very late in the day.

10 Very late in the day?---M'mm.

After you sent this email, LMS3, is that right?---I believe so.

At 3.07 pm?---Yes.

15

Was it before or after you got the response from Mr Cox at 4.13 pm?---I couldn't categorically state but my view is, after.

After that as well?---M'mm.

20

So it was some time after 4.13 pm this person you can't remember has then told you about this envelope that's on your desk, is that right?---(No audible response).

And you have no idea who that was?---It was usual - if I can state it like this -

25

towards the end of the day was when I would actually have that catch-up time and be able to sort of take in all of those incidental things and catch up on paperwork and catch up on answers to emails because my appointment schedule had lightened up.

30 So the question is, when was it that this person drew this to your attention?---Very late in the day but I can't give you a timeframe.

So someone had, what, rang you or came into your office and said, "Lisa, there's that rather important envelope there sitting just in front of you"?---If you don't

35

mind me saying, I had an aide in the role, Paul - - -

I don't mind you saying that at all?---Okay, and I hope I'm not constructing but I do have a recollection that many times the documents might have only been delivered to Paul and then they were brought in. So actually, when I try and focus on it now, I don't know but I do recall it was late in the day, unless someone had - whether Paul had placed it there or someone else had placed it there, I don't know.

40

What were you doing all day then?---If I could look at my diary, I could tell you.

45 But were you at your desk?---So no one day is the same in that role. It was a continual cycle of inside, outside, appointments at the sofas in the middle of the office with people that would be visiting. I can't recall what appointments I had on

that first day back but I was in and out of that office continually.

So you think it might have been Mr Anastas who drew this envelope to your attention?---Yes.

5

So he's come in and said, what?---He was - - -

"What's this envelope here"?---I don't that he said it like that. I can't recall now if he delivered it or he said what you've just said.

10

So you're not sure whether he was the one who delivered it?---Earlier.

Earlier?---Which is often how - you're out and things could be put on your desk or put on your chair.

15

So if he delivered it earlier and you were at your desk, then one would expect you would have opened it?---No, not necessarily.

No? Not if it was marked confidential?---If it was face up, even then, I don't - - -

20

If it was marked confidential, you would have opened it immediately, would you not have?---I don't recall. You're asking me to pinpoint something that is just not in my mind.

25

An envelope marked confidential, as soon as it's brought to your attention - - -?---No, there were many of those and so it doesn't stand out.

That might be the case but just let me finish the question. So a document marked confidential, I suspect you would not leave it until the end of the day to open it?---I can't say I would and I can't say I wouldn't. It just was not obvious to me in the location that it was.

30

And you're not sure now whether it was there when you first arrived in the office or whether it was hand-delivered to you or who was it who drew your attention to the fact that there was an envelope on your desk?---I feel it was Paul.

35

You feel it was Mr Anastas?---Yes.

Who delivered it to you?---That I can't remember now.

40

We might be able to get a hint as to when you got it by one of your emails you sent to Mr Stevenson that we have already looked at?---Okay.

0970. Could we just have a look at that, Madam Associate, 14.0970. TRIM number, sir, 13799.

45

COMMISSIONER: Thank you.

WITNESS: 5.37.

MR URQUHART: 5.37 pm:

5

Gary, I'm in receipt this evening of the documents (various letters, CCC/you from 2015). Why have you sent his to me under private/confidential cover today with no explanatory note now, when it was requested for last year by my lawyers in writing and you refused to provide it and confirmed so in writing. Please explain, what's the game plan? We'd appreciate a response this evening.

10

I would just like to concentrate on the fact that now it would appear that the envelope that this material came in was actually marked, "Private/confidential", would you agree with that?---Yes.

15

And that you received it some time "today", can you see that?---Yes.

Might then you have looked at this material before you corresponded with Mr Cox at 3.07 pm?---I could not say definitively.

20

You are not sure, are you?---I am not sure.

Thank you, Ms - - -?---But - - -

25

I thought we'd finished for the day but you've said "but". To avoid an application from my learned friend, you were about to "but", but what?---Given my nature to respond quickly, which you've observed before, I think as soon as I saw it I would have emailed Gary, so I think that is an indicator that I did not see that document until around 17.00.

30

This is some construction going on though, isn't there?---Okay.

Would you accept that?---I don't know, but that is how I work.

35

That's certainly how you worked with your WhatsApp messages?---Mm hmm.

Thank you, Ms Scaffidi. That's all the questions I have for this witness, sir.

COMMISSIONER: Thank you. Are there any other housekeeping matters which any other counsel wish to raise with me at this stage? Thank you. I will have Madam Associate retrieve those documents from the witness. In that case, Ms Scaffidi, I'm going to adjourn shortly. It has been a long day for you, I know that, but I want to thank you for your assistance today and you're excused from further attendance for the rest of the day.

45

WITNESS WITHDREW.

COMMISSIONER: Mr Urquhart, I'm going to adjourn shortly. It's 4.40 pm but I'm conscious that there have, in the back of the hearing room, been a number of counsel on another witness' evidence and they have been sitting there a very long time. So I don't want to adjourn for the day and disappoint those in the public gallery who have been waiting for a long time. When I adjourn shortly, I'm going to ask Mr Parkinson and yourself to confer with all counsel who wish to be present for the hearing of the completion of Ms Barrenger's evidence.

10 MR URQUHART: Certainly, sir.

COMMISSIONER: To see whether there's a willingness to continue and sit a bit later this evening, because I'm quite prepared to do that.

15 MR URQUHART: Thank you, sir.

COMMISSIONER: I will adjourn now for 10 minutes.

(Short adjournment).

20

HEARING RECOMMENCED AT 4.52 PM

COMMISSIONER: Mr Beetham, before you begin, I'd just like to express my appreciation to all counsel, their instructors and to everyone else, including Ms Barrenger, for accommodating the Inquiry in a late sitting this afternoon. I'm sure you all appreciate that the Inquiry is sitting late to try and move through its schedule of work, so it's very much appreciated.

The process I will adopt for the balance of the day, until 5.30 this evening, is that I will have you recall Ms Barrenger, Mr Beetham. I will not re-swear her, that's not necessary. I will then hear any new applications and I will take appearances at the Bar table, and then we will continue with the examination of Ms Barrenger. We will see how far we get by 5.30 but if we are not completed at that time, with your examination and any other examinations that are permitted, then we might have a look at an early start tomorrow.

MR BEETHAM: Certainly, sir. In that case, I recall Ms Barrenger.

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

MS Erica Margaret BARRENGER, recalled on former affirmation:

COMMISSIONER: Ms Barrenger, you continue on your oath. Please, when you give your evidence today remember, if you can, to speak up and to speak into the microphone in front of you?---Okay.

Otherwise, I'll get reminded that you're not speaking loudly enough and then I will have to remind you?---Thank you.

Mr Fotheringham, you continue to appear for Mr Mianich?

5

MR FOTHERINGHAM: Yes, Commissioner.

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

10

MS SARACENI: Correct, sir.

COMMISSIONER: Ms Harrison, you continue to appear for Ms Barrenger, with Mr Harris. Thank you. Mr Cornish, you continue to appear for Dr Green?

15

MR CORNISH: I do, thank you, Commissioner.

COMMISSIONER: Mr Russell, you continue to appear for Mr Crosetta?

MR RUSSELL: Yes, Commissioner.

20

COMMISSIONER: Mr Mariotto, you continue the appear for Mr Limnios.

MR MARIOTTO: If the Commission pleases.

25

COMMISSIONER: Ms Siavelis, you continue to appear for Ms Battista.

MS SIAVELIS: Thank you, Commissioner.

COMMISSIONER: Mr Wyatt, you continue to appear for Ms Moore?

30

MR WYATT: Thank you, Commissioner.

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

35

MR MALONE: Thank you, Commissioner.

COMMISSIONER: Ms Young, you appear to appear for Mr Hasluck.

MS YOUNG: Yes, Commissioner.

40

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

MR van der ZANDEN: Yes, Commissioner.

45

COMMISSIONER: I've missed somebody.

MS WAUGH: Ms Waugh in place of Mr Houweling for Ms Alexis Barton.

COMMISSIONER: Thank you. Mr Beetham.

5 MR BEETHAM: Ms Barrenger, yesterday you gave some evidence about a plan that you had in place and you had some concerns, I think, at the start of the special ELG meeting that Ms Battista might have been out on a different plan, do you remember giving that evidence?---Yes, I do.

10 And I think you gave that evidence about a plan in the context of the letter that you and the other members of the Executive had signed and sent off to the Director-General of the Local Government, is that right?---Yes, that's correct.

Madam Associate, would you mind pulling up the document at 12.0667, please.
15 That's TRIM 19360, sir.

COMMISSIONER: Thank you.

MR BEETHAM: Can you read that on the screen or would you like it a bit larger,
20 Ms Barrenger?---That's fine, yes, I can read it.

You will see that's a letter to the Director-General dated 12 February 2018?---Yes, that's correct.

25 Madam Associate, if you could go across two pages in to 679. Is that your signature there under your name as Director?---Yes, it is.

And is this the letter that you're talking about that was sent to the
Director-General?---Yes, it is.

30 Madam Associate, if you go back one page to 678, please. I will take you to a passage on this page in a moment, Ms Barrenger, but can you explain to the Commissioner how this letter came to be? What was its genesis?---Who drafted it?

35 When did it start? Was it drafted in 2018?---I'm not sure. It was around the beginning of the year. My best to my recollection was the first time I had seen it was at the beginning of 2018.

40 Who showed it to you?---Mr Mileham brought it up as an ELG and put it up on the overhead projector and read through the letter.

And at that stage was the letter in a draft form, do you remember?---Yes, he said this was a draft letter. I believe there were some small changes made to it, I can't
45 recall what they were, and then it was brought back to ELG again and put up and read through again.

On a different occasion?---Yes, on a different occasion.

So there were at least two occasions, were there, when this letter was put up on a screen at an ELG meeting?---Yes, that's my understanding, yes.

5

Can you recall any other occasions or just those two?---Just twice.

Was it brought up by Mr Mileham on both occasions?---Yes, it was.

10 Did he speak to the letter on those occasions?---Yes, he read through it.

COMMISSIONER: You mean he read through it aloud?---Yes, he did, yes.

15 MR BEETHAM: To clarify that, do you mean he read the letter out or did he read different parts of it?---He read the letter out loud, maybe not the entire letter but definitely - no, I think probably the entire letter. He pulled out bits of it out loud and read out of it. I was reading along at the same time on the screen.

20 Can you recall - I think you said the first time you saw it was in early 2018?---That's the best of my recollection, yes.

Do you know if that was in January or February?---I'm not sure but I was away for a lot of February because my mum was ill.

25 At the meetings at which you saw this document on the screen, were they regular Executive Leadership Group meetings?---Yes, they were.

How often are they held?---They are held weekly.

30 So did you recall seeing this in two consecutive weeks, do you know, or whether there was a gap?---I don't think it was two consecutive, as best as I can recall

[5.00 pm]

35 When this went up on the screen the first time that Mr Mileham put it up on the screen, did it take you by surprise to see a letter of this type or did you know something like this was in the works?---I know that we had been concerned about some of the behaviours of Council, of some members of Council. I didn't know a letter of this kind was in the works, I suppose, like drafting a letter. I knew that the
40 ELG thought it was important to highlight it to the Department, or bring it to their attention.

45 Were there any particular behaviours of any particular Councillors that were of concern to you at this time? Perhaps I will break that down. Were there any particular Councillors whose behaviour was concerning to you?---Yes, there was.

Who were they?---So I had - well, the emails that I had provided where I had felt

they were, I suppose, a bit aggressive towards me was Councillor Green.

5 Anybody else? Any of the other Councillors?---There was one or two earlier on from Councillor Harley, but he was spoken to by Martin Mileham and changed his behaviour following that, or changed the emails.

10 When you say - I think you may have just clarified it, but when you say there was one or two from Councillor Harley, you're talking about emails of the type - - -?---Yes.

- - - that Councillor Green was sending?---Yes, that's right.

And you say he was spoken to by Mr Mileham?---That's correct, yes.

15 When did that happen?---I think it probably would have been before Christmas, is my best bet, so in late 2017.

20 So did the emails that were of concern to you stop coming or stop being phrased in the way that was - - -?---Yes, they did, from Mr Harley.

And I confused the question there, do you mean they stopped coming altogether or the language changed?---The language changed in them.

25 Did you have any concerns about behaviours of Councillor Limnios in January 2018?---I don't know if it was January 2018 but there was a whole lot of different motions put up which created an enormous amount of workload for my Directorate, so the motions I believe came from Councillor Limnios, which was a skate park, a ferry, looking at a ferry for the river, and I think there was another one but I can't quite recall it. They all came in the same Council meeting and there
30 had been other types of motions like that which had created, I suppose, a lot of additional workload for my Directorate in particular.

You said they all came up at one particular Council meeting?---They did, yes.

35 Do you remember, was that a Council meeting in 2017?---To the best of my recollection it was in 2017. It would have happened before that - I get the feeling it happened a long time - a few more months before that because I was addressing them in the New Year, as in responding to the motions back to Council.

40 Other than motions that were put up that were generating work for your Directorate, was there behaviour of Councillor Limnios, similar to the behaviour you described with Councillors Harley and Green, that made you uncomfortable or you thought was aggressive or was concerning in any other way?---No.

45 Did you otherwise have a reasonable relationship with Councillor Limnios?---Yes.

What about Councillor Hasluck, did you have any concerns about Councillor

Hasluck?---No.

Or Councillor Barton?---No.

5 Your evidence a moment ago, and I might paraphrase a little bit, is that the ELG agreed that something like what was in this letter needed to be done, is that right? Am I getting that correct?---Or that it should be raised to the Department's attention.

10 Should be raised, that's right, should be raised to the Department. When did the ELG start having those types of discussions?---Probably at least late 2017.

When you say late 2017, I don't want you to put too fine a point on it, but do you - -?---Probably in the middle more of 2017, towards the end of 2017.

15

So from July onwards, would that be fair to say?---I think so. I know it was around the same time that the workshops were raised and we were trying to work through the workshops which are referred to in this letter, and that's saying around 2017.

20

Those workshops you're referring to, is one of those workshops the workshop conducted by Bartlett Workplace with Mr Glen Bartlett?---That's correct.

25 So your recollection is the ELG started to think these things needed to be raised with the Department around the same time as those workshops?---Yes, that's correct.

30 Was it any particular member of the ELG who first raised this, saying, "We should bring this up with the Department"?---My only recollection is Martin Mileham bringing up the topic at an ELG.

In 2017?---Yes, in 2017.

35 Was the concern about the Council en masse, all of the Councillors as a body or was it about particular Councillors?---The ones that I've mentioned were my particular concerns.

And were concerns expressed to you by other members of the Executive about other Councillors?---Yes.

40

Which Councillors were concerns expressed about?---I know Annaliese expressed a concern about the Lord Mayor.

45 Did Ms Battista express a concern about anybody else, or just the Lord Mayor?---That's the only one I can recall having a discussion with her about, that she'd mentioned it to me.

Did Mr Crosetta express concerns about any of the Councillors?---I can't recall particular Councillors but I know that he had mentioned on occasions that the Councillors had been directing him to do things, but I don't know in which relation that Councillor was to.

5

He just used the phrase "Councillors", did he as a generic form of identifying particular Councillors?---Yes, he did.

10 What about Ms Moore, Rebecca Moore?---A very similar thing, would say, "I've been directed to do this" but I couldn't see what was on her phone or whatever she was referring to at the time.

15 And Mr Mianich, did he raise that he had any concerns with any particular Councillors?---Mr Mianich being the Director of Governance, raised about behaviour in Council.

20 And did he mention particular Councillors?---I know that he raised one with me, being that Jemma Green made an inappropriate comment in Council about me and he came to see me and said that he'd addressed it with her or it had been addressed by Governance with her. That's the one I remember, obviously, but I know that he did mention inappropriate behaviour and that they would address with them afterwards on a couple of occasions.

25 Are you aware - I'm jumping ahead a little bit in time, but are you aware of complaints lodged by Mr Mianich against some of the Councillors in that week when he was Acting CEO?---I don't know - I knew he was going - I knew we provided the emails for review, I thought by the legal to see if they were relevant.

30 Is that Jackson McDonald?---Yes, to see if it was relevant or not and I know I had received a couple of calls about a few emails, you know was there a follow-up one that I'd written, so I was aware of that. I didn't know when he was going to actually lodge those.

35 Were you aware that he was going to though, or there were steps in place to do that?---I didn't know what day he was going to lodge it or when he was planning to lodge it but I knew that I had provided information.

40 And did you think that was for that purpose, or potentially for that purpose?---Yes. I thought it was to, I suppose, provide examples to the Department to assess whether they were appropriate or not, ways to communicate.

45 When you speak of a plan, I think you gave evidence of this plan and it encompassed this letter, did it encompass anything else? What was the plan about?---No, it's just this letter. My understanding was we'd written this letter. We had agreed as an Executive that we wanted the Department, I suppose, to look a bit further into it and I suppose give us their opinion on whether they thought the behaviour was inappropriate or not.

In this letter which you were shown on the screen by Mr Mileham, did you have any involvement in actually drafting the letter?---No, I did not.

5 Do you have firsthand knowledge as to whether any of the other Directors had involvement in drafting the letter?---No, I don't.

Do you know who wrote the letter?---He said - sorry, Mr Mileham had said that he'd had assistance, or had a lawyer review it, so that's all I know. I don't know
10 which lawyer either.

If you can now have a look at the letter in front of you and you'll see there are a number of dot points starting toward the top of the page?---Mm hmm.

15 And underneath those dot points there's a paragraph that starts, "Notwithstanding"; could I just ask you to read that to yourself. If you need it blown up, please let me know. Have you read that paragraph?---Yes, I've read the paragraph. I haven't read all the dot points, is that all right?

20 Yes, of course. I'm just interested in that paragraph that starts, "Notwithstanding"?---Yes.

You will see in there Mr Mileham expresses the opinion - this is about halfway through the second line that, "The conduct of Council should continue to be
25 closely monitored and that corrective measures, should same be indicated, are applied swiftly", do you see that?---Yes, I do.

As a co-signatory of this letter, is that an opinion you also held?---Yes, I think corrective measures needed to be taken of some sort.
30

And you held the opinion that "the conduct of Council should also continue to be closely monitored"?---Yes.

When this letter was prepared, did you give thought to what "corrective measures" might mean?---No, I thought that would be what the Department would advise us.
35

Did you have any in mind?---No.

Did you discuss any corrective measures with the Executive at these meetings at which this letter was put up on the board?---No.
40

Did anybody ever raise with you in these meetings or otherwise that one potential corrective measure was to have the Council suspended by the Minister?---No.

45 So when you signed this letter saying that, "Corrective measures, should same be indicated are applied swiftly", you had no view at all about what those corrective measures might have been?---No, I didn't.

You've given some evidence already, just a moment ago, about having concerns about Councillor Green and to some extent, for a while, Councillor Harley?--- Yes.

5 Are you able to expand upon what your relationship was like with Councillor Green in January and February of 2018?---I suppose, not much.

Not much of a relationship, is that what you mean?---No. I think - - -

10 COMMISSIONER: No, it's not what you mean or no, it is what you mean; what are you saying?---Sorry. I'm just thinking. I didn't have much contact with Councillor Green in those couple of months, I would say very limited. I think the only motion that would have involved me from Councillor Green was the parklets and I was working on that to review where they would be put throughout the City

15

[5.15 pm]

MR BEETHAM: Were you still receiving these emails that you described as aggressive during this period?---We had gone to the inbox, the CEO Inbox so I didn't receive direct emails from Councillor Green.

20

You didn't receive any direct emails from Councillor Green in that period?---I can't 100 per cent say I didn't receive any emails from Councillor Green.

25 Do you recall any of these aggressive-type emails from her in that period?---Sorry, I don't recall.

You don't remember?---No.

30 Was it fair to say that as a result of the emails that had you received previously, that you didn't have a great relationship with Councillor Green?---I didn't think that I treated Councillor Green any differently.

35 No, I'm not concerned with how you treated Councillor Green, I'm interested in how you viewed the relationship between the two of you?---I suppose a professional relationship.

40 Was it a fractured professional relationship as a result of what you saw as this aggressive behaviour?---I suppose I was guarded in my dealings with Councillor Green. If I was to meet with Councillor Green, I would ensure that I had Mark Ridgwell in the room.

The Manager of Governance?---Yes, that's correct.

45 Why would you have him in the room?---Because quite often Jemma would say that I'd said things that I hadn't or implied that I'd said things, so I needed to ensure that it was minuted correctly.

Did you have a view about Councillor Green and her compliance with her obligations as a Councillor and whether or not she was overstepping those?---No.

5 Even when she was sending you these aggressive emails, did you have a view about that?---I just thought it was inappropriate.

From just an interpersonal point of view or from a Councillor/Executive relationship point of view?---From a professional point of view.

10

What do you mean by that?---Well, whether I was in Council or in a private industry, an email like that would be inappropriate.

15 Did you ever turn your mind to the particular rules and obligations that bind Councillors in relation to their relationships and correspondence with administrative staff?---Yes. If I had a concern I would raise it with Mark Ridgwell and he would assist me in responding to those emails, if I had to.

20 Yes, but did you turn your mind to - are you aware, for example, that Councillors under the Local Government Act aren't able to direct the Administration of the City?---Yes, I am aware of that.

25 And did any of these emails, in your view, constitute a direction to you to do things?---Yes, I believed the email that we gave to the Department - - -

25

This was an email from Councillor Green to you?---Yes.

30 So at that stage did you have a view that what Councillor Green was doing was contrary to those regulations?---Yes, I did and I believe Martin reiterated that in the response back to Councillor Green.

35 In relation to the emails from Councillor Harley, were they of a similar type? Did you consider those to be directive emails?---Yes, they were. We held a meeting with Councillor Harley and Mark Ridgwell and we explained why they weren't appropriate.

40 And was Councillor Harley accepting of that, was he?---Yes, he apologised and he said, I think - like, he didn't think he was - didn't realise what he was saying was taken that way.

40 Do you recall when you first saw the motion that Councillors Green, Harley, Hasluck, Linnios and Barton signed to amend the Council Policy in relation to Acting CEOs?---I didn't actually see the motion.

45 You've not seen the motion? Were you aware of its existence?---Rob Mianich told me that he had received a request for the Special Council Meeting.

Were you aware who he'd received the request from?---No, I just got told that he'd received it.

5 So did you at any point become aware that the motion was moved by those five Councillors that I've just named?---Yes, I was told that, that it had been moved by those Councillors.

And that was told to you by Mr Mianich?---Yes, it was.

10 During your time at the City, did you observe what have been called factions on the Council, or voting blocs?---Yes.

15 Did you consider when you were told that those five Councillors had moved that motion, that that was a faction or a voting bloc?---Yes.

Did you consider that that was reflective of perhaps a change in majority on the Council?---Yes, it was.

20 And was that a change from majority that was - that comprised the Lord Mayor and others, a change from that majority to a change regarding these five?---Yes.

COMMISSIONER: Is that yes?---Yes.

25 MR BEETHAM: Are you aware of other times around that period, January/February, where those five Councillors voted together or seemed to be voting in a faction?---I'm not. I'm sorry, I was away - - -

For that period of February?---For quite a bit of that time.

30 Did that represent to you, and by that, I mean the change in majority, as a sort of shift in power on the Council from that one faction that I was talking about with the Lord Mayor and this new group of five Councillors?---Yes.

35 Do you know, did you know at the time what relationship Annaliese Battista had with any of those five Councillors, what her relationship was like?---No, I did not.

I will ask in particular, are you aware of what her relationship was like with Deputy Lord Mayor Green?---No, I did not.

40 And Councillor Harley?---No.

Hasluck?---No.

45 Barton or Limnios?---No, I did not.

When you were first notified by Mr Ridgwell by text, by showing you the text that he'd received from Ms Battista, and then later that morning by Ms Battista herself

that she had been approached to be the Acting CEO, did you form any views then about whether or not Ms Battista was liked or preferred by those five Councillors?---No, not really. I just didn't think - I didn't know what the reason was for choosing her.

5

Was there any discussion at that special ELG meeting about what the reason could be?---Only that Annaliese's Directorate as part of the Target Business Model, didn't exist any more.

10 Could you explain that to me? I'm not quite sure I understand that answer?---Sorry. So the Exec was doing a Target Business Model.

Yes.

15 COMMISSIONER: What's the Exec?---Sorry, the Executive, so the Executive team, so the ELG.

20 The ELG?---Were doing looking at functions and services of the City for a structure and under the structure Annaliese's - the function of heritage would come under my Directorate and a couple of the other functions would go under the other Directorate and Annaliese was - even though Annaliese had the smaller Directorate, her Directorate would shrink to a small number and therefore she would not have a Directorate. I know that Martin had had discussions with her about that she could still remain a director and they would look at some other types
25 of roles.

MR BEETHAM: You say - I think you called it the Exec, the Executive Leadership Group plus Mr Mileham, came up with this or was formulating this Targeted Business Model, yes?---Yes, that's correct.

30

Was Ms Battista involved in this process?---Yes, she was.

35 Did she express a view about the targeted business model, given it would reduce the size of her Directorate?---She made a comment to say, "Well, this will mean I won't have a Directorate at an ELG" but I know that she did participate in any of the meetings we had, looking at functions and services across the City.

40 What was the role that was envisaged that she would play, following the roll-out of the targeted business model?---I wasn't privy to that.

40

That was not discussed as part of the model itself?---It got paused after that happened so it never got any further than that.

45 When you say "that happened"?---Sorry, this - after 26 February, 27th, 26 February.

When Mr Mianich went on leave and the Crisis Management Plan?---That's

correct. Then when Mr Mileham came back on the Tuesday, they put the Target Business Model on hold.

5 Was there, prior to that point, a go live date for the targeted business model?---Yes, it was meant to go live over the Christmas holidays.

10 Of 2017?---Yes, to change the units that would move easily. So for example, my Health and Activities Approval got moved into Rebecca's Directorate because they were more hands-on operational and that was a very - I suppose an easy type move because it's the whole unit.

15 Yes. What about the changes that would result in Ms Battista effectively not having - - -?---The heritage team had been discussed as moving across into my Planning Directorate and there was a program of when these things would happen, which Annaliese had agreed to the program.

Do you recall when that program envisaged that change happening?---The heritage team coming across? That was going to happen when I was back in January.

20 But it didn't happen in January?---No. Annaliese came back from Christmas holidays and asked to relook at the Target Business Model.

25 What did you think about that request?---I didn't really get much time to think about it because after that, then this happened, so - - -

30 Did you think about it at all? When Ms Battista said this, did you and the other members of the Executive respond with - perhaps you might have gone, "We have been dealing with this for a while now, why would you try and throw a spanner in the works at this stage"?---I suppose I felt that, yes.

Did you express that view?---I know that Martin said that we would have a relook at it and make sure that Annaliese was happy with the changes and I didn't get any more information than that.

35 Was this business model championed, or was the point person for it Mr Mileham?---Yes, it was led by Mr Mileham and, I've forgotten, there was a consultant brought in to run the - - -

40 Within the Executive, Mr Mileham was the key person?---Yes.

45 And if Mr Mileham wasn't there? If, hypothetically Mr Mileham was replaced as Chief Executive by somebody else, would that person have taken on that role?---I assume so. So it was Byron Smith was the consultant that was running it and rolling out the program.

Is it fair to say if Ms Battista had been made CEO, she wouldn't have continued with the program? Is that the sense you got from her?---I don't know. Annaliese

agreed with the Target Business Model originally.

But she changed her view, did she, in January?---She did, yes.

5 So do you think having changed her view, if she was then appointed CEO, that's 27
or 28 February, that she might not have continued with that targeted business
model?---I'm sorry, I don't - I'd probably be speculating if I said whether she'd
continue with it or not, but I can.

10 Yes, I'm interested in what your impression was?---I think she would have
continued with the Target Business Model.

You think she would have?---M'mm.

15 Notwithstanding her view expressed in January?---Yes, that's correct, because she
was CEO or Acting CEO.

So you think that in that role, she would have continued on because -
why?---Because she was accepting Acting CEO for three days, so - - -

20 Sorry, I'm suggesting if she was made permanent CEO?---Mm hmm.

Let's say Mr Mileham was removed for some hypothetical reason and Ms Battista
became CEO?---Mm hmm.

25 Do you think the targeted business model would have continued?---Yes.

Under Ms Battista's leadership?---Yes.

30 Notwithstanding that she expressed the view in January that she wanted to relook
at that model?---Yes.

And why do you think she would continue with it in those
circumstances?---Because she had a role.

35 Do I understand that answer the mean, well, her role as Director of DEDA would
no longer be at risk and so she wouldn't be motivated to stop the model because
she wouldn't be losing out?--- Yes.

40 Sir, that might be convenient moment.

[5.30 pm]

45 COMMISSIONER: Yes, thank you. Mr Beetham, is there reason that you're
aware of why we could not resume the Inquiry tomorrow at 9.30 am?

MR BEETHAM: No, sir.

5 COMMISSIONER: Is there anyone else at the Bar table who would be
inconvenienced by an early start at that time? Speak now or forever hold your
peace. In that case, I will proceed on the basis that everyone at the Bar table is
prepared to begin at 9.30 am. Ms Barrenger, can you be here at 9.30 am
tomorrow morning?---Yes, I can.

10 Thank you. Thank you for your assistance today and I will resume tomorrow
morning. So the Inquiry will be adjourned until 9.30 am tomorrow morning.

WITNESS WITHDREW

**AT 5.31 PM THE MATTER WAS ADJOURNED
UNTIL WEDNESDAY, 18 SEPTEMBER 2019**

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