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INQUIRY INTO THE CITY OF PERTH

PUBLIC HEARING - DAY 98

FRIDAY, 30 AUGUST 2019

INQUIRY PANEL:

COMMISSIONER ANTHONY (TONY) POWER

COUNSEL ASSISTING:

MS KATE ELLSON

COUNSEL APPEARING:

**CAV. MARIA SARACINI and MR MARTIN TUOHY (MR Martin MILEHAM)
MS ALEXANDRA TOMASINI with MR TOBIAS BARRIE (Ms Judith McEVOY)
MR ALAN SKINNER with MR PETER MARIOTTO (Mr Dimitrios LIMNIOS)
MR JASON O'MEARA (Mr Reece HARLEY)
MR JOEL YELDON with MS EMILY CHAPPELOW (Ms Janet DAVIDSON)
MS JENNY FORD (Dr Jemma GREEN)
MR PETER van der ZANDEN (Ms Lisa-Michelle SCAFFIDI)
MR DARREN RENTON (Mr Gary STEVENSON)
MS JUSTINE SIAVELIS (Ms Annaliese BATTISTA)**

HEARING COMMENCED AT 10.10 AM:

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

10 COMMISSIONER: Ms Ellson, you recall Mr Mileham this morning?

MS ELLSON: I do.

15 COMMISSIONER. Thank you, Mr Mileham. Please come forward and take a seat in the witness box to my left. Take a seat. You remain under your oath.

MR Martin Nicholas MILEHAM, recalled on former oath:

20 COMMISSIONER: I will now deal with appearances and applications. Ms Saraceni, you continue to appear for Mr Mileham?

MS SARACENI: Yes, thank you, sir.

25 COMMISSIONER: Mr Renton?

MR RENTON: I don't seek to be heard in relation to this matter, Commissioner, thank you.

30 MS TOMASINI: May it please the Commissioner, my name is Alexandra Tomasini and I seek leave to appear for and represent Judith McEvoy at today's hearing, pursuant to the application made on 5 August.

COMMISSIONER: Thank you. Is there any opposition to that, Ms Ellson?

35 MS ELLSON: No, Commissioner.

COMMISSIONER: In that case, leave is granted, Ms Tomasini.

40 MS TOMASINI: Thank you.

MS CHAPPELOW: Commissioner, leave has been granted to Mr Joel Yeldon to appear for Ms Davidson. He's unavailable this morning, so I seek for the leave to be extended and for myself to appear in his place.

45 COMMISSIONER: Yes. I was going to say, you don't look anything like Mr Yeldon.

MS CHAPPELOW: No.

COMMISSIONER: Which is probably very fortunate for you.

5 MR SKINNER: May it please you, sir, I seek leave to continue to appear on behalf of Councillor Limnios.

COMMISSIONER: Thank you, Mr Skinner.

10 MR SKINNER: Thank you, sir.

MR O'MEARA: May it please you, Commissioner, O'Meara for Councillor Harley. I seek leave to continue appearing.

15 COMMISSIONER: Yes, of course.

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

20 COMMISSIONER: I don't imagine there will be any objection to that; is there, Ms Ellson?

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

25 COMMISSIONER: Thank you, leave is granted. Ms Ellson, are you ready to proceed?

MS ELLSON: I am, yes.

30 COMMISSIONER: I'm sorry.

MS SIABELIS: May it please you, Commissioner, Ms Siavelis. I represent Ms Battista and I seek leave to represent Ms Battista today.

35 COMMISSIONER: Yes, of course. Ms Siavelis, I'm sorry I didn't see you at the Bar table

MS SIABELIS: There's not enough room at the Bar table.

40 COMMISSIONER: Take a seat at the front. Is there any opposition, Ms Ellson?

MS ELLSON: No, Commissioner.

45 COMMISSIONER: Leave is granted. We will start again: Ms Ellson, are you ready to proceed?

MS ELLSON: I am.

COMMISSIONER: Thank you.

5 MS ELLSON: Mr Mileham, between 2015 and 2017 how frequently were retrospective sign applications dealt with by the City?---I don't know the number.

10 Was it a common occurrence?---I wouldn't call it common. It certainly wasn't the predominant way of treating with applications, to the best of my recollection. That said, some would not necessarily have come above delegation of the Manager of Approval Services.

15 It's certainly preferable to the City for applications to be dealt with for signs to go on buildings before they go up, isn't it?---Beforehand would be better than afterwards, yes.

Mr Mileham, I spoke to you yesterday afternoon about your second interview when you gave a presentation, do you recall that?---Your question, yes.

20 Do you accept that it was at 4.30 in the afternoon, 29 August 2016?---If that's the record, I will accept that.

Can you tell me, other than yourself, who was there?---The second interview?

25 Yes?---No, I couldn't confirm the complete number of persons there. I would expect it would have been a predominant number of Councillors, but I can't recall.

30 So there were more people there than were on the Interview Panel for the first round of interviews, is that right?---To the best of my recollection, but I couldn't verify who they were

[10.15 am]

35 Mr Mileham, do you recall discussing the workload of the officers responsible for moving the Grand Central Hotel through the heritage process, with Ms Battista?---In that interview?

Sorry, no, in September 2016?---Could you repeat the question then?

40 Yes. Do you remember discussing the workload of the officers responsible for moving the Grand Central Hotel through the heritage process?---In?

With Ms Battista?---In what period?

45 In September 2016?---No, I don't.

Do you recall talking to her about amending the report to indicate that partial her Heritage Listing was unprecedented?---No, I don't.

And amending the report because it was not in line with the City's policy, a partial listing?---I don't recall a discussion with her, other than ones that were had latter than that date.

5

So you recall some discussions with Ms Battista about the Grand Central Hotel in September in 2016, is that right?---No, I said latter.

10 Being?---Discussions that were had enquiring as to whether - why the building had not yet been listed when it had already been approved by Council for listing, the advertising period had completed and it was not yet listed several months after that date and - - -

I think you've skipped - - -?--- - - - the discussion was about - sorry.

15

You've skipped well ahead of me, Mr Mileham. I'm going to come back to what you're talking about. If you could focus your mind in September 2016?---I don't recall any discussions in September.

20 Madam Associate, could you please show the document at 27.1097, TRIM 19695.

COMMISSIONER: Thank you.

25 MS ELLSON: While that's happening, Mr Mileham, did you consider that partial Heritage Listing was unprecedented as at 16 September 2016?---I don't recall my view from that time.

Do you recall as at September 2016 whether or not it was in line with the City's policy?---Whether what was, partial listing?

30

Yes?---I don't recall, no.

Mr Mileham, could you please read the document in front of you there. I will identify it for you. It appears to be an email from Ms Battista to Ms McMullen, copying in some other officers of the City of Perth, dated 16 September 2016 at 3.04 pm, do you see that?---Yes.

35

The second paragraph:

40

I have discussed this at length with the Chief Executive Officer and have determined that the report should be amended simply to say that what was proposed is feasible through the DA process but that partial Heritage Listing is both unprecedented and not in line with the City's policy.

45

Do you see that?---Yes.

Does this help you remember what your views about partial Heritage Listing were in September 2016?---No.

5 To give context to the sentence, "I have discussed this at length with the Chief Executive Officer" I would ask Madam Associate, please, to turn to page 27.1098. Do you see here, Mr Mileham, text from an email which appears to be from Ms McMullen to Ms Battista asking for her guidance? Can you see that?---Yes.

10 Could you read the second paragraph, please?---:

15 *The officers are currently already stretched with embedding the restructure, an unprecedentedly high volume of Development Applications - although it says DAs - to review and a SAT hearing. I feel that I must express my concern about the workload associated with the number of revisits to this report. I know you share my confidence in the professionalism, expertise and capacity of the officers and I only wish to see their talents channelled in the most efficient and effective directions.*

20 Does this assist you to recall discussing the officers' workload with respect to the Grand Central Hotel with Ms Battista?---No.

The number of revisits to the report, did you discuss that with her?---As I've said, I don't recall having a discussion in that context.

25 This document doesn't help you?---No.

30 Did you, as at September 2016, share Ms McMullen's confidence in the professionalism, expertise and capacity of the officers?---It's difficult to say because I don't know the level of her - what did she say - confidence.

35 Did you have confidence in the officers in the City, Mr Mileham, with respect to their approach to the listing of the Grand Central Hotel?---I had a level of confidence, high level of confidence.

The document can be taken down, please, Madam Associate. Mr Mileham, do you recall a Planning Committee meeting that occurred on 25 October 2016?---No.

40 Madam Associate, could you turn, please, to document 27.1143, TRIM 19697. Mr Mileham, do you see there Planning Committee minutes, 15 November 2016, certified?

45 COMMISSIONER: Is this the one with the notation under the date that says, "Should be 25 October 2016 (incorrect cover page)"?

MS ELLSON: Yes, thank you, Commissioner?---Sorry, could you repeat the question, please?

Do you see on the screen some minutes, Planning Committee 15 November 2016, "Should be 25 October 2016 (incorrect cover page)", which have been certified?---Yes, but I don't know when the addition was made so I'm assuming it was made at some point after that was published.

I didn't ask you about that, Mr Mileham?---You'd asked me to read it and that's my comment.

I'm not asking you to comment, Mr Mileham?---Okay, I will not.

Please just answer the questions that are asked?---Okay.

Madam Associate, 27.1146. Do you see here, "Members in attendance" include you as the Chief Executive Officer?---Yes.

Madam Associate, if you could turn to page 27.1147. Do you see here a confidential item, "Proposed entry of Grand Central Hotel, 379 Wellington Street, Confidential Schedule 11"?---Yes.

A matter for which the meeting may be closed?---Yes.

Madam Associate, if you could turn, please, to 27.1148. Do you see there the item, "Proposed entry of Grand Central Hotel, 379 Wellington Street, Perth"?---Yes.

Madam Associate, if you could turn to page 27.1152. Do you see there table 1 deals with specific numbers of properties and appears to be part of a timeline with respect to how those properties have been dealt with?---Yes.

Madam Associate, 27.1153. At the top of the page there, it appears to be a remaining timeline dealing with the properties, the subject of heritage consideration, do you see that?---Yes.

Do you accept that that information was inserted into the officer's report at your request?---Could you repeat the question, please?

Do you accept that that information was inserted into the report at your request?---The entirety of the table?

Yes?---I don't recall requiring that.

It was of the amendments you requested to be made during the agenda settlement meeting in August 2016 that we talked about yesterday, wasn't it?---I don't recall making the request but the documentation you showed me showed some people making those statements.

They have inserted a chronology of events with respect to how the properties were dealt with, you would accept that?---They have made those statements, I don't recall requesting it.

5 Madam Associate, 27.1156, a motion moved by Councillor McEvoy, seconded by Councillor Yong that "Council propose to include the Grand Central Hotel in Wellington Street on the Heritage List and give the owners 21 days to make a submission"?---Yes.

10 With a second part that notes that, "Officers will report back to Council with the results", do you see that?---Yes.

And that motion was put and carried?---Yes.

15 Aside from the members of the Planning Committee being present at this meeting, Mr Mileham, do you have a memory of any other Councillors attending this meeting?---No.

20 Can you think of a reason why other Councillors might come to this particular meeting?---I note on the paper here that Councillor Green was at the meeting and departed it, and could you repeat your question, please?

My question was, can you think of a reason why other Councillors might have come to this particular meeting?---Not on their behalf, no.

25 Did you speak to any other Councillors other than those on the Planning Committee, about the Planning Committee meeting on 25 October 2016?---Did I speak to?

30 Any Councillors other than those on the Planning Committee?---To the best of my knowledge, I don't recall doing so.

35 By 25 October 2016, had Councillor Harley expressed any concerns to you about the matter proceeding to Heritage Listing?---I believe you showed me a document where he had some communication. I can't recall the date of that. Are you asking, was it a verbal conversation? Could you ask the question again, please?

40 Yes, verbal conversation. Had you had any discussions with Councillor Harley before 25 October 2016 about the matter moving to Heritage Listing, the matter being the Grand Central Hotel?---I can't recall.

Had Mr Harley expressed any concerns to you before 25 October 2016 about the matter moving forward?---Verbally, other than the emails?

45 Yes?---No, I don't recall any.

Had Councillor Green expressed any concerns to you before the Planning

Committee meeting on 25 October 2016?---I don't recall any

[10.30 am]

- 5 Had Councillor Limnios expressed any concerns to you about the matter moving forward before the Planning Committee meeting on 25 October 2016?---I don't recall a discussion with Councillor Limnios about the matter.

- 10 Madam Associate, if you could bring up page 27.1146, please. Do you see here, Mr Mileham, two observers, Councillor Limnios and Councillor Green, do you see that?---Sorry, say again? Could you ask the question again?

Do you see there two observers, Councillor Limnios and Councillor Green, do you see that?---Yes, I do.

- 15 Can you provide any insight as the Chief Executive Officer as to why those two Councillors attended the meeting on 25 October 2016?---As CEO, I can say they were observers.

- 20 Can you tell me why?---No.

No insight at all?---As observers, as in CEO, I would assume they would wish to see the process of the Planning - - -

- 25 Did they wish to see the process because they were concerned about the movement of the Grand Central Hotel through the Heritage Listing process?

MS SARACENI: Commissioner - - -

- 30 COMMISSIONER: Yes. I don't think Mr Mileham can answer that question.

MS ELLSON: Yes, Commissioner.

- 35 Did you see or hear either Councillor Limnios or Councillor Green say anything during this meeting?---I can't recall the meeting so I don't recall them saying anything either.

- 40 Thank you, Madam Associate, the document can be taken down. Looking back at it now, Mr Mileham, can you suggest a reason why Councillor Limnios and Councillor Green attended the meeting on 25 October 2016?---With hindsight?

Yes?---They were interested in the process of the listing of that building.

- 45 Why?---Do you want my opinion on that?

As the CEO of the City, what are your thoughts on that in hindsight?---Okay. As the CEO of the City my thoughts on that in hindsight were both Councillors Green

and Limnios were implacable opponents of the Lord Mayor and they probably had a heightened interest in anything that related to her business.

5 The property had taken some time to come through the Heritage Listing process, hadn't it?---It took a period of time to go through the process, yes.

And it took a period of time over and above the other 11 properties that were dealt with at the same time as it, didn't it?---I don't know. I don't know the timelines that were - from beginning to end.

10 Could it also be that Councillors Green and Limnios - I withdraw the question?---Thank you.

15 Do you accept that the recommendation of the committee in this meeting was endorsed by Council on 1 November 2016?---I apologise, I can't recall the date of that document. I'm assuming that's correct.

20 Which document, Mr Mileham?---As I've mentioned in the past, my memory has been somewhat affected by matters, and we don't wish to go into that, as you know. Could you please repeat the question because I'm a little confused by the dates.

If you're confused, Mr Mileham, I will take you to the document?---Please.

25 Madam Associate, if you could bring up 27.1199, which actually begins, my apologies, on 27.1193. Do you see here, Mr Mileham, some minutes of the Council meeting, 1 November 2016?---Yes, thank you.

30 They have been certified?---Yes, thank you.

Madam Associate, 27.1209. Do you see here, Mr Mileham, a motion moved by Councillor McEvoy, seconded by Councillor Yong, which appears to be in the same terms as that proposed by the Planning Committee that we have just looked at?---Yes, thank you.

35 And the motion was carried?---Yes.

40 So you accept that the Planning Committee recommendation made on 25 October 2016 was endorsed by Council on 1 November 2016?---Unanimously, yes.

Looking at the resolution, Mr Mileham, can you tell me what was to happen next?---I will just read it, if you don't mind. Yes, the owner - affected owner and occupier, the reasons for the entry and 21 days to respond to the City and the report then would be raised back to Council, based on that.

45 Directly to Council or to Planning Committee first?---Well, the resolution says Council, although one would assume it would go through Planning. It may depend

on what the response was.

So the process would be for the City to notify the owner and occupiers of the decision?---Yes.

5

And seek submissions within 21 days?---Yes.

It would be correct to think that receipt of those submissions would trigger the process for the officers to report back to Council?---That would be fair to assume.

10

Thank you, Madam Associate, you can take the document down. Mr Mileham, do you recall Council advising the owners of the Grand Central Hotel of what happened at the Council meeting?---No.

15

Madam Associate, could you bring up, please, 27.1497. Mr Mileham, do you see here a letter directed to Mr Scaffidi, Central City Pty Ltd, dated 20 January 2017?---Yes.

20

Madam Associate, would you turn the page, please. For the transcript, Commissioner, it's TRIM 19718.

COMMISSIONER: Thank you.

25

MS ELLSON: Do you see here the end of the document signed by Ms McMullen?---Yes.

Do you recognise that as a notification from the City to the owners of the Grand Central Hotel, notifying them of the results of the Council meeting, or a Council meeting - I think the date may be an error, Mr Mileham?---The date?

30

22 November 2016?---M'mm, it's my birthday, so I think I'd remember it. Could you go back to the first page, please? Is that the date referred?

35

I'm sorry, 1497, please, Madam Associate?---"At its meeting held on 22 November 2016" - it would appear to be incorrect.

But do you recognise it though as a letter that the City has written to the owners of the Central City Hotel, giving them the opportunity to make submissions by Friday, 10 February 2017?---It has the letterhead. It has some differences from our usual practice in that it doesn't have the writer's details at the top of the letter. That's a rather unusual way of doing so, but I wouldn't dispute it's a letter from that officer to Mr Scaffidi.

40

Giving Mr Scaffidi the opportunity to make submissions on the proposal by Friday, 10 February 2017?---Yes.

45

Madam Associate, the document can be taken down, please. Mr Mileham, what

happened after that?---I know what should have happened, I can't recall what did happen.

5 The matter was finally dealt with on 29 May 2018 at a Council meeting, do you accept that?---The property was listed at that time, resolved to be listed at the time, I recall, although I don't have a specific memory of the meeting.

10 Can you explain why it took that long, Mr Mileham?---Between that correspondence from Ms McMullen and the listing?

Yes?---One of the reasons it took that long would appear to be that it was forgotten.

15 By whom?---By Ms McMullen and Ms Battista. A newspaper article appeared at some juncture prior to its listing saying that it was not yet listed. I read the newspaper article, was ready to contact the newspapers and advise them they had an error. I spoke to the Manager, Governance, Mr Ridgwell, about it and he looked into the registration and found that it had not yet found its way to Council to be finally endorsed, investigated with the department and had the response that due to workloads and change of staff, et cetera, it had been put to the bottom of the pile and - I'll paraphrase - forgotten. The staff members were told that that was not acceptable. It was brought forward and brought to Council, or the Commissioners at that time for formal listing.

25 The newspaper article that you read wasn't published until April 2018 though, isn't that right?---Yes - I don't recall the date, I just recall reading it and being surprised that the journalist appeared to have it wrong.

30 So you didn't follow this up or think about it after 1 November 2016, isn't that right?---We instituted a - - -

I'm talking about you, Mr Mileham?---Me personally, no.

35 Given your intrigue that you described with respect to the attention this property received, it would be reasonable for you to wonder why it hadn't yet been listed, wouldn't it?---It wasn't brought to my attention that it had not been. The Heritage List was updated five times during my tenure. It remains unupdated at this date, so officially it's still not on the Register. I was surprised as CEO, disappointed in my staff. I did not believe I should have to personally follow up on a Council direction given to that Directorate.

You let it slide, didn't you, Mr Mileham?---No, I did not.

45 You're partly to blame for the delay, aren't you, Mr Mileham?---I'm the CEO, my staff erred.

And you're partly to blame because of that, aren't you, Mr Mileham?---I'm the

CEO and erred.

[10.45 am]

- 5 Did you turn the other cheek because the Lord Mayor did not want it listed?---Turn the other cheek? Would you clarify, please?

Did you let it slide because the Lord Mayor didn't want it listed?---I did not let it slide and for no reason was it let to slide, other than what I've described to you as I understand it.

10

Ms Battista worked with Mr Ridgwell to try to figure out what had happened, didn't she?---You would have to ask them both that. I had a report from Mr Ridgwell that he investigated the matter.

15

The Inquiry has information that Ms Battista worked with Mr Ridgwell to determine what had happened, do you accept that?---I can do. Mr Ridgwell reported to me, as I've said earlier.

- 20 Do you accept that that was done at around about the same time as the media article you read?---Unfortunately, that was the trigger for my question.

Mr Mileham, I'm going to ask you a series of questions now. I'm going to either ask you whether you recall something from yesterday or the day before, or to accept or reject a proposition, okay?---Yes.

25

You recall that on 26 July 2016 the Lord Mayor called you and used the words "the next CEO" and "a strong CEO" do you recall giving evidence about that?---I recall giving evidence about my note on a date, 26th or 7th, yes.

30

And you recall the evidence about the words in quotes, "the next CEO", and "a strong CEO"?---Yes.

- 35 You recall that the Lord Mayor questioned whether or not you still supported her during that call?---I can't recall the exact words. I would probably need to see the note.

You recall that you were asked about the Lord Mayor's questioning, whether or not you still supported her, weren't you?---Do I recall your question? Could you clarify?

40

Mr Mileham, do you recall that in the telephone call on 26 July 2016 the Lord Mayor questioned whether or not you still supported her?---I can't recall if that was in my note or not.

45

Do you recall giving evidence about that yesterday?---Not very well, no.

Do you accept that that is what happened during the phone call on 26 July 2016?---I'm unable to recall the phone call without reference to my notes and by that I mean, I would read from the notes.

5 Mr Mileham, do you recall that at the end of the call you felt as though your CEO application was in jeopardy, as well as your substantive role, do you recall giving evidence about that?---About it, the exact wording, I would refer back to the note again.

10 You recall the evidence?---I recall giving evidence about that question, yes.

You felt as though you had lost her support, didn't you, in July 2016?---Are you asking about my evidence of yesterday or - - -

15 I will ask it in a clearer way, Mr Mileham. Do you accept or reject that as at 26 July 2016 you felt as though you had lost the Lord Mayor's support?---I reject that I felt that I'd lost her support.

20 Do you accept or reject that you felt as though her support had waned, as at 26 July 2016?---As at 26th, some waning, yes.

To the point that you thought she might terminate you, do you accept or reject that?---The words I recall from yesterday in the note were, my application being fairly or otherwise dealt with and my incumbent position.

25 Do you accept or reject, Mr Mileham, that as at 26 July 2016 you believed that the Lord Mayor might terminate your employment?---No, I reject that.

30 Do you accept or reject that she might do that, just like she terminated Mr Stevenson?---When? Could you clarify, please, the question?

This is your thinking - sorry, I will be clearer - do you accept or reject that as at 26 July 2016 you believed the Lord Mayor might terminate your employment, just like she terminated Mr Stevenson's?---I saw it as a very remote possibility.

35 But a possibility?---Very remote.

But it was a possibility?---As I've said, very remote possibility, not impossible.

40 As at 26 July 2016 you were motivated to please the Lord Mayor?---Reject.

Do you recall your first interview being on 16 July? Do you recall giving evidence about that?---Not well, I'm afraid, no.

45 But you accept the date?---Of the interview?

August - if I said July, I'm sorry, Mr Mileham?---I'm confused now, I'm sorry.

Could you repeat the question?

COMMISSIONER: Just restate your question, Ms Ellson. I'm confused.

5 MS ELLSON: Yes. Thank you, Commissioner.

Mr Mileham, do you recall that your first interview was on 16 July 2016?

COMMISSIONER: 16 July or August?

10

MS ELLSON: I'm sorry, it's my fault, Commissioner.

16 August 2016?---Excuse me for a moment. Could you please repeat the question?

15

Do you recall that your first interview was on 16 August 2016?---I don't recall it but I accept that date if that's the one we are saying now.

You did your best during that interview?---I would hope so.

20

You hoped to receive the Panel's support?---To be appointed CEO? That's why I did the interview.

And you hoped to receive the Lord Mayor's support?---I hoped to receive Council's support.

25

You hoped to receive the Lord Mayor's support?---Council's support.

I'm asking you about the Lord Mayor, Mr Mileham?---In an interview process, I wanted the employer's support.

30

The Lord Mayor was one of your employers?---No.

She's part of Council?---Council's the employer.

35

The Lord Mayor was part of the Interview Panel?---I would have sought the Panel's support.

The Lord Mayor was on the Panel?---I sought every member's support.

40

Mr Mileham, my question is, the Lord Mayor was on the Panel?---I assume she was, yes.

And you wanted the Lord Mayor's support?---I would like the Lord Mayor's support, along with the Panel.

45

The very next day to your interview, do you recall requesting - I withdraw that.

Do you accept or reject that the very next day after your first interview, you asked for the Administration to withdraw the Grand Central Hotel report from the agenda settlement meeting?---I don't recall requesting it to be withdrawn.

5 It wasn't a coincidence that that happened, was it, Mr Mileham?---I don't recall the events so I can't comment on whether it was a coincidence or otherwise.

You had the Administration defer the matter so you could get back the Lord Mayor's support, isn't that right?---Reject.

10

Because you thought you had lost it?---Reject.

You had the Administration defer the matter to please the Lord Mayor, isn't that right?---No, reject.

15

You recall that you have accepted that on 29 August 2016 you participated in your second interview? You gave a presentation, you've accepted that?---Could you repeat the date, please?

20 29 August 2016?---That was the second interview?

Yes?---I will accept that if that's the record.

25 And the same afternoon, you emailed Ms Battista and referred to concerns you had over the timing of the recent report into the Grand Central Hotel, coinciding with the CEO recruitment process?---I don't recall sending an email.

Do you accept that?---I didn't send an email.

30 Ms Battista sent an email referring to your concerns?---I thought you said - could you clarify the question because I heard you say that I had sent an email; was I incorrect?

35 COMMISSIONER: Ms Ellson, is there any reason why the email itself cannot be shown to Mr Mileham so that he can reflect properly on the question and his answer?

MS ELLSON: Not at all.

40 COMMISSIONER: Thank you.

MS ELLSON: Madam Associate, 27.1812, TRIM 19743.

COMMISSIONER: Thank you.

45

MS ELLSON: Up, Madam Associate, please?---That's dated 28 February 2018, from Annaliese Battista's private email address.

That's into the right section of the page, Madam Associate?---To Jemma Green's private email.

5 You can just stop, Mr Mileham, that's not what I'm taking you to?---Okay, sorry.

I'm taking you to Ms Battista to Mr Mileham, 29 August 2016. Do you recall giving evidence about this yesterday?---I recall giving evidence about that email, yes.

10

In particular, Madam Associate, page 27.1813. The next page, please, Madam Associate. Thank you. Do you see here:

I note your concerns over the timing of the most recent report.

15

COMMISSIONER: Counsel is directing you to the antepenultimate paragraph beginning, "I note your concerns"?---Thank you, Commissioner, I can see that. Yes, thank you. Yes.

20

MS ELLSON: Do you accept that on or about 29 August 2016 you expressed concerns to Ms Battista about the timing of the Grand Central Hotel's report coinciding with the CEO recruitment process?---I recall giving evidence yesterday that they were Annaliese Battista's words and I didn't recall.

25

Do you accept or reject that that occurred, that you expressed concerns to Ms Battista?---As I don't recall it, that would be a difficult question to answer categorically.

30

It wasn't a coincidence, Mr Mileham, that this email - sorry, it wasn't a coincidence that Ms Battista was reporting you having concerns the same day you were interviewed, was it?---I couldn't comment on whether it's a coincidence. You might want to ask Ms Battista, who wrote it, whether it was a coincidence.

35

Mr Mileham, I'm asking you about what happened with you?---I can't comment - -

40

Mr Mileham, my next question, on 29 August 2016, you still didn't feel as though you had the Lord Mayor's support, did you?---Which date? Pardon me, would you clarify the question, or repeat the question.

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

45

COMMISSIONER: Just leave it there for a moment, please, Madam Associate. Mr Mileham, I recall your evidence that you don't recall expressing concerns over the timing of the most recent report coinciding with the CEO recruitment process, I have that firmly in my mind, but what counsel is asking you about is this: if you had expressed such concerns, was that simply a coincidence that you expressed

such concerns so close to the timing of your second interview?---I would answer that it would be coincidental.

5 MS ELLSON: It's not a coincidence, is it, Mr Mileham? The document can be taken down, please, Madam Associate?---Could you clarify because I thought I'd just answered the question? Is that a new question in

[11.00 am]

10 You said it was not a coincidence, is that your evidence?---No, what I said is on the record.

Mr Mileham, as at 29 August 2016 you still didn't feel as though you had the Lord Mayor's support, isn't that right?---No.

15 You were worried that the Lord Mayor would not support your application if you didn't defer the Grand Central Hotel matter, isn't that right?---No.

That's what she wanted, was it?---I don't know what the Lord Mayor wanted.

20 As at 29 August 2016, you wanted to please the Lord Mayor?---No.

On 1 September 2016, your appointment as CEO was endorsed unanimously by Council, do you recall that?---If that's the record, then - I don't recall it but if that's
25 the record, I accept it.

As at 1 September 2016, your contract hadn't yet been signed?---That would appear to be correct.

30 On 13 September 2016, the Grand Central Hotel was deferred by the committee against officers' recommendations and you said nothing, isn't that right?---I don't recall.

35 By saying nothing, Mr Mileham, you demonstrated support for the Lord Mayor, is that right?---No.

On 21 September 2016, your contract was signed or executed, isn't that right?---I don't know. The record will show it.

40 You accept the record's correct?---I would hope so, if it's not showing a correction as the other document did.

Mr Mileham, do you recall giving evidence about an optional superannuation payment in the amount of \$15,500?---I recall giving evidence about the maths that
45 resulted in a figure of \$379,000 or thereabouts, yes.

Do you recall also that the total remuneration package offered to you was above

the recommendation in the officer's report, do you recall that?---Could you repeat the question, please?

5 Do you recall that the total remuneration package proffered to you was over and above the recommendation in the officer's report?---I don't recall the evidence I gave on that subject yesterday, no.

10 Do you recall that the total remuneration package offered by the officer was \$364,450?---In what - I don't recall that particular evidence, no.

Do you accept that?---I don't recall the evidence so I don't know really what you're talking about. I'm sorry, you will have to help me with the question to point me to the document you're talking about.

15 I can do that, Mr Mileham. I won't be a moment, Commissioner. Madam Associate, 9.0857. Do you see here an employment contract to which you are a party? Do you see it?---Yes.

20 Do you accept that it was made on 21 September 2016?---The contract was made and the period commenced on 3 October, so some two weeks later or so, yes.

Madam Associate, could you please turn to page 9.0869. Do you see there, "Total annual remuneration package: \$379,950"?---Yes.

25 Do you accept that was the total annual remuneration package offered to you?---I accept that that's the figure on that document, yes.

30 Do you recall giving evidence yesterday - sorry, evidence you gave yesterday, I asked you:

Before you signed the contract, did you have an understanding that you would be paid a total remuneration package of \$364,450?---That's my recollection.

35 Does that help you?---Yes, thank you.

40 The difference between \$364,450 and \$379,950 is \$15,500, do you accept that?---The figure of the employer contribution, non-statutory, yes, which is asterisked below, as is the double asterisk below, the additional \$2375 should I take the motor vehicle allowance, yes, I recall that.

Mr Mileham, my question was a simple one?---Okay.

45 Do you accept that the difference between \$364,450 and \$379,950 is \$15,500?---I will take your word for that because I'm not very good mental maths, but I would assume it's correct.

Mr Mileham, did the Lord Mayor offer you an optional superannuation payment to defer the Grand Central Hotel report?---No.

5 Did the Lord Mayor offer you \$15,500 to defer the Grand Central Hotel report?---No.

Do you accept that it looks that way?---No.

10 Did the Lord Mayor offer you a \$15,500 optional superannuation payment to thank you for your support?---The Lord Mayor made me no offer.

Do you accept that it looks that way?---No.

15 You wanted the Lord Mayor's support in - the document can be taken down, please, Madam Associate - September 2016, didn't you?---I wanted Council's support. The Lord Mayor's support wouldn't matter without Council's support.

You wanted everyone's support?---Correct.

20 The whole time you were CEO, the Lord Mayor's support was important to you, wasn't it?---It's important that I worked well with the Lord Mayor in the terms of the Act which requires liaison.

25 You needed the Lord Mayor's support in September 2016 because she had the majority in Council, wasn't that right?---No.

30 The whole time you were Acting CEO and when you became CEO, the Lord Mayor's support was important to you, wasn't it, Mr Mileham?---It was an important facet of being able to do the job of CEO for Council, as she is the leader in Council, as you quoted her being so.

And you became her strong CEO, didn't you, Mr Mileham?---I became Council - in my belief, I was Council's strong CEO.

35 And you became her next CEO, didn't you, Mr Mileham?---I became Council's CEO.

The next CEO after Mr Stevenson?---I replaced Mr Stevenson.

40 And you became the Lord Mayor's next CEO?---You would have to ask the Lord Mayor that. I became Council's CEO.

45 As at 1 November 2016, you were the CEO but you weren't permanently appointed, isn't that right? You were still on probation?---The probationary period was in force, yes.

And you wanted to keep the Lord Mayor's support through your probationary

period, didn't you?---No.

You wanted to keep Council's support through our probationary period, didn't you?---Yes.

5

The Lord Mayor's part of Council, isn't she, Mr Mileham?---That's self-evident.

Mr Mileham, throughout your tenure as Acting CEO and CEO, you were concerned about the security of your employment, isn't that right?---No.

10

Did you talk about it throughout your tenure, the security of your appointment?---With whom?

Anyone?---My wife.

15

Anyone in Council, anyone in the Administration?---About the security of my tenure?

M'mm?---Not that I recall.

20

You could have?---Not that I recall.

Did you talk about it often?---I don't recall talking about it so "often" would be ridiculous for me to say.

25

Mr Mileham, I'm going to change topics with you now. I'm wondering if you can assist the Inquiry to understand some amendments to the Code of Conduct that were made in June 2017. Specifically, I will ask you questions directed to the Code of Conduct. Can you tell me whether you remember the Code of Conduct being amended in June 2017 to insert provisions relating to bullying?---Could you repeat the question?

30

Do you remember the Code of Conduct being amended in June 2017 to insert provisions relating to bullying?---I don't remember the exact date but I do remember that Codes of Conduct were reviewed to bring them up to date.

35

I would like to understand more about the bullying provision, Mr Mileham. Do you have any insight into that?---Yes, I have some insight. As CEO, I was keen to reflect contemporary legislation and bullying per se had become cause célèbre amongst both the public and private sector. It was an emergent area of mental health and well-being for staff and I believed, as did my staff, that we needed to update our policies around the definition of and treatment of, and elimination of bullying.

40

Was there any specific event or series of events which led to you - I withdraw the question. Did you recommend the provisions be inserted? How did it happen that they were?---It was a consultative process but I believe I was providing significant

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5 leadership in that space, as I had myself some concerns around treatment of myself. One Councillor had said to me in his words, and I will paraphrase him, "I know you're ugly enough and big enough to look after yourself, but I'm appalled at the way Council speaks to you, and I apologise on their behalf." From that, I took that he meant that I was being bullied. I was quite - - -

10 Who was that, Mr Mileham?---That was Councillor Hasluck, a recent addition to Council. So that postdated that insertion so I thought I had been relatively prescient in putting it in. So - - -

[11.15 am]

15 Sorry, the comment Councillor Hasluck made to you postdated the Code of Conduct amendments?---Yes, but he had observed some behaviours that were ongoing.

I'm not asking you to tell me what Councillor Hasluck observed. You've told me what he said?---Yes.

20 And you've placed that in time?---Yes.

Can you tell me why, at June 2016, you had some concerns about yourself?

25 MS SARACENI: Excuse me, Commissioner, I think it's June 2017 rather than 16.

MS ELLSON: Sorry, it was?---Thank you, I'm confused again.

COMMISSIONER: Thank you, Ms Saraceni.

30 MS ELLSON: I will ask it again.

35 Mr Mileham, can you tell me why, around June 2017, you had some concerns about yourself?---June 2017. My notes will show that I had received some calls from some Councillors, that I would call bullying, that some of the emails that I received from Councillors - I think we saw one yesterday that said they "would be watching me", terms to the effect that, you know, I was under surveillance and there would be consequences. Could you repeat the date again?

40 June 2017?---I received one particular text message that I found intriguing in March, I think it was, 17 where a Councillor sent me a text message one Sunday saying, "It's a whole new world" and they were referencing political outcomes in an election which I took as threatening. So there was a series of things which I thought Councillors needed - and staff needed to be aware of what bullying was, so that they could then self-modify their behaviours, to begin with.

45 The text message you referred to, was that a text message from Mr Harley saying, "It's a whole new world"?---Yes.

And that's all?---Yes, the day after the State election.

Close to March 2017?---M'mm.

5

Or in March 2017?---Yes, I think so. Given the tone of his other emails, I took that as being interesting, intriguing.

10 Is it fair to say that by June 2017, your relationship with Councillor Harley was dissolving?---I don't know about fair to say. I think my relationship with several Councillors was different.

15 Two questions arise from that, Mr Mileham. Firstly, how so?---I had felt the need to spend a lot of time with some Councillors and less with others, hence the communication took up more of my time with some Councillors than others. I attempted at all times to be even-handed with all, regardless of the amount of time involved.

20 You mentioned that your relationship with some Councillors had become different, who were they?---I spent a lot of time in communications with Councillors Harley, Limnios and Green, more so than others.

25 Is it fair to say that by June 2017 your relationship with Councillors Harley, Limnios and Green had become a difficult one for you?---I wouldn't characterise it as difficult.

How would you characterise it?---Time consuming, needing diplomacy.

30 Councillors Harley, Limnios and Green were keen in their work for Council, is that right?---You would have to ask them.

35 Going back to the Code of Conduct being amended in June 2017, you mentioned that you wanted to update the code of conduct to bring it into line with other external factors. Was there any event internally that led to the introduction of the bullying provisions?---In mid 17, I can't recall specifics, albeit that the Directors had reported me varying matters which they felt were inappropriate behaviours across the board, so we felt that it was time to be clear what those behaviours were, because I think at times there was confusion what is bullying and what is just being asked to do a job. So it was clear that first we needed to define our terms and then deal with the matter appropriately under the legislations, plural, which existed, and the emergent thinking in bullying.

45 Mr Mileham, do you recall making some changes to the Workplace Grievance Policy in July 2017?---I don't recall specific dates or what the changes were, no.

Do you remember changes being made to the Workplace Grievance Policy parallel to you considering inserting the bullying provisions in the Code of Conduct?---I

can't remember the detail. I can clarify that we, at some time during that period, on or about that period, made the reporting processes more clear, as the staff had - staff surveys had indicated that the grievance procedures were not clear to them. So we clarified the grievance procedures, and how matters were to be escalated or dealt with should someone have a grievance.

Did you do that because of a specific event?---One of the - my recollection is one of the key triggers was the staff survey information, which indicated staff did not appear to have a complete understanding of how to do that, so we both updated and communicated the process. Subsequent surveys I think showed that staff now knew how to escalate matters but were still not convinced about how the matter would be treated.

Mr Mileham, do you have a memory of attending a meeting with some WorkSafe officers with Ms Pember and Ms Moyser and Mr Ridgwell on 14 July 2017?---I have a memory of a meeting, I can't recall the date and I'm not entirely sure of the substantive discussion, but there was a WorkSafe meeting some time around that time.

What's your best memory of the meeting, Mr Mileham?---That I was seeking WorkSafe's advice on our current policy settings and procedures.

Can you tell me why? Why WorkSafe?---Because I wished that our policies and procedures were, for want of a better term, audited, or at least viewed by them and I could receive a report on their efficacy or lack thereof.

Did you request the meeting? You did, didn't you?---I believe I did, yes.

Did you request the meeting because you wanted WorkSafe's guidance on preventing and managing unreasonable and inappropriate workplace behaviour from Elected Members towards employees?---That probably would have been part of it all but I didn't restrict - I don't think I restricted it purely to Elected Members. I was thinking organisational-wide.

What was happening in the City in July 2017 that made this all happen, Mr Mileham, the bullying provisions, the Workplace Grievance Policy amendments and a meeting with WorkSafe, what was happening?---There were several factors, and I can't recall all of them. I think I've mentioned media. There was, I guess, a media opinion apparent in the broader community that the workplace had issues. I wanted to address those concerns and create a better workplace, if that were in fact correct, and I think as one Director put it to me, we will put ourselves in the frog in the water being slowly warmed up to a point where we recognise that at some point it would boil. So I wanted to make - I wished to have a third party and a professional and knowledgeable third party and who better than WorkSafe to come in and advise us on what we should be looking at.

Is it correct to think that the politics in Council were getting in the way of Council

business at this time?---That was an emergent perception, and concern on my part, and the Directors' part. The Executive, I think, shared on view on that.

5 Was it correct to think that the Administration was dissolving around you at about the same time?---Administration, as in my Administration?

10 Yes - not you, the Executive Leadership Group and the officers?---No, I wouldn't say dissolving. I would say there was some healthy debate but we were aligned on the requirement to not tolerate bullying or inappropriate workplace behaviours.

Was the workload for the Administration becoming too much for many of them at around this time, June/July 2017?---I don't believe too much, I believe at all times the Administration tend to say there's too much work.

15 Was the workload from Elected Members becoming a burden for the Administration at around this time?---I can't recall specifics. I don't believe it was unmanageable workload but the workload was there and persistent and consistent.

20 At around June or July 2017, was it ramping up, do you think?

COMMISSIONER: Was what ramping up?

25 MS ELLSON: Sorry, the workload from the Elected Members?---I probably wouldn't categorise it as ramping up, as being somewhat ad hoc and therefore needing management and prioritisation.

You did something about that, didn't you, Mr Mileham?---Mm hmm.

30 And I will come to that in a bit. I just want to cover off on what I'm talking about with respect to WorkSafe. Do you recall a recommendation from WorkSafe for you, being Mr Ridgwell, or you and the City, Mr Ridgwell included, to identify a person to undertake a psychological WorkSafe Risk Assessment?---I don't recall that, no.

35 Do you know what happened as a result of your meeting with WorkSafe on 14 July 2017?---My sole recollection was that Mr Ridgwell advised me that our policies and procedures had been seen as somewhat robust and not, shall we say, dangerously deficient. That's the sole recollection I have at this point.

40 Mr Mileham, do you have any memory at all of what was discussed at the WorkSafe meeting on 14 July 2017 with respect to strategies the City was to introduce following on from the meeting?---No, I can't recall the strategies following on. The main thing for me, the predominant need that I had that I recall was to have an expert body and an administrative and a legislative body in the room to assist us with implementing best possible practices. That was in
45 alignment with our relaunch of the City Values and Culture.

Madam Associate, I would like to show the witness a document at 15.0660.

COMMISSIONER: Before we do that, would this be a convenient time for the morning break?

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MS ELLSON: Yes, thank you, Commissioner.

COMMISSIONER: Thank you. I will adjourn for 15 minutes.

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WITNESS WITHDREW

(Short adjournment)

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HEARING RECOMMENCED AT 11.48 AM

MR Martin Nicholas MILEHAM, recalled on former oath:

5 COMMISSIONER: Ms Ellson, before you resume, I see there are some new faces at the Bar table.

MS FORD: May it please the Inquiry, my name is Ford. I appear for Dr Green.

10 COMMISSIONER: Thank you.

MS FORD: May I seek leave to appear, sir? There was an application made in respect of my client for Monday but I'm appearing somewhat prematurely.

15 COMMISSIONER: I understand why too. I will just hear from Ms Ellson on that. Ms Ellson, is there any objection to that?

MS ELLSON: No, Commissioner.

20 COMMISSIONER: Very well. Leave is granted, Ms Ford.

MS FORD: Thank you, sir.

25 MR BARRIE: I appear on behalf of Ms McEvoy in place of my colleague, Ms Tomasini, who was here this morning.

COMMISSIONER: Thank you.

30 MR MARIOTTO: May it please, Commissioner, Mariotto, I'm replacing Mr Skinner from this morning.

COMMISSIONER: Yes, Mr Mariotto, thank you very much. Ms Ellson.

35 MS ELLSON: Commissioner.

Madam Associate, if you could bring up for me page 15.0660, TRIM 20369. Mr Mileham, do you see here a note recorded by Mr Ridgwell, the subject being, "A meeting with WorkSafe"?---Yes.

40 Dated 14 July 2017?---Yes.

And you are recorded as being in attendance, do you see that?---Yes.

45 Does that assist you to remember attending a WorkSafe meeting on 14 July 2017?---I'm afraid it doesn't assist my memory of that meeting but I see words here which I assume will be a correct record.

Under the heading, "Topics discussed" it says:

Martin was keen to ensure that the organisation was meeting its statutory obligations in ensuring a safe workplace for staff.

5

Is that right?---I expect that's a correct record, yes.

Can you tell me why, in July 2017, the safety of staff was of specific interest to you?---It is my - as a CEO, the peak obligation of the CEO is a health and well-being of his or her Administration. I had had reports from various staff of inappropriate behaviours. They appeared to be escalating. It appeared to me that despite my pitch to Council that we wanted to be the best place to work and the best place to be a Councillor and the best place to be a ratepayer, there was what I termed at that stage incipient dysfunction, whereupon the ratepayers, perhaps, were taking a bit of a back seat in deference to politics and that politics sometimes played out in some unacceptable behaviours between Council and staff. My Directors were reporting some of that and some of their managers, likewise. As I've said also, the survey showed that staff had some dissatisfactions in the area around behaviours and in fact, one of the staff survey items that came out very poorly during that year was behaviour of senior - behaviour of Council, in respect to treatment of staff. So I was keen to ensure that we would, first of all, conduct a formal audit of our systems to ensure that wasn't caused by lack of systems or a lack - or exacerbated by a lack of attention on my part, because that was my key obligation, and obviously I wanted to also make sure that we didn't just have people complaining when they were being asked to do work.

You've given me a lot of information there, Mr Mileham?---Mm hmm.

Madam Associate, I will ask for the document to be taken down while I speak further to Mr Mileham about its content and his answers. One of the first things you said after you indicated that as the CEO, safety was one of your peak obligations, was that inappropriate behaviours had been escalating. Can you tell me what those inappropriate behaviours were?---Communications in emails between staff and Council had, at times, been a bit fractious, verging on inappropriate, and that's the question, verging on. I engaged with the Department of Local Government, the Director-General, Ms Matthews, and the Deputy Director-General on a couple of occasions and had discussions around how we would address the ongoing situation at the City. As you are aware, the Lord Mayor was in the press very frequently, due to her matters. Some Council believed that the Lord Mayor should stand aside and those frictions were playing out in the Council Chambers and in the administration of the City, I believed. Sorry, you asked the question, could you repeat it for me so I don't go off tangent?

You firstly raised the fact that inappropriate behaviours were escalating?---M'mm.

You've mentioned emails. Was there any face-to-face behaviour that was inappropriate and of concern to you as a safety matter?---I had reports amongst -

both amongst staff and between Council and staff of inappropriate behaviours. They were not of a singular nature so what I had asked the Executive to do was to bring the information to the Executive table if they had witnessed these types of behaviours so that we could, as an Executive, consolidate any concerns and have them addressed. As I've said, one Director I think said to me that they found communication with Council somewhat - I think the word "sickening" was used, that every time they saw an email from a Councillor, they wondered what abuse was going to come with it.

10 Do you know who that was, Mr Mileham?---In one particular case I had a concern that Councillor Green seemed to have taken an intense dislike to one of the Directors, Erica Barrenger and wrote to me, and I can't recall the dates, but it was consistent over a period of time, basically saying to me that she should be terminated as she was not able to do the job and she said that she preferred to be a stay-at-home mum and therefore shouldn't be a Director. So that's exemplary of the type of communication I didn't think was appropriate. What I did do though to address these issues - - -

20 Sorry, Mr Mileham, before you move off topic?---Yes.

The expression from Councillor Green that you described, was that done in writing?---Yes.

25 I asked you about face-to-face behaviours that were inappropriate behaviours which were escalating; were there any?---I believe I had my own experience of some face-to-face behaviours and reports of others from the Exec. As I say, they were brought to the table to discuss and bring to the Manager, Governance's attention to assess them and to see whether in fact they were just someone being upset or whether in fact it was bullying or inappropriate behaviour.

30 What was your own experience, Mr Mileham?---Belligerence toward me from, say, Councillor Limnios where he wanted something done and would confront me and say things in the effect that, "Once upon a time it used to be yes, sir, no, sir, three bags full, sir; what's happened?" I tried to explain that in fact Council directed the Administration, not individual Councillors. Councillors had influence but no authority.

40 When did that incident occur?---I can't recall the exact date. It was during 2017. It would have been when he was deputy. In one particular meeting with the Minister for Local Government, Councillor Limnios said to the Minister, pointing to me, "You have to tell him, we tell him what to do, not the other way around."

45 When was that, Mr Mileham?---The record will show, it would be during 2017 in a meeting with Minister Templeman in which Mr Limnios told the Minister that, "Ms Scaffidi had to go, get her out of the building." So it appeared to me it was all becoming about the politics of Council, as opposed to administering the Council for the ratepayer benefit.

Do you know what month that meeting was, Mr Mileham?---It would be prior to October of 2017 when Deputy Lord Mayor Green became - sorry, Councillor Green became Deputy Lord Mayor. It would probably be in the mid period of 2017.

Did you do anything about that behaviour, Mr Mileham?---Yes, I did. I began, shall I say at home, by engaging executive training for my Executive and appointed - - -

I'm talking about the conduct of Councillor Limnios?---Okay. In that particular case I spoke to him one-on-one. I had one-on-one meetings with him and attempted to mediate, shall we say, to varying degrees of success, asking him to moderate his behaviours in that particular face-to-face.

You mentioned behaviours, plural. What other instances concerning Mr Limnios caused you to meet with him one-on-one to discuss his behaviours?---As part of my process of meeting with him, I believe the Lord Mayor was not present so the Deputy Lord Mayor was performing the duties of the Lord Mayor at the time

[12 noon]

I didn't ask you about the duties, Mr Mileham, I asked you about other incidences?---I was clarifying in that I met with him regularly. So in those meetings we raised and discussed the issues of behaviours and he was at pains to tell me that he was not happy with officers not doing what they were told by Councillors.

Can you tell me when Councillor Limnios suggested to you that he was not happy with officers not doing what they were told?---I can't recall the date of that. As I say, I believe it was during 2017, and the term used was, as I recall it, and I can't put a date on it - as I said, "It used to be yes, sir, no, sir, three bags full, sir", that was the comment which I explained to the Council it would be because, it would be inappropriate for an officer to do with a Councillor tells them to do necessarily.

Did what you describe occurring with Councillor Limnios occur at about the same time you were asking the Executive Leadership Group to bring their concerns to the table, as you described?---We did that during - I did that during 2017. As I've said, it would be roughly in that period, between, say, February of 17 and October of 17 in particular and that's why I asked in probably early 17 for the Directors, rather than to anecdotally tell me things in a meeting, if they had evidence, to bring it with them to those meetings, confer with me and Mark Ridgwell, Manager, Governance, and we would assess whether in fact there was a grievance here and begin to understand whether we had a problem or not. My perception was we had an escalating problem.

And that was something you did in 2017, some months after the WorkSafe

meeting, wasn't it, Mr Mileham?---About asking them to come with their - I can't recall the exact date. I do recall though asking for them, rather than to just anecdotally talk, to bring examples. I do recall Mr Ridgwell saying, that kind of put a parameter on it and the commentary became more focused.

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I will come back to that subject matter, Mr Mileham. You indicate that you made - when I first asked you about safety in July 2017 and the reason for you attending the WorkSafe meeting, you indicate that you made a pitch that the City should be the best place to work?---Mm hmm.

10

And the best for the ratepayers?---Mm hmm.

Can you tell me when and to whom you made that pitch?---It was in my interview process and prior to. In my job application, I think it is quoted in quotes, "The best place in the world" or words to that effect, and my mantra had been, "Best place to be a Councillor, best place to be an employee and best place to be a ratepayer" and that began in early 2017. It was difficult to maintain in the face of some of the behaviours.

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20 COMMISSIONER: Just for my benefit, which behaviours are you speaking about?---The apparent concerns that several Councillors wished to speak direct to staff about matters and appeared to want to direct them. Director Crosetta, for example, reported to me that Councillor Limnios instructed him to go and trim certain trees in the streets in East Perth and couldn't understand why that instruction was not sufficient for Mr Crosetta to change his work plan. To me, that's not functional management of the City, especially if I don't know about it or Council hasn't instructed it. That type of behaviour was not - it was becoming perhaps more prevalent. Another example is that we would bring a report coming to Council, would be abused of being canted in a particular direction to favour a Directorate, rather than being an honest report to Council and then would be debated in those terms. That said, not every matter that went to Council was denigrated by Council nor voted down, so why I call it incipient dysfunction, because the cracks were showing that reports from officers were not being trusted or the demonstration of Councillors was they did not trust the information in there and they suspected an agenda, which I found unacceptable.

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Thank you. Ms Ellson.

MS ELLSON: Mr Mileham, with respect to the incipient dysfunction that you describe, did you see anything to make you think that Councillors did not trust the Administration's reports?---I recall, and I don't know the dates again - apologies - I recall reports around the push for free parking in the City, which was not universally supported in Council, and the Administration, Ms Moore, the Director of the area, brought a report through me to Council portraying the costs of that initiative and those costs were heavily criticised as being deliberately overstated to defeat the motion. So the inference is that the Administration had lied to protect a revenue position which I don't believe is a team working well together, for

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whatever reason.

5 Can you tell me, with specifics, what you heard on the occasion that you describe when Ms Moore presented her report about free parking to Council?---Not with a great deal of precision. My recollection of the meeting is that Council or certain Councillors were not convinced by the numbers and I believe we were told to go back and recalculate but that said, I don't have a very specific recollection, other than that the tone was, this is being deliberately inflated so that the proposal will be defeated.

10 I need to narrow your evidence, Mr Mileham, to what you saw and heard?---Mm hmm.

15 Is there anything else you heard which gave you the view that Council thought officers were running agendas in Council meetings?---Specifics I can't really at this juncture think of particular ones, other than the one I've just mentioned, other than to say that several reports that were debated in acrimonious terms and that on occasion, criticism of the Executive was made in public meetings and the Code of Conduct requires that doesn't happen. So I apologise, I don't have specifics, but 20 there were reports that would have gone up and which I recall some rather critical view of the Administration in opening meeting which I felt was not appropriate.

As the leader of the Administration, Mr Mileham, did you see that what was happening in Council to the officers had an effect on them?---Yes, I did. I 25 believed it did.

Can you tell me what you saw?---The surveys showed that there was a morale issue. The staff surveys showed that there was a morale issue.

30 Did you see that for yourself?---Yes, I saw the Directors doing very long hours and reporting to me that they felt that their long hours and commitment to work were, to some degree, pointless, which was disappointing.

35 Did you do anything about trying to manage that?---Yes. I spoke to the Lord Mayor and Councillors about the matters, particularly the Lord Mayor about becoming more cohesive as Councillors. I asked that they consider perhaps these matters could be dealt with, rather than in open Council where, for want of a better word, political point scoring were made, it could be done as a team within briefing sessions. What I did do to ensure the efficiency, or at least to assist in the 40 efficiency and cohesion of the Executive, because there were issues there - there's no doubt that the Executive at time debated with each other - I brought in Marple Bridge, Doug Aberle to executive train the group and to help us establish a strategic direction for the organisation. I brought in Bartlett Workplace to work with the Executive and the Councillors with the mantra that feedback is a gift, that 45 the idea being that Council and Executive together could give honest feedback and work together to hear at least what we had in common and take that off the table and then resolve disputes in that process. That was an attempt to resolve some of

this friction.

With respect to your conversation you describe with the Lord Mayor about becoming more cohesive as Councillors?---Mm hmm.

5

Can you tell me when you did that?---From time to time - I can't tell you dates, and it's outside the timeframe, I recall one specific event but it's post the timeframe that you're talking about.

10 Mr Mileham, I need you to try to concentrate on the middle of 2017 so we don't slide off track?---Mm hmm.

The political point scoring that you described in the context of your conversation to the Lord Mayor, did you see that occurring in Council meetings, and also
15 committee meetings in 2017?---Yes. You could probably assist me with that in that in 2017 a motion of no confidence was moved by Council and the Deputy Lord Mayor Limnios and albeit it has no effect, in my view that's not a useful motion.

20 Did you see any other examples of what you say was political point scoring in Council or committee meetings in 2017?---Yes, because in particular, say, for example, around the Historic Heart project that was brought to briefings and Councillors debated that, I thought, in a non-teamwork approach. It was more like, "We want this, we don't want that, we will fight about it" as opposed to try to
25 find a way for consensus, and I saw that splitting on lines rather than perhaps the merits.

COMMISSIONER: When you say split along lines, what do you mean?---Well, it appeared that in, say for example, the matter of Historic Heart, I believe that
30 Councillors Green, Harley, Limnios believed that the money should be given to that group, whereas Councillors Scaffidi, Yong, Chen, Adamos and Davidson believed not and that that debate caused an issue for the Administration in that we were between a rock and a hard place trying to deal with a key stakeholder who wanted to create a not for profit to revitalise the East End of the City, was seeking
35 a grant from the City. There was debate around that, you know, probably missed the point about what it was about. I could understand the arguments of both sides but in my view it would have been best if Council could have resolved those differences and given a clear instruction to the Administration, rather than involving us, the Administration, in what became a bit of a "turf war". A comment
40 made was, "Well, if Mr Fini wants to do this, he should go for Council." Another comment was, "If Mr Fini's doing it, why don't we give him the money." That didn't get resolved sufficiently at Council for the Administration to take clear action, in my view

45 [12.15 pm]

MS ELLSON: Mr Mileham, in an email before the Inquiry, 19.3293, Madam

Associate.

ASSOCIATE: Could I have that number again, please?

5 MS ELLSON: Before that happens, Madam Associate, perhaps I will ask Mr Mileham a question about it before putting it up. Do you recall describing there being defraction on Council which had the potential to impact on individual well-being, as early as March 2017?---I don't recall saying so, no.

10 Did you have concerns as early as March 2017 that there was defraction on Council?---I recall that it began early in 17 - when I say began, I recall that throughout 2017 my perception was of an escalation in tensions at Council that were flowing into the Administration due to adverse media reactions to - amongst other things, due to debate in Council. For example, Councillors being asked to
15 sign stat decs, et cetera, in Council that though were telling the truth, which was seen as an unusual thing. The West Australian then - media gags were in debate. The West Australian ran a front page with the City of Perth depicted as surrounded by razor wire with the Lord Mayor depicted at Kim Jong-un.

20 How did those things impact to the Administration, Mr Mileham?---I was told by many staff they didn't tell people who they worked for when they went to barbeques.

Did your observations about defraction in Council have an impact upon your
25 decisions to offer people jobs?---Yes.

Madam Associate, if I could ask the witness, please, to be shown 19.3293. Mr Mileham, at the very top there can you identify an email from yourself to Ms Pember, 27 March 2017, 3.37 pm?---Mm hmm.

30 I ask you to read - I think it's the fifth paragraph. I will read it out aloud:

My decision not to offer the role in the first instance to the preferred applicant at the initial advertising was reached after I had witnessed a
35 *growing defraction at Council with a potential to impact onto the Administrative, which defraction I believe is now manifest in fracture and which, in my view, has the potential to damage individual well-being. I further believe that to re-advertise the position now would not be prudent, given the media profile of the City and Council*
40 *(manifestly negative at this point) and the stated objective of the current State Government to "remove Council should the Act permit".*

COMMISSIONER: Could we just enlarge that, please, Madam Associate, so we are just focusing on that paragraph, please?---Yes, could you repeat, please, the
45 paragraph you were referring to?

MS ELLSON: It's the fifth one, Mr Mileham, which starts as "My decision not to

offer", do you see that?---Yes.

Does that assist you to remember what concerns you had about Council's conduct, or the conduct of Councillors in March 2017?---Well, it refers to that process, it doesn't aid with my memory but my writing doesn't - I don't disagree with what I've written.

When you say "defraction I believe is now manifest in fracture", what do you mean?---My meaning was that debate on the evidence may not be possible - sorry, I've got a - - -

Sorry, your debate about - - -?---Sorry, I'll clarify. Frank and fearless advice to Council and then debate in committee and Council is what you would expect. I was concerned that other than that would occur, in other words, and that would put staff at risk. I.e., if we were to appoint staff into that environment, their performance may not be the sole arbiter of how they proceed through the Council process, shall we say.

Did you notice in March 2017 a clear division between Councillors? The email can be taken down, please, Commissioner?---In March and June 2017 it became apparent that there would be a tendency for certain Councillors to vote on one side or another, although there was still - business was still being done, i.e., the definition of dysfunction was that reports by the Administration to Council are routinely turned away for reasons other than good reasons. That didn't happen all the time but it was clear that on certain matters there would be some voting on the one side and some voting on the other and they tended to revolve around philosophies rather than evidence, in my view, and maybe personalities.

Who was on what side of the fractured Council, Mr Mileham?---My view of it was that the Deputy Lord Mayor Limnios had stated at some point during 2017 that he no longer believed the Lord Mayor should be in the role and should stand aside until the matters that she was dealing with were resolved, that - - -

COMMISSIONER: Which matters were they?---The matters that the Lord Mayor was facing in relation to the SAT action and the subsequent Supreme Court action in relation to gifts and travel.

Thank you?---Albeit that that's the Lord Mayor's issue, not a Council issue. So - I'm being rather rambling. The question was, who was on which side. I perceived it to be that Councillors Davidson, Adamos, Chen, Scaffidi would tend to vote in one side, shall we say, in contentious matters; Harley, Green, Limnios the other side and pardon me, I've forgotten one Councillor at that time.

MS ELLSON: McEvoy?---Councillor McEvoy, yes. So it was five/four on some matters, it was unanimous on others. I think on occasion Councillor Chen may have, to use a term that's not term in appropriate in Local Government, crossed the floor but that said, that was apparent, I think.

Going back to the email that we were looking at, Mr Mileham, for a moment, the role that you were describing there, and the decision-making that you were thinking about, did that concern a decision whether or not to appoint someone to the role of Director of Economic Development and Activation in August 2016?---I believe so, yes.

Is it fair to think then, Mr Mileham, that when you met with the WorkSafe officers, your considerations of the fractures in Council and the way that that had been affecting the Administration and particularly the Executive Leadership Group, was in your mind in going to see them for advice?---Yes, it's fair to say.

Madam Associate, if you could bring up page 15.0660 again, TRIM 20369.

COMMISSIONER: Thank you.

MS ELLSON: Just for the sake of completeness, Mr Mileham, I took you to the first paragraph. If you would just read the second paragraph to yourself?---Yes.

I will move you to the next page, please, Madam Associate, 15.0661:

The conduct of several Elected Members caused concern to the CEO and his Executive Leadership Team and discussion was had on strategies to ensure a safe workplace is maintained.

Do you see that?---Yes.

Can you tell me who were the Elected Members whose conduct has caused concern to you and the ELG?---The ELG had their specific concerns and I may be corrected by them, but I perceived them to include the Lord Mayor, Councillor Limnios, Councillor Green. I had some concerns at times, albeit limited, with Councillor McEvoy's addressing to me but that was not a strong one. So to recap, Lord Mayor, probably Green, Limnios Harley were probably the ones that the Executive, amongst them, would have put on the list, I suppose.

What conduct concerning the Lord Mayor was of concern to you in the context of ensuring a safe workplace?---To me, my main concern with the Lord Mayor, albeit - my main concern with the Lord Mayor was in communications, that I needed to ensure that she communicated solely with me and that I with her in the day to day liaison to do business at the City. That said, that was not always possible, given the media was being handled by another Director and sometimes media issues would evolve on a weekend and therefore direct contact would be required. That said, I wanted to ensure that the Lord Mayor understood that there should be a communication protocol that was through me. I think that staff - -

Sorry, Mr Mileham, I will get to what happened as a result of all of these things?---Okay.

I would just like to try and identify what happened before we get to how it was dealt with. Can you tell me whether there was any other conduct by the Lord Mayor that caused you concern in the context of ensuring a safe workplace?---At this time?

Yes?---That was my main concern, that staff were not acting or feeling they were being directed by a communication they might receive.

So officers and the ELG were receiving communications directly from the Lord Mayor, is that right?---I believe on occasion, and that was not prohibited. I think Annaliese Battista appeared to have a particular concern about communications she had received from the Lord Mayor. She was the main complainant about the Lord Mayor's behaviour. I addressed - you can ask me how I addressed that

[12.30 pm]

Other than email communication with staff, Mr Mileham, what was it about the conduct of the Lord Mayor that caused you concern with respect to workplace safety?---That was my main concern, that and interactions with staff to ensure that communications were not misconstrued and put stresses on people that shouldn't be there by being spoken to by the Lord Mayor.

COMMISSIONER: What counsel's inviting you to do, Mr Mileham, is to put some flesh on the bones?---Okay.

So you've identified there was a problem and I think counsel is seeking some examples from you?---Okay.

Am I right, Ms Ellson?

MS ELLSON: Yes?---Could you repeat the question, please?

I will rephrase, Mr Mileham. Can you provide some examples of the Lord Mayor's conduct which caused you concern in the context of workplace safety?---I wasn't witness to it but the reports from the Director of Economic Development led me to be concerned that there was direct communication, verging on instruction, which would not be appropriate, and that could put some stresses on the Director, not wanting of course to disappoint the Lord Mayor, but also wanting to go by my direction as the CEO. So that's a particular one. The specifics were, I think, around things such as her - which activations might occur, for example, how an activation might occur in the City. I think we had an art installation, for example, and I don't know if the Lord Mayor spoke to Annaliese Battista directly but she said to me she was very disappointed in it and that kind of communication going direct to the Director is not going to help the Director feel safe, shall we say, if it's done in a manner that implies a criticism. That's the example I can sort of put, straight off the top of my head.

You mentioned Councillor Harley?---Mm hmm.

5 Can you provide me with some examples of Councillor Harley's conduct which caused you concern in the context of workplace safety?---My personal belief was that he - - -

10 An example of what you saw or heard to be specific, Mr Mileham?---The debate about my probation, for example, when I was excluded from the room, of course, to debate whether I should be appointed some six months post my contract appointment.

You declared an interest then, didn't you?---I left the room.

15 You weren't excluded, you - - -?---I left the room, yes, and it went for a very long time. Councillor Harley was very negative about the process and he - - -

20 Mr Mileham, you weren't in the room so I'm not understanding what you saw or heard?---He told me later that he was negative about the process, not me, but he also sent me a lot of emails wanting to know about the Lord Mayor's business and also telling me that it was my job to tell the Lord Mayor what she should do about her matter, i.e., stand down, that I had an obligation to tell her what to do.

25 Which business and which matter, Mr Mileham?---The matter I mentioned before, before the SAT and then subsequently Supreme Court. Councillor Harley virtually instructed me on a few occasions that I should be telling her to stand down and I felt that he felt that if I was not against the Lord Mayor, then I was not for him, sort of thing. So there were a few emails along that line which will be on the record.

30 How does that connect to workplace safety, Mr Mileham?---I felt threatened by that. I felt that he would do - he would work toward making my tenure difficult and understanding that was because he did not agree with my work with the Lord Mayor. One particular example I can give - - -

35 In time and place, if you can?---Okay, I can. The record will show that the Independent Member of the Audit Risk Committee during 2017, and I can't give you the exact date, resigned his position after he was berated verbally by Councillor Harley and Councillor Green in a meeting and he told me later that he stood down and would not tolerate that form of bullying behaviour. So we were
40 left without an Independent Member of the audit and risk and the reason why they berated this - - -

45 Mr Mileham, I didn't ask you about that. I've asked you to place this incident in time?---During 2017, it will be on the record showing when the Independent Member of audit and risk stepped down and the new member was appointed some time during 2017, I can't do that.

You used the word "berated", Mr Mileham?---Yes.

5 Were you berated or was someone else berated?---I was, in the meeting and it was put to me and to the Independent Member that the Lord Mayor's Chairmanship of the Audit and Risk Committee was untenable and Mr Harley's comment in forceful terms to the Independent Member was, "What are you doing about it", and his comment was, "Well, I don't agree with you" and he and Councillor Green forcefully disagreed, after which the Independent Member came to me and said he would not seek to be reappointed because he didn't want - he would not tolerate that form of address, and he could not understand how I'd tolerated how they had spoken to me in the meeting as well.

15 Did you consider that to be bullying towards you?---Yes, and to the member, and to Mr Ridgwell who was also in the meeting.

You mentioned your probation, Mr Mileham?---Mm hmm.

20 Councillors, plural, were concerned about the process that the CEO Performance Review Committee had adopted, weren't they?---That's right.

25 So the discussions you describe among Councillors were in the context of some Councillors, including Councillor Harley, raising concerns about a process, not about a person?---My perception, after speaking to Councillors Green and Harley, who told me that they had debated the matter on process, which I found interesting given it was a closed meeting and I was not supposed to be privy to the debate, was done in an attempt to change my opinion. My opinion was, rightly or wrongly, that they did it to deliberately attack me because of their demeanour toward me. As evidence for that I had - - -

30 Sorry, that's not demeanour in the meeting because you weren't present, is that right?---I wasn't present but subsequent to the meeting, when they spoke to me, they told me that, "It's not about you, it's about the process." I did not believe that. As I've said, I saw their conduct toward me as being, because I was working with the Lord Mayor, i.e. as a CEO working with a Lord Mayor who refused to step down.

40 Did you see that Councillor Harley's and Councillor Green's conduct toward you in that way as somewhat political?---I perceived it more from Councillor Harley than Councillor Green. As I've said, Councillor Green subsequently said to me, "I know we have had our differences."

COMMISSIONER: Mr Mileham, when you were told it was not about you, it was about the process?---Mm hmm.

45 Why did you think that could not have been correct?---I didn't believe it, Commissioner. Why?

Why, yes?---Because I'd witnessed their conduct and I did not believe that that was the reason. Their conduct in other matters had been to criticise my behaviours and also to link or believe that I was acting, favouring the Lord Mayor against them and therefore I had understood that the combination of Councillors Limnios, Green
5 and Harley had formed the view that I needed to go and that was what I saw in dealing with those people, particularly Councillor Limnios who, as I've said, was aggressive toward me at times saying things like, "I can't understand why you don't just do what you're told" and saying to the Minister, "You've got to tell him what to do", sort of thing, in a derogatory sense. So those folks voted, I'm told, on
10 process and yet their actions didn't tell me that was the case because when I then moved to make the Performance Review Committee the whole of Council, their demeanour did not change.

Thank you.

15 MS ELLSON: Mr Mileham, did you have any input into what process was used to assess your performance by the CEO Performance Review Committee?---A little.

20 Did you have any insight into what that process was?---I had some insight, yes. I tried to remain as far arm's length from it as was appropriate.

It was the fact that three members of the Council were tasked with assessing your performance and not including other members of Council that was the difficulty
25 for Councillors Harley and Green, wasn't it?---My perception was that was part of it.

Not your perception. Did you know that?---No, I didn't.

30 If that were the case, Mr Mileham, that's a reasonable question to raise, wouldn't you think?---What question?

A question as to why perhaps other Councillors weren't involved in assessing your performance?---I'd question that it be done during the process. I would have
35 thought that Council would resolve an agreed process to do so. To have a CEO Performance Review Committee, it would be unreasonable to debate that while you're assessing the CEO.

40 But you had no involvement in that and you're assuming that's what happened?---Pardon me?

You had no involvement in determining what process was to be followed and so you're assuming that's what happened, are you?---No. What happened was they
45 voted against my probation and wanted it extended six months.

I'm talking about the process and why Council members might have raised concerns about it?---The statement they made to me was, it was about the process

and yet they wanted my probation extended by six months, so I couldn't see how the process would require my probation to be extended six months. It wasn't logical to me.

5 Mr Mileham, I would ask for you to consider Councillor Green's response particularly. She congratulated you in moving forward, didn't she?---I do not recall.

And she - - -

10

MS SARACENI: Excuse me, Commissioner. Perhaps my friend could just fix a timeframe for these conversations.

COMMISSIONER: That would be helpful, Ms Ellson.

15

MS ELLSON: Thank you, Commissioner, yes.

[12.45 pm]

20

In March 2017 Councillor Green congratulated you on moving forward, didn't she?---I don't recall.

And she wanted to explain to you how she voted and talk to you about her views in the Chamber, didn't she?---I don't recall - well - - -

25

Did she explain - - -?---That's incorrect. I don't recall when, I do recall that both Councillors and Green and Harley had said to me it wasn't about me, it was about the process.

30

And Councillor Green did that in writing to you in March 2017, didn't she?---I don't recall.

Madam Associate, if we could move to 9.1087. We will come back to the document that's on the screen. If you could move down, Madam Associate, so we can see the middle of the page.

35

COMMISSIONER: Can we just identify the document first?

MS ELLSON: Yes.

40

Do you see here, Mr Mileham, an email from you to Councillor Green, 15 March 2017?---Yes.

"Councillor, noted, thanks", do you see that?---Yes.

45

An email from Councillor Green to yourself?---Yes.

15 March 2017?---Yes:

:

5 *Congratulations, Martin. I would like to provide you with some background for how I voted last night as I was prevented from speaking fully about my views and justifications in the Chamber.*

Do you see that?---Yes.

10

:

15 *What I advocated last night was that the committee undertake the work prescribed in your employment contract as part of your probation period and that they do that over the next few weeks and bring it back to Council in an out of session Council meeting to review.*

Do you see that?---Yes.

20 She goes on to describe "wildly differing views on whether you had met KPIs"?---Yes.

And she indicates she had moved a motion to revert the matter back to the committee, which wasn't carried?---Mm hmm.

25

Then she goes on to say that:

30 *Another Elected Member proposed an amendment to the motion.*

30

?---Mm hmm.

And that was not carried, and then Councillor Green voted against the substantive motion due to, in her view "an inadequate process", do you see that?---Yes.

35

So she's not telling you that had anything to do with you?---I've already said that, yes.

40 Councillor Green goes on to say that because of the work done by the committee, she had not been able to form a fulsome view of the work done against the KPIs?---M'mm.

And she raises concern that, "The committee did not solicit feedback from your direct reports or Councillors outside the committee"?---Mm hmm.

45

Over the page, 9.1088, Councillor Green says she "only received information on the motion on Friday night and learned of the process on Thursday", and she felt

"railroaded by the timeframe and lack of information and thwarted discussion", do you see that?---Mm hmm.

She goes on to say that:

5

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

Do you see that?---Mm hmm.

10

These are reasonable remarks from a Councillor involved in a process, aren't they?---Given that it was in-camera and she's writing to the person who was excluded from the room, I find it odd but I guess they are a reasonable justification for her behaviours.

15

COMMISSIONER: Whether they are reasonable or not, it's a fairly detailed articulation of why she thought the process was flawed?---Yes.

20

MS ELLSON: And there's nothing in here that would make you feel unsafe in the workplace, is there, Mr Mileham?---In there? No.

Madam Associate, the document can be removed. Other the example we are going through with respect to your probation and Councillor Green?---Mm hmm.

25

Are there any other examples you can provide of the ELG concerns about the conduct of Councillor Green in the context of workplace safety?---Are you talking about a date period now again?

30

You've gone to WorkSafe in July 2017?---Yes.

So conduct leading up to that on the part of Councillor Green which caused concern in the context of workplace safety?---At that juncture, no.

35

Anything else about the conduct of Councillor Harley?---I can't recall any specific examples of any Councillor conduct at that point.

40

You also raised Councillor Limnios as a person whose conduct had caused you concern in the context of a safe workplace in around or leading up to July 2017?---Mm hmm.

Can you give me some examples of that?---Councillor Limnios and Councillor Green in an email referred to me as "snowflake", "Hashtag snowflake" which I felt was a rather nasty term to use toward me.

45

Sorry, Councillor Limnios and who?---Green. They were exchanging - and that was prior to that date, that was when I was acting, in fact some time prior to that. So that email and that other email don't sort of gel with me. So when someone

5 makes fun of the CEO behind their back, I would expect that what they write to the
CEO and what they write behind their back are different. I'm just trying the
remember, Councillor Limnios spoke to me at some length when I was about to be
considered for the CEO role and I made a note of it in my notes, saying words to
the effect, you know, how supportive he was of my appointment but, the
requirement would be that, you know, he would vote for me provided that things
were done in the right way. It was quite an aggressive phone call. The Councillor
made no bones about the fact that he felt that Councillors should be able to have
access to the staff and as I say, do what they are asked to do by Councillors. So
10 those sorts of communications were there.

You mentioned as well Councillor McEvoy with respect to you. Can you give me
an example of how Councillor McEvoy's conduct had caused you concern with
respect to workplace safety?---Yes. I did say it was an isolated event. When we
15 had a fatality in early 2017 of one of our staff, and I was attending to it, Councillor
McEvoy wrote me a rather terse email, more concerned about the timing of my
advice to Council than any other matter and was quite critical and she had been
critical on other occasions, and the Lord Mayor had been, on matters such as the
Organisational Compliance and Capability Assessment. So I would get emails or
20 texts that were quite, sort of like - I wouldn't call them team emails, they were
probably on the rude rather than the dangerous, but I found ongoing rudeness to be
an impact on workplace safety. Lack of respect, I think, hence why we brought
respect into the values of the City.

25 COMMISSIONER: Can you tell me a little more about this terse email, as you
describe it?---I recall that in early 2017, a gentleman that worked for us in the
waste area was killed in the street in the early morning. I heard of it early
morning. I wasn't - I was dealing with it and was unable to inform Councillors
until about 8, 9 am and Councillor McEvoy was very upset that I hadn't got to
30 them first, so that the media hadn't got them first and as I recall, I was quite - I was
hurt by the email because I felt it was looking at the wrong subject. To
characterise, that's not an unusual situation. In early 2017, safety in the workplace
is driven by attitudes a lot of the time. When there was a double fatality in the
Skyworks, the communication I had from Councillor Harley was, "What are we
35 doing with the food because the dinner is being cancelled" and I think Councillor
Green wanted to know if the dinner was cancelled. They are reasonable requests, I
grant you, but the tenor of those discussions when I'm dealing with a double
fatality and had to cancel Sky works for the first time, to me tells me that people's
priorities need a little bit of work.
40

MS ELLSON: Is it fair to say that your personality clashed with that of
Councillor Harley and Councillor Green?---You would have to ask them that.

45 I'm asking you, did you feel that?---Personality clash? No. In fact, at times we
could agree.

Did you consider that leading up to your attendance at the workplace meeting in

July 2017, that what you had on your hands was a Council that wasn't respecting, or Councillors that weren't respecting their role?---I think there was varying views of what their roles were and some saw them as - they saw them differently. Not respecting their role? Hard to say.

5

By contacting the Administration directly?---Yes.

And getting involved in the day to day operations of Council?---Yes.

10 Councillors weren't respectful of their role of Councillors, were they?---They didn't understand it fully.

Is that what you considered when you saw WorkSafe?---Part of the situation, yes.

15 And was a failure to understand the role of Councillors a safety issue for you?---In terms of mental health and well-being for the staff in that they were under pressure, if you like, to - torn between wanting to do something for Council but not wanting, of course, to do an instruction of a Councillor, singular. What that brings on is stresses on a senior manager that's trying to navigate their day to day business and deliver, according to KPIs that I might have set and yet being drawn to do
20 other work at the instruction or even the suggestion of a Councillor. It may not be an instruction but, "Why haven't you done this, why haven't you don't this, I don't agree with that." A Councillor writing to me and saying, "This person's incompetent", or "they should be terminated" and then writing to the Director in a
25 way that makes them feel gaslighted for want of a better term, and I think that's what I was concerned about.

In July 2017?---Around, yes.

30 Did it escalate beyond that, Mr Mileham?---I believe the Executive felt that it had got to a point late in 2017 where we needed joint action as Executive. As I said, I'd been talking to the Department. I didn't want to go down the path of Standards Panel complaints, although I did engage McLeods and Jackson McDonald, Renee Harding and Matt Read and Neil Douglas, to assess the things that were going on.
35 Matt Read characterised one of Councillor Green's emails to me as "a nasty piece of work with an explicit threat." So I didn't want to respond to that but Matt insisted and drafted a response for me. I took several days to consider that but there was some fairly nasty emails going on.

40 When did you respond and to whom did you send the response?---In respect to that email?

Yes?---Back to Councillor Green.

45 When?---It would have been post June/July 17, but some time in that period when I engaged Matt Read - sorry, when the City engaged Jackson McDonald to look at the issues. I did not wish to use my own - the comment has been made, did I have

a personality issue. To ensure that didn't happen, I used legal advice to assess the communications and that one in particular was seen by the lawyers as particularly serious and was dealt with. I was provided the draft, I toned it down so it was more polite, and sent it.

5

COMMISSIONER: Mr Mileham, in and about the middle of 2017, when you were having these interactions with some of the Councillors, did you at any time contemplate whether those interactions might have been prompted by a concern on the part of the Councillors that they were not being kept informed of matters relevant to the performance of their duties?---Could you repeat the question, so I can understand it in full, sir?

Yes, of course. Did you at any time during that period contemplate that the interactions that you and others were having with Councillors might have been prompted by a concern by Councillors that they were not being kept informed of matters relevant to the performance of their duties?---That may have been their perception.

Did you - - -?---Occur to me?

20

Yes, did it occur to you?---Not in terms that I believed they weren't, but in terms of, that I believed that we could enhance communications and I attempted to do so throughout 2017.

So it did occur to you?---It occurred to me that it may be their view. I didn't believe they were not being given the information they needed, but it occurred to me that it may be their view and then I moved to institute systems to improve the communication.

Thank you. Thank you very much, Mr Mileham. Would this be an appropriate time?

MS ELLSON: Yes, Commissioner.

COMMISSIONER: Thank you. I will adjourn until 2.15.

WITNESS WITHDREW

(Luncheon Adjournment)

40

45

HEARING RECOMMENCED AT 2.23 PM

MR Martin Nicholas MILEHAM, recalled on former oath:

5 COMMISSIONER: Mr Yeldon, you've returned?

MR YELDON: Yes, there's been a change in the batting order, Commissioner.
Will this present a problem?

10 COMMISSIONER: Not to me.

MR YELDON: Thank you, Commissioner.

COMMISSIONER: Ms Ellson, are you ready?

15

MS ELLSON: I am, Commissioner, thank you.

COMMISSIONER: Thank you.

20 MS ELLSON: Mr Mileham, could you have been mistaken when you spoken
about Councillors Harley and Green raising the subject of the Council dinner after
the two fatalities at the Sky Show?---No.

25 Mr Mileham, the Inquiry has been unable to uncover any communications from
either Councillor Harley or Green or yourself with respect to the dinner at the Sky
Show?---I'll clarify, it was a telephone call.

Who rang you and when?---This Sky Show was Australia Day 2017.

30 2017?---I received calls as I was on my way to the control centre, I believe from
Councillor Green and Councillor Harley on or around that time, wanting to know
if - I think Councillor Green asked me on the telephone was the dinner still going.
That was the only part of the call I remember. There was no discussion about the
actual event, and Councillor Harley spoke to me about wanting to know if - what
35 would happen to the food that was being therefore not used, by telephone. I
believe Ms Battista may have had a similar conversation, but I don't know. So
that's what I recall, two telephone calls on my mobile telephone, the City's mobile
telephone.

40 Did you discuss it with the Lord Mayor?---The Lord Mayor, I rang the Lord Mayor
immediately after the event and informed her that - - -

45 After what event?---After the two fatalities, they were not yet confirmed. I'd
received reports that there had been an air crash into the river, that there were
unconfirmed reports that one or perhaps two persons had perished and that I had
been asked by the Director of the Sky Show, which was Ms Battista, to advise on
what to do and I was on my way to the control centre when I rang her.

Did you speak to her about the dinner as well?---I don't recall speaking about the dinner. I advised her that I understood there had been a crash, I understood that there had been a fatality, or perhaps two, and I was contemplating enacting the shut-down procedure, to advise her of that and that we would probably be communicating further.

And you did by email?---I can't recall.

Madam Associate, could we please be shown 15.1095. Hard copies, please, Madam Associate, yes. TRIM 23756, Commissioner.

COMMISSIONER: Thank you.

MS ELLSON: Mr Mileham, do you see there an email from yourself to Ms Scaffidi, copying in Mr Fernando, the Catering Manager, and Ms Battista?---Yes.

And Councillors?---Yes.

Lord Mayor and Councillors?---Yes.

You say here:

Lord Mayor, I also note and confirm our discussion that the Council dinner planned for this evening will not proceed. We are continuing to follow the Ops procedure in closing the entire Skyworks event down as per. Please refer any media enquiries -

To a particular person?---Yes.

And that includes another email from you to the Lord Mayor and Councillors with the advice that there had been two fatalities, do you see that?---Yes.

Does this help you recall your discussions with the Lord Mayor about the dinner planned?---No, my recollection is that I advised her we were going to proceed as per the shutdown procedure. Clearly, we discussed the dinner and I advised that that would not proceed.

Thank you, Madam Associate, the document can be returned. Mr Mileham, could you be mistaken in attributing the "snowflake" to Councillor Harley and Councillor Green?---If I could be shown the email record, it's in an email between Councillor Limnios and Councillor Green, and I believe I am not mistaken.

Could you be mistaken? You don't believe you could?---No. "Hashtag snowflake" was the actual term, "LOL" perhaps after that.

Madam Associate, if you could provide, please, the witness with a bundle of documents 15.1087 to 1094, TRIM 23754.

COMMISSIONER: Thank you

[2.30 pm]

MS ELLSON: Mr Mileham, I would like you firstly to turn to page 15.1093?---Mm hmm.

Do you see there an email from someone - - -?---Sorry, 1093?

Yes?---Thank you.

27 August 2016, 7.34 am?---Mm hmm.

You see an email there not from a Councillor?---Mm hmm.

It appears to be directed to Councillor Limnios, doesn't it?---Yes.

At the second last paragraph, there are the words, "Anyway"?---Second last paragraph, "Anyway", yes.

:

Anyway, the conversation got heated and I called him a snowflake.

?---That's correct.

So it wasn't a Councillor that called you a snowflake?---Yes, it was.

This person is attributing the remark to themselves?---Yes.

And they are not a Councillor?---They are not a Councillor and they made the remark, as did Councillor Limnios and Councillor Green.

Mr Mileham, turning, please, to page 1092?---Mm hmm.

You mentioned that Councillor Limnios and Councillor Green did it in such a way as to refer to "hashtag snowflake"?---Yes, I believe so. I can't recall exactly but the word "snowflake" was there.

You'd be mistaken about the use of the term "hashtag snowflake", wouldn't you?---Perusing this document, it is not - - -

I'm asking you to look at 15.1092. There's the use of a hashtag?---Would you

repeat the question? 10?

92?---92, thank you.

- 5 There's the use of a hashtag in the context, "Slip hashtag number", no reference here to "hashtag snowflake"?---That's not the communication to which I referred in which "hashtag snowflake" was used.

- 10 Mr Mileham, the Inquiry's been unable to locate such a communication or such communications. Could you be mistaken?---No. If you wish, I can point you to it.

- Do you have it?---I do not, but the City does on its record. It should have. It is in a file where an investigation was conducted into the first comment made by the person you referred to who initially referred to me as "snowflake". The
15 subsequent communication between Limnios and Green made fun of that remark and repeated the remark behind - without copying me in. I became privy to the email exchange because I had conducted an investigation into the matter due to the fact that we had a disappointed ratepayer and Councillor Limnios had wanted me to look into the matter.

- 20 Mr Mileham, could you be wrong in attributing the remark about Director Barrenger as a stay-at-home mum to Councillor Green?

- 25 COMMISSIONER: Sorry, I missed the last part of that question, there was a cough.

MS ELLSON: The documents can be returned.

- 30 Mr Mileham, could you be mistaken about attributing the comments about Director Barrenger as being a stay-at-home mum to Councillor Green?---I would need - my memory is not perfect of that particular exchange. It may have been in an email which I shared with our legal advisors in order to answer it, and it may have been a verbal discussion, but I certainly do recall that term being used to describe Ms Barrenger.

- 35 It wasn't Councillor Green, she was reporting a comment from an anonymous person, wasn't she?---Potentially. I recall her using the term. I found that inappropriate to repeat, even if it was from an anonymous third person.

- 40 I didn't ask you if you found it inappropriate, Mr Mileham. I was asking - - -?---I noted that, thank you.

- - - about the attribution?---I stand corrected.

- 45 Just to tie this off, Mr Mileham, Madam Associate, if the document at 15.1097 could be provided. While that's happening, Mr Mileham, could you be mistaken that you received a phone call from Mr Harley about the Skyworks dinner?---I

don't believe so.

5 The phone records have been examined by the Inquiry, Mr Mileham, and there's no call from Mr Harley at around the time you suggest; do you accept that?---If that's the case, that may be the case.

10 The document that you have in front of you there, Mr Mileham, I ask you to consider this as an email from yourself to Mr Ridgwell, 5 January 2018, 1.52 pm?---Mm hmm.

15 Indicating to Mr Ridgwell that you propose to send a response to the Deputy Lord Mayor's email and in the second paragraph you refer to a report that "a anonymous person or persons told you", referring to Councillor Green, that "the Director finds her job "pushy" and would rather be a stay-at-home mum", amongst other opinion, do you see that?---Sorry, could you point me to the paragraph?

The paragraph starts with the words, "You suggest"?---Second paragraph?

20 Yes - it would be the third paragraph if you count, "Mark draft"?---Yes.

Do you accept then that the comments about Ms Barrenger, who would rather than a stay-at-home mum were not Councillor Green's?---I asked Councillor Green, as I recall whose they were and I understood from her that she saw that as a reason for criticism.

25 Mr Mileham, that wasn't an answer to my question?---Okay. The answer was, they were repeated by an anonymous third party - they were the words of an anonymous third party repeated by the Deputy Lord Mayor about a senior Director, which I found difficult to understand.

30 I didn't ask you about your opinion about them, Mr Mileham?---I noted that. Thank you, I stand corrected yet again.

35 Madam Associate, the document can be returned, please. Mr Mileham, the comments about you being under surveillance by Councillor Harley were overstated, weren't they, Mr Mileham?---I don't believe so. He told me he'd be watching me.

40 He didn't tell you he'd be watching you, did he, Mr Mileham?---"I will be watching this subject" perhaps.

Yes, and that's not the same thing as having you under surveillance, is it?---I agree, that's not exactly the same, no.

45 Just to tie this off, Mr Mileham, if a page could be brought up on the screen, please, Madam Associate, 27.1082, TRIM 19689. This is a email we have looked at, 13 September 2016 from Councillor Harley at 11.34 pm in the middle of the

page, do you see that?---Mm hmm.

5 Madam Associate, if you could turn the page - I'm sorry, just before you do that, this is an email concerning a committee meeting where Mr Harley was talking to you or raised concerns about you not saying anything at a committee meeting on 13 September, do you see that?---Yes.

27.1083, please, Madam Associate. Mr Harley says:

10 *I expect this item to be back in front of Council as soon as possible. I will be watching it closely.*

Doesn't he?---Yes.

15 There's no reference to you there, is there?---He does say prior to that, "You held your tongue and it concerns me." I don't believe the communication is consistent with section 5(4) of the Act which requires the respectful treatment.

20 COMMISSIONER: Madam Associate, would you just go back to 27.1082 for me, please. Just pause for a moment, please, Ms Ellson.

MS ELLSON: Yes.

25 COMMISSIONER: Thank you. 1083 now, please, Madam Associate. Thank you.

MS ELLSON: Mr Mileham, the Councillor had raised concerns about your silence, hadn't he?---Yes.

30 But he wasn't indicating that he would have you under surveillance, was he?---I think he was.

35 There's nothing wrong with a Councillor raising the concerns that Mr Harley did with you about that meeting, is there?---I found it inappropriate to be raised from his private email address in what I took to be a disrespectful and threatening tone.

40 You took it that way?---It's in threatening tones from his private email address, I believe it's an inappropriate communication to the CEO of the City of Perth from a Councillor who is not the Lord Mayor, nor any representative of Council. There are appropriate channels for that work, hence why I wrote to him a formal letter and requested him to clarify his concerns.

45 COMMISSIONER: Mr Mileham, apart from the fact that it was from his private email address, why else do you say it was in threatening tones?---If we could go back, Commissioner.

1082?---Yes, please.

Yes, of course. Madam Associate?---"I'm not sure why you held your tongue" and prior to that the Councillor has said that, "What I saw tonight were three Councillors who are scared of retribution.

5

Sorry, where's that?---Paragraph 3. The inference to me, whether I'm right or wrong and I'm being asked for my opinion of this email, is that correct?

I understand that, yes?---My inference - - -

10

What I'm trying to do is understand why you hold the view it was in threatening tones?---Thank you. The inference I took from this, that I was akin to the three Councillors scared of retribution and the inference is that I held my tongue because I was also scared of retribution of the "Scaffidis" and to me, I found that to be, at the minimum, disrespectful and at the maximum, an attempt to sway my opinion with a veiled threat.

15

What did you perceive to be the veiled threat?---That he may, given the fact that this was from a private email address and I became aware later and certainly was aware at the time that there was discussions going on behind the scenes that there would be perhaps advice given to others that I was behaving as the Lord Mayor's proxy and I found that I did not like the tone of that letter that implied that.

20

Thank you?---To clarify, Commissioner, if I may?

25

Yes, please?---I followed that by asking Mr Ridgwell whether indeed the view that I held that it was a serious matter - - -

I don't need to hear Mr Ridgwell's view, thank you.

30

MS ELLSON: Mr Mileham, going back to your WorkSafe meeting in July 2017, Madam Associate, if you could bring up the document we left off at 15.0661. We have been through the conduct of the several Elected Members which had caused you concerns with respect to safety in the workplace. You see here, "WorkSafe advises to ensure that an assessment is made on the hazards to employees", do you see that?---Yes.

35

Going down the page, Mr Mileham, do you see "some strategies suggested to reduce or manage behaviours to ensure a safe workplace is included but not limited to pairing up in personal meetings"?---Mm hmm.

40

And that had already been implemented?---Mm hmm.

You had developed a system whereby - sorry, don't "m'mm", you have to say yes?---Yes.

45

You'd developed a system whereby you met with Elected Members one-on-one at

their choice, is that right?---Yes.

And centralised communications was something that you were developing with respect to the CEO Inbox which you put into place a little bit later?---Yes

5

[2.45 pm]

It says here:

10

Undertake psychological WorkSafe Risk Assessment.

Do you see that?---Yes.

15

Do you consider that connects to the WorkSafe advice "to ensure an assessment is made on the hazard to employees"?---Yes, that would appear to be the notes Mr Ridgwell's taken.

20

Is that your recollection about the recommendations WorkSafe were making in July 2017?---I don't specifically recall those recommendations.

Do you accept that's what they were?---I accept these are Mark's notes of the meeting and the action resulting was to identify WorkSafe Risk Assessment.

25

In July 2017, Mr Mileham, did you understand WorkSafe had recommended to you to undertake a psychological WorkSafe Risk Assessment?---I didn't understand it as an order, no, not from WorkSafe, but as a recommendation of something to consider.

30

The actions, Mr Mileham, in Mr Ridgwell's notes, do you see:

Identify a person to undertake psychological WorkSafe Risk Assessment.

35

?---Mm hmm.

Do you know whether Mr Ridgwell followed up on that?---I don't know what follow up he did on that.

40

Mr Ridgwell has provided evidence to the Inquiry that he followed that up with the City's Employee Assistance Program's people?---Mm hmm.

45

Do you have a memory of that being done?---I have a memory of us enhancing the EAP processes, yes. We introduced information to the organisation, the EAP process existed but we enhanced the information sharing and the processes for engaging the EAP.

Mr Mileham, was a psychological WorkSafe Risk Assessment conducted?---Could

you repeat the question, please?

Was a psychological WorkSafe Risk Assessment conducted?---WorkSafe didn't conduct a program, I don't believe.

5

Did you seek the services of someone else to do it?---We, as I said, employed additional EAP procedures. Latterly we adopted a, and I was no longer present when the program commenced, I believe, the safety officer engaged with several providers to look at programs and we were engaged in programs of workplace well-being, mental well-being, including I believe, one with the Red Cross.

10

My question was, Mr Mileham, did the City engage a psychological WorkSafe Risk Assessment service?---By that name, I don't believe so.

15

Can you tell me why not?

MS SARACENI: Commissioner, I object to this because - - -

COMMISSIONER: Should it be heard in the absence of the witness?

20

MS SARACENI: Potentially, Commissioner.

COMMISSIONER: Mr Mileham, it's no reflection on you but I'm going to ask you to be escorted from the hearing room, thank you.

25

WITNESS WITHDREW.

COMMISSIONER: Yes, Ms Saraceni.

30

MS SARACENI: Commissioner, it appears to me that there could be a risk of misunderstanding. My friend has referred to WorkSafe, the regulator under the Occupational Safety and Health Act, with a "W" and then work safe here. They are not the same so whether - it's not clear to me whether my client's answering in relation to WorkSafe the regulator or safe work, if I could put it that way, safe work practices, and reading this, as the witness has said, there's not a direction or an improvement notice or anything by WorkSafe, the regulator to do this. It's a recommendation and I'm not clear whether my friend is asking whether there are external services or whether it could be done internally by the internal health and safety staff at the City. So perhaps if there could be some clarity so the witness can have a better opportunity at answering the question.

35

40

COMMISSIONER: Ms Saraceni, it seems to me that your objection can be dealt with if the witness is directed back to bullet point 3 on page 15.0661 and asked if that assessment took place, would you agree?

45

MS SARACENI: Yes, Commissioner.

COMMISSIONER: Ms Ellson, can you deal with it in that way?

MS ELLSON: Yes, I can.

5 COMMISSIONER: Thank you. Madam Associate, would you please bring Mr Mileham back into the hearing room. Mr Mileham, please resume your seat in the witness box, thank you.

MR Martin Nicholas MILEHAM, recalled on former oath:

10

COMMISSIONER: Thank you, Mr Mileham. In your absence, your counsel's objection was dealt with. Ms Ellson.

15 MS ELLSON: Mr Mileham, looking at bullet point 3 was a psychological WorkSafe Risk Assessment undertake by the City after July 2017?---I believe we did an assessment of the psychological risks to staff during that period.

Who is "we"?---The HR department. We changed HR department leaders three times through the process, so there may have been some handover timing.
20 However, we upscaled our work in, as I say, the psychological risk assessment, brought that into risk management processes.

What do you mean?---We started to include - - -

25 You brought - sorry, go on?---We started to include - I would put it that we segued from focusing on physical well-being to mental well-being and we conducted surveys that included questions around well-being, but we also looked to our processes to assess them for problems, much as we had with the communications processes and other things. It was a bespoke risk manager within the Governance
30 section that looked after these things, under Mark Ridgwell.

The document can be taken down, please, Madam Associate. Is it fair to say, Mr Mileham, that you also had some further regard to the communication issues - is it fair to say that you developed some communications protocols after the
35 WorkSafe meeting?---Yes.

You mentioned Mr Read before?---Yes.

40 Did he provide or did a law firm provide advice to you in November 2017 with respect to confirming or emphasising the roles of Councillors within the City?---I believe at around that time. To the best of my recollection, it was Mr Douglas of McLeods that provided the basis of a report to Council, and the basic parameters around that.

45 Can you tell me why you obtained legal advice concerning the roles of Councillors in the City?---It was my perception that it was not well understood that the CEO set the communications protocols. It was my belief that some in Council believed

it was their prerogative to set communications protocols. So I wished to have a clear legal basis on which to - within the Act, within which to put a Communications Protocol into operation.

5 Who were the some in Council?---I would believe there was probably - I don't believe Councillor Limnios believed that it was appropriate or inappropriate to speak directly to staff without my knowledge or permission. I believe that may have been the case for others. Perhaps he was the strongest advocate. I believe Councillor Green objected to the centralised communications email process. I
10 believe Councillor Harley disagreed with that too and wished to speak directly to people. I think the comment was something along the lines of, "We don't want a black box, we want a person to speak to that knows the subject", so to speak. I think all Councillors probably at some time had spoken to or communicated with a member of staff. What I was endeavouring to do was to standardise the process. If
15 I may put some context, a question might be asked by - even a question might be asked by an Elected Member of a staff member and an answer given. What I was endeavouring to do was that that question and that answer would be known by all of Council to benefit information sharing, much like a tender process.

20 I will talk to you more about how that effort was received, Mr Mileham. Firstly, I would like to go back. You didn't immediately implement any communications protocols after you received the advice in November 2017, did you? You had some further discussions with Mr Ridgwell and Deputy Lord Mayor Green?---I had established a system prior to that. I believe the CEO Inbox existed prior to
25 that point. I also believe that the, and I can't put a date on it - in fact, if I could have access to my notebook, there are several examples in there, if that would be possible.

30 Mr Mileham, I'm not talking to you about examples, I'm talking to you about a chronology. You seem to be conflating the advice with your Communications Protocol. What I will do is separate out the timeframe out for you?---Okay.

So we have established that there was advice provided to you in November 2017. Madam Associate, could you please put up 15.0869. Do you recall, Mr Mileham,
35 having a meeting Deputy Lord Mayor Green and Mr Ridgwell on 5 December 2017?---No.

Do you see here a file note made by Mr Ridgwell at 10 am on 5 December 2017?---Yes.

40 TRIM 20422. Please read through the page, Mr Mileham, to yourself?---Yes.

Turn the page, please, Madam Associate. Read that to yourself, Mr Mileham?---Yes.

45 Mr Mileham, do you recall discussing Policies and Communications Protocols with Deputy Lord Mayor Green on 5 December 2017?---Don't recall the meeting

[3.00 pm]

Do you accept that this note is an accurate record of the meeting?---It may well be.

The policies referred to in paragraph 1, 15.0869, do they refer to CP 10.4, Elected Members administrative support, do you know?---Sorry, which reference?

:

Councillor Limnios showed the attached policies to the agenda and stated that they were limiting Elected Members and this was a deliberate attempt to constrict Council.

Do you see that?---Yes.

Do you recall whether or not there was some move in the Administration to amend Council Policy 10.4, the Administrative Support Policy?---I don't recall. I see a reference to Cecilia who was the Councillor Support Officer.

Mr Mileham, was there some disagreement amongst Councillors when you attempted to introduce a streamlined communications protocol, using you as the point of contact?---Using me as the point of contact?

As the CEO Inbox?---It was not me, no. That's an incorrect rendition of what the system was.

Was there disagreement amongst Councillors when you implemented the CEO Inbox?---I believe so.

Can you tell me what the basis of that disagreement was? Madam Associate, that document can be taken down for now?---My recollection is Councillor Limnios did not appreciate the swiftness with which it was introduced, that Councillor Green, as I said, did not like the black box nature of it, as I think she referred to it.

I think you attributed that comment to Mr Harley earlier?---I think Ms Green said it.

As well as Mr Harley, do you say?---Possibly, but I cannot be absolutely sure. That comment was used by one or the other, or both. So to go back to your question, what was your original question that I was answering?

What was the disagreement or the basis of the disagreement between Councillors when you attempted to implement the CEO Inbox?---In a nutshell, my perception was that some in Council did not wish to go through what had been referred to by some as a generic email address. There were concerns about the time it would take for a question or a query to be answered and an action to be taken. That was

the concern, the predominant concern.

Deputy Lord Mayor Green became involved in discussions with respect to improving the system, didn't she?---I don't recall.

5

The note that we have just seen, 15.0870, Madam Associate, if you could put that back up, 20422.

COMMISSIONER: Thank you.

10

MS ELLSON: The Deputy Lord Mayor, in the middle paragraph, Mr Mileham:

15

Had advised her priorities were to establish a positive relationship with State Government, an effective relationship between Elected Members and the Administration, and driving reform."

?---Yes.

:

20

In reference to driving reform, the Deputy Lord Mayor had been frustrated with her stalled initiatives in Council and was seeking to drive the changes which is her role.

25 Do you see that?---Yes.

Do you believe that in December 2017, Deputy Lord Mayor Green was attempting to help you centralise the communications?---I don't recall that and I don't see that in that paragraph. My recollection is that Deputy Lord Mayor Green did not like the CEO Inbox.

30

Madam Associate, the document can be taken down, please. Several days after that meeting, Mr Mileham, did you circulate a memorandum introducing the CEO Inbox to Elected Members?---I don't recall the dates when that was established. I think it was prior to a leave that I took.

35

Madam Associate, if you could please bring up 15.0371, 18782.

COMMISSIONER: Thank you.

40

MS ELLSON: Do you see here a memorandum from yourself, Mr Mileham, as Chief Executive Officer dated 11 December 2017?---Yes.

Communication with Elected Members?---Yes.

45

:

I wish to take this opportunity to inform and announce a number of new initiatives that we aim to introduce in early 2018. I also wish to reconfirm communication protocols between Elected Members and the Administration.

5

Can you tell me why you sent this email in December 2017, or this memo - I withdraw the question. Did you distribute this memorandum to Elected Members in December 2017, Mr Mileham?---I can't recall. I'm assuming it made it out on that date.

10

Was that your intention?---I don't recall my intention but if I wrote that, the intention would have been to send it to all Elected Members.

15

Did you write it?---I may have had assistance with it. I would assume so, that I would have vetted it, whether I wrote it in toto I cannot recall. In fact, it's unlikely that I would have inserted the graphics, so I would have had assistance with it. Is that page 1? There must be more, I imagine.

20

Mr Mileham, in December 2017, did you intend to announce a number of new initiatives in early 2018?---I intend - my recollection is I intended to continue to enhance the communications processes.

25

In order to do that, did you distribute a memorandum to Elected Members?---I can't recall. You're showing me this memorandum, I'm assuming it was issued.

Do you accept that it's your memorandum directed to Elected Members?---I can accept that.

30

Have a look at page 1, Mr Mileham?---Mm hmm.

"Roles of Council, Councillor, Lord Mayor and CEO"?---Yes.

There's a table setting out the roles?---Yes.

35

It appears to be taken from the Local Government Act?---Yes.

Madam Associate, if you turn the page to 15.0372. You see there a table setting out the roles of Council, Councillor, Lord Mayor and CEO?---Yes.

40

It appears to continue the table on the previous page. Mr Mileham, can you tell me whether you needed to remind Councillors of their roles to this extent in December 2017?---I believe I needed to.

45

Why did you, Mr Mileham? What was happening ?---The trajectory was a rather lengthy one. While Director of Planning I introduced a centralised communications process and if you will bear with me, it will inform the answer. Then, during my early role as CEO, I brought in a centralised CEO Inbox what is a

managed communication process. This was the next phase in making it more user friendly and I now see the term, "Council hub" which was intended to be used on Elected Members' mobile devices to improve the ease of use of that centralised communications process so that we might manage the comms, obtain metrics and disseminate information completely and transparently amongst Council. That's it in a nutshell, the reason being that I wished to decrease the complexity that was created by nine Councillors potentially contacting 700 staff which could give rise to some completely unmanageable communication matrices.

10 In fact, it's not the role of a Councillor to contact staff to get involved in the day to day operations, is it?---That's right - well, to contact them perhaps but then to continue in say communication would be debatable.

15 How did you attempt to draw that line between, contact is okay but not to continue that?---Colloquially, I advised our staff that if they were in the elevator with an Elected Member and they discussed who beat the West Coast or the Dockers on a Saturday, that was okay but if then they began to discuss why the corner of such-and-such street and such-and-such street had a problem, that would be then for them to say, "Well, Councillor, send a note to the centralised comms and we will deal with it."

20 So is it your view that social contact with staff was all right but not business contact?---I believe it would be impossible to completely limit that kind of contact, yes.

25 That's what you were trying to do?---I was trying not to limit social contact, no, but to allow occasional contact because Councillors and staff often met in the elevator or the lobby or what have you, to allow that but under certain clear guidelines. As I said, the weather, the football might be okay but technical matters should go through the appropriate processes.

30 Is it because you were having trouble with the volumes of technical matters being raised with the staff that you implemented these protocols?---Yes, problems managing it, problems in the quantum, yes. Programming of work is imperative to complete work, would become difficult if there were several ways that a staff member could be instructed to do work or requested to do work or perceived they had to do work.

40 So another reason for implementing centralised protocols in this way was to reinforce with everyone, not just the Councillors, their reporting obligations in terms of the organisational structure, is that right?---Sorry, could you repeat that? I didn't quite hear it.

45 Yes. Another reason for implementing the centralised Communications Protocols was to reinforce with everyone, not just the staff, the reporting lines within the organisation?---Correct, the fundamental one being, and that's the reason for taking legal advice, that it is the CEO that sets those procedures. It is not for Council

necessarily to set them, certainly to be consulted. It wouldn't be the job of the CEO to just tell, consultation is important but it is the CEO's role to set those protocols.

5 Did the staff welcome that change, Mr Mileham?---I believe almost universally.

Did the Councillors?---No, not to my recollection.

10 Just to cover off, Mr Mileham, at page 15.0374, you see here your memo includes information to the Elected Members regarding the CEO Inbox "being a central point of contact for City operational queries"?---Yes.

And you're trying to "ensure that Elected Members may communicate appropriately with the Administration via the CEO"?---Mm hmm.

15

Madam Associate, if you could turn to page 15.0375. You indicate, "When not to use the Chief Executive inbox and you indicate that's when someone has a complaint"?---Yes.

20 "Or when matters commit the Administration to utilise significant resources or time or financial expense"?---Yes.

15.0376, please, Madam Associate. You indicate here, Mr Mileham, that "Elected Member briefings are underway", is that right?---Yes.

25

They are held monthly?---Yes.

And a new initiative Elected Member forums, was to be introduced?---Yes.

30 And that was to be Chaired by the Lord Mayor, was it?---Elected Member briefings, pardon me if I just read it for a moment. Chair's probably too strong a word to talk about Elected Member briefings. They were informal discussion meetings. However, conduct of that is based on protocols of recognising, you don't need to speak through the Chair as you may in a formal meeting but there needs to be at least some level of moderation of the meeting and someone would be in the Chair, probably the Lord Mayor or a designated Councillor

35

[3.15 pm]

40 Was it proposed that you would be the only person from the Administration present at these forums?---No, I don't believe so.

MS SARACENI: Excuse me, Commissioner. I just seek some clarification. I heard the previous question from my friend referring actually to Elected Member forums which is item number 6, but then I heard the witness answering in relation to number 5 and now my friend is again about forums. Perhaps it could be clarified which one is being discussed, number 6 on this email or number 5.

45

COMMISSIONER: Ms Ellson, do you wish to respond?

MS ELLSON: I can be clear, Commissioner.

COMMISSIONER: Thank you.

MS ELLSON: Mr Mileham, I'm asking you about Elected Members forums?---Thank you.

Not the briefings?---I will read it for a moment, if you don't mind. The forum I believe was intended to be a more restricted table, yes.

For what purpose?---The feedback from the EMs to enable relatively free-ranging discussion that isn't decision-making in a round table format.

What was the purpose of having round table discussions with the Elected Members and implementing these things as a new initiative in 2018?---It followed on, to some degree, from the contemporary guidelines around communicating in Council, but also an attempt, on my part, if you like, to reach out and offer the Elected Members as many appropriately managed fora as possible that we could discuss matters.

Was it intended for the forums to include you as the only representative of the Administration?---I can't recall whether that was the intent. Certainly, I would be an attendee, as a minimum.

Point 7, Mr Mileham, refers to a buddy program. Let me know when you've finished reading the paragraph?---Yes.

Can you tell me why you implemented a buddy program in 2018?---It was my - I had - as part of the Council of Capital City Lord Mayors, I had visited Sydney, Melbourne Councils with our Lord Mayor and discussed their processes. Melbourne was often held up as an exemplar in the space. Melbourne has a system of committees that are not named by Planning or whatever, they are just called Melbourne number 1, 2, et cetera. The Lord Mayor there in Melbourne then designates a Councillor to have a lead in certain areas. That lead may well be a Councillor that does lack expertise in, say, planning matters, so a member of staff will assist that Chair to address planning matters in a more robust and speedy manner. So the intention here was, as it said in the example, if the Director of Planning works alongside the Chair who's a Councillor in planning matters, they will be able to well-informed when debating planning matters and can meet before the meeting so that we are not spending Councillor time, because this is a part-time job, in understanding basic principles of planning. We also enhanced how we presented reports in those committees, for example, bringing in 3D modelling for the Planning Committee. As opposed to, once upon a time, sticking drawings on a wall and expecting Councillors with no training to understand what

they were seeing, we brought in a 3D computer model that enabled us to fly around the Development Application building to see how it worked in context, and then for the Planning Director to advise on architectural and planning matters. So the whole point was about improving technical competence of the committees.

5

Was one of the other purposes to reduce the number of enquiries made by committee members to staff, to Administrative staff?---It was intended to streamline the workload and to centralise the communications process so there was no misunderstanding and everyone was equally - could be equally informed as far as is feasible.

10

The document can be taken down, Madam Associate. Mr Mileham, were your new initiatives, the CEO Inbox - - -?---I beg your pardon, I didn't hear that properly.

15

Were your new initiatives, the CEO Inbox, the forums and the buddy programs, well received by Councillors?---The CEO Inbox in its first iteration was not well received by all - by some but not all. This latter program intended to add to and enhance that - can you remind me of the date that this was issued? 11 December, was it not?

20

Yes?---2017 - didn't have much of a chance to be assessed because Council was suspended in February, I believe.

25

So you didn't have much time for the forums and the buddy system to be assessed?---Not really, no, unfortunately.

Mr Mileham, had, for you, in December 2017, your workplace become unsafe in your opinion?---It was becoming so, in my view, for me personally. If I could refer to my notebook, I believe I could point to the actual dates that that became apparent but I don't have that, unfortunately.

30

Mr Mileham, to help you place matters in time, I can refer you to an email at 15.0193. If we start at 15.0194, do you see here - I've skipped from the page which said it but on the previous page it says, "From: Jemma Green, to: Martin Mileham, Monday, 11 December 2017. Safe workplace at the City"?---Mm.

35

Do you see there the words:

40

Hi Martin, having consulted with the Department I'm advised that the CEO is the reporting officer regarding incidents concerning an unsafe workplace.

Had you raised with Councillor Green safety of the City as a workplace before December 2017?---I believe that may be, and I cannot recall perfectly - that email may have been subsequent to a meeting that the Deputy Lord Mayor and myself and the entire Executive had with the Deputy Lord Mayor where concerns were

45

raised.

Did Councillor Green raise with you the possibility that she herself had felt unsafe?---Yes.

5

Was that reported to you in a formal way?---No, I don't believe I would call it formal. I took a note, I recall, of a disturbing discussion I had with Councillor Green about her fear of Councillor Limnios. I think she used the words that she feared "he would bring his heavies onto her", or words to that. I may be not quite correct. He also, I think she told me, and if I could refer to my notes it may or may not be in the note, that he said words to the effect that, "If you thought Scaffidi was bad, you haven't seen nothing yet", or words to that effect.

10

COMMISSIONER: Sorry, who was that attributed to?---I beg your pardon?

15

Who was that attributed to?---Councillor Green informed me verbally that she felt unsafe.

The comment you just made, who was that attributed to?---The comment?

20

Yes?---Councillor Limnios.

By whom?---Councillor Green.

25

Thank you.

MS ELLSON: Did you talk to Councillor Green about your safety about this time as well?---I don't recall doing so. I recall being quite concerned about the comment and considering what needed to be done about it.

30

Just to complete the evidence relating to the document, Mr Mileham, 15.0193, do you see in the middle here, an email from yourself to Deputy Lord Mayor?---Mm hmm.

35

11 December 2017, 1.58 pm?---Mm hmm.

:

40

I've instigated a series of actions, including inviting WorkSafe to formally advise myself and HR."

?---Yes.

45

And you're indicating that "a formal report to WorkSafe is a possibility but not a preferred option on time"?---Yes.

Is that because you were waiting for the effect of your communication protocols to

be fulfilled or progressed?---Yes. The intention was to try to continually improve the systems and reduce the issues, rather than just ad hoc reporting to the various authorities. I thought it would be more efficient - more effective and safe to do it that way.

5

Going back to the email, Mr Mileham. You also note that Councillor Green of advised you of "feeling unsafe due to the conduct of an Elected Member and that she had reported the matter", do you see that?---That would appear to be what I understood from that discussion, yes.

10

So this places that in time on around 11 December 2017?---Yes.

And above that, Councillor Green acknowledges your email. She wanted to know the results of investigations you had conducted, is that right?---It would appear to me.

15

Did you provide those to her?---As I recall, the Deputy Lord Mayor undertook her own - if you let me read this - I don't recall what followed that. I do recall, however, that the Deputy Lord Mayor had mentioned to the Executive taking it up with Council, but instead had, as she has said there "been seeking advice on the problem and potential solutions" and I wasn't entirely sure with whom and I can't recall what actions followed that

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[3.30 pm]

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The document can be taken down, thank you, Madam Associate. Mr Mileham, did you receive some further advice from Jackson McDonald on the subject matter of the roles of the Elected Members?---I may have done, I can't recall it. As I've said, I engaged McLeods and Jackson McDonald to advise on employment and Act matters. Predominantly though, I relied on Jackson McDonald for employment matters due to their expertise.

30

Madam Associate, could please bring up 15.0195. The TRIM for the last document was 15386.

35

COMMISSIONER: Thank you.

MS ELLSON: This TRIM is 15387.

40

Do you see here a letter under the letterhead Jackson McDonald, to you dated 14 December 2017?---Yes.

Concerning advice, roles and responsibilities?---Yes.

45

And they refer to recent meetings during which you discussed the "City's objectives to improve the Communication Protocols between Elected Members of the City and the City's Administration"?---Yes.

Given that you had already had legal advice with respect to communications, why did you feel the need to obtain further advice?---As I recall it, the initial advice I took on protocols was related more closely to the provisions of the Act and the powers and responsibilities of the CEO vis-à-vis the powers and responsibilities of Council as individuals, and as a Council. I recall that in some of the information you've shown me before, I referred to a matter at another Council where that same lawyer had advised Council that Councillors were individually responsible, should there be a case where the physical well-being or mental well-being of staff was impacted by their action or inaction. So that was one tranche. This tranche of work was more around, and I believe Ms Harding of JacMac is an expert in this field, around employment law and ensuring that the staff and the Elected Members are doing what they can to protect themselves from any breach of employment legislation. So there is a combination and an overlap of those two matters but the expertises, in my view, are different.

Did you provide Jackson McDonald with a dossier of emails that the Executive had provided to you in response to your request for their concerns about Elected Member conduct?---Possibly. As I say, I don't recall the detail of the communications.

You recall that you and Mr Ridgwell had made requests to the Executive to put together a set of their communications they felt were causing them difficulties, do you?---I recall discussing that over a period of time, that if issues were concerning, to bring them to the table so that we may look at them in the cold light of day, rather than emotionally.

Mr Ridgwell did that for you, didn't he?---I believe he coordinated that process, yes.

Are you aware as to how many communications Mr Ridgwell received?---No, can't recall.

Do you know how many were forwarded to Jackson McDonald?---No, I cannot recall.

Do you know how many resulted in further action being taken?---No, I don't know.

Mr Ridgwell has given evidence, Mr Mileham, that he received approximately 400 communications and that on review, some 30-50 were provided to Jackson McDonald?---Mm hmm.

Would you accept that?---It would sound feasible.

Of those 30-50, three required further action, would you accept that?---Sounds feasible.

Do you know which matters required further action?---I believe three matters went to the Department, the Standards Panel.

5 It appears from Mr Ridgwell's evidence, Mr Mileham, that two went to the Standards Panel?---Then I'm mistaken.

One involved Councillor Green and no breach was found, do you accept that?---I recall the Standards Panel finding no breach in that matter, yes.

10

And one concerned Councillor Harley and no breach was found by the Standards Panel, do you accept that?---Yes, I understand that.

15 And one matter concerned a warning to be provided to Councillor Limnios, do you accept that?---Yes.

And that warning was in the form of a letter?---I don't recall what communication followed.

20 Madam Associate, if you could please bring up 15.1063, TRIM 1895. Do you see here, Mr Mileham, a letter to Mr Limnios dated 21 February 2018?---Yes.

Headed, "Elected Member conduct"?---Yes.

25 Do you recognise this as a letter sent to Mr Limnios concerning his conduct?---I'm assuming it is, yes.

It wasn't sent by you, Mr Mileham, was it?---I see at the bottom "enquiries to Mr Mianich".

30

So you would expect it was sent by him?---Yes. I was not at work, I believe, at that date.

35 Thank you, Madam Associate, that can be taken down. It appears, Mr Mileham, doesn't it, that the ongoing complaints made by the Elected Leadership Group were dealt with, does it?---You mean Executive Leadership Group?

Yes. If I didn't say that, I did, yes?---In the process of.

40 In the process of what?---Being dealt with. I wouldn't imagine that all of a sudden their concerns would stop.

Mr Mileham, you made yet another attempt to remind Elected Members of their roles and responsibilities in January 2018, did you?---I may have done.

45

Can you think of a reason why you may have done?---I'm assuming it's in documentary form. I need to see it, I don't recall it.

Madam Associate, if you could bring up 15.0453, TRIM 18787.

COMMISSIONER: Thank you.

5

MS ELLSON: Do you see here a memorandum to Elected Members and the Executive Leadership Group from yourself, or from a Chief Executive Officer on 4 January 2018?---Yes.

10 The subject, "Role and responsibilities". Madam Associate, if you could turn to page 15.0468. You see this document, numbered 16 page, signed by you?---Mm hmm.

15 Do you recognise the document as a memorandum distributed by you in January 2018?---Yes.

To Elected Members and the Executive Leadership Group?---Yes.

20 Just read through the conclusion, Mr Mileham, first?---Yes.

It's correct to think from reading that, that you were making efforts to again reinforce with the Elected Members their roles and responsibilities and to remind them of the separation between the Elected Members, the Mayor, the CEO and the employees, is that fair?---In terms of the directive nature of communications, yes, or otherwise.

25

So this was a Governance issue?---Yes.

30 It wasn't a safety issue?---It closely relates to it.

You've emphasised the importance of ensuring that the City meets its Governance responsibilities, do you see there?---Yes.

35 And you're providing the advice "to provide an overview of the different roles, responsibilities and expectations of Elected Members and Administration staff"?---Mm hmm.

40 "And the features of effective working relationships between each party"?---Yes. I think at this time, as I mentioned, we had a program from Bartlett Workplace that talked about feedback being a gift and we intended to bring - this was part of a process of bringing Councillors and the Executive group together as a team.

45 Is it the case, Mr Mileham, that despite your repeated efforts to remind Councillors of their roles and responsibilities, they weren't respecting them?---It was my perception that that was the case in some cases.

In whose cases?---After one feedback session, it was reported back to me that one

of the Councillors had referred to the process as, and I don't wish to swear, bull-something, so one Councillor took it as being rather pointless, Councillor Limnios. I believe the Lord Mayor and some others were quite positive. So there were two ends of the spectrum. I would probably put Councillor Limnios as the
5 least receptive and the Lord Mayor and the couple of others as more receptive.

You've mentioned Councillor Harley and Councillor Green quite a bit?---Mm hmm.

10 Did they respect your advice or your views?---At times. Councillor Harley, for example, would at times take my advice but then at other times he may say things like, "If I had a legal opinion and then a second legal opinion" and if he didn't like it, he would request a third one. So, you know, at times we would have a dispute about that. Sometimes it could become argumentative. Councillor Harley tends to
15 be quite verbose.

Independent?---Yes, as maybe I can be at times, verbose that is.

20 Madam Associate, the document can be taken down. Mr Mileham did your efforts to implement Communications Protocols and reinforce the roles of Councillors cause more stress for you in the workplace?---Many of my efforts, and that included, caused me some stress, yes.

25 Can you tell me in what sense?---Stress is probably too strong a word, workload and concentration on diplomacy. At times I employed appropriate professionals to assist me in team building, in communications and in legal matters, in probably an abundance of caution, not that I didn't know the subject, but I wished to ensure that I was doing the best possible improvement process for all processes under the Act. So by stress, no; workload, yes. Other things stressed me.

30 [3.45 pm]

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Like what?---Well, it's - - -

5 If you limit that to workplace matters?---Workplace matters. I felt the investigation into me conducted by Herbert Smith Freehills was a very strong stress on me.

10 Did the resistance you received from some Elected Members with respect to your Communications Protocols lead to a six where you felt unsafe in the workplace?---Sorry, could you repeat the question? Assistance, did you say?

15 Did the resistance?---Resistance, pardon me. Did the resistance make me feel unsafe in the workplace? Not so much. It's a component, I guess, of Performance Review. I knew that certain Councillors were quite vehemently opposed to the CEO Inbox process and therefore that may impact on their assessment of me.

20 Were you worried that you'd lost the support of Council in attempting to remind them of their roles and responsibilities?---I perceived and understood that could be an outcome but I felt that was virtually irrelevant, what I felt, as it needed to be. As has been stated before, the City of Perth should have been an exemplar under the Act in being fair, frank and fearless, et cetera.

I have no more questions, Commissioner.

25 COMMISSIONER: Thank you. Mr van der Zanden, do you have an application to make?

MR van der ZANDEN: Yes, I do, Commissioner.

30 COMMISSIONER: Very well. In that case, Mr Mileham, I will have you escorted from the hearing room while the applications are heard.

WITNESS WITHDREW

35 COMMISSIONER: Yes, Mr van der Zanden.

MR van der ZANDEN: Commissioner, I seek to ask or examine the witness by - this morning the witness was asked about a Council meeting where a report by Ms Moore was presented on the cost to the City of introducing free parking.

40 COMMISSIONER: Yes

MR van der ZANDEN: The witness said that there was a tone in the questioning by some Councillors that the costs were deliberately inflated.

45 COMMISSIONER: Yes

MR van der ZANDEN: But he did not indicate which Councillors he was

referring to and I seek to ask him about that.

COMMISSIONER: How will that assist the purposes of the Inquiry?

5 MR van der ZANDEN: At the moment there's a suspicion on all Councillors, they have been tarred with that broad brush and to the extent that the Inquiry seeks to be informed as to the behaviour of individual Councillors, it's a matter which will assist the Inquiry.

10 COMMISSIONER: Is that the only topic?

MR van der ZANDEN: Yes.

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

15 MS ELLSON: The Terms of Reference require the Inquiry to investigate and report on the relationship between Councillors. In my submission, asking Mr Mileham to identify who used a tone in questions of some officers deliberately does not advance the Inquiry in any great degree. My friend has not identified a
20 question that he wishes to ask specifically.

COMMISSIONER: Is that all you wish to say, Ms Ellson?

MS ELLSON: Commissioner, you will see I am mistaken in limiting my
25 submission to the relationship between Council members, it does extend to the relationship between Council members and employees.

COMMISSIONER: It does.

30 MS ELLSON: And "to the adequacy and competency of Council decision-making." Perhaps Mr van der Zanden could be asked to identify the question he wishes to ask.

COMMISSIONER: Yes. Ms Ellson, I don't require Mr van der Zanden to
35 identify the question. I understand that there might be a number of ways in which he can ask that question. Thank you, Ms Ellson.

Mr van der Zanden, whilst I can understand the reason why you might want to ask Mr Mileham questions on that topic, I must tell you that I am at this stage
40 struggling with the notion that it will advance the purposes of this Inquiry. It does seem to me to be a bit incidental

MR van der ZANDEN: We have heard quite some evidence about the behaviour and conduct of individual Elected Members and this is another instance of that and
45 as I say, at the moment the evidence is that someone within the Council, so those who aren't responsible, are in effect grouped within that. So to the extent that the Terms of Reference extend to the relationships between the Council members, the

CEO and other employees and the effect of those relationships, then this to me seems to be an instance where certain Elected Members, on Mr Mileham's evidence, are engaging in behaviour that is detrimental to that relationship.

5 COMMISSIONER: Mr van der Zanden, it's line ball but I will allow you to ask it.

MR van der ZANDEN: Thank you, Commissioner.

10 COMMISSIONER: Thank you. Mr O'Meara, do you have an application to make?

MR O'MEARA: No, thank you, Commissioner.

15 COMMISSIONER: Thank you, Mr O'Meara. Thank you, Mr McIntyre. Mr Mariotto, do you have an application to make?

MR MARIOTTO: No application, Commissioner.

20 COMMISSIONER: Thank you. Mr Yeldon?

MR YELDON: Not on my part, thank you, Commissioner.

COMMISSIONER: Thank you. Mr Barrie?

25 MR BARRIE: No, Commissioner.

COMMISSIONER: Thank you. Mr Renton, you're still there?

30 MR RENTON: I am. No application, sir, thank you.

COMMISSIONER: Thank you. Ms Ford?

35 MS FORD: No application at this stage, Commissioner, although there are some queries in respect to certain documents which I will raise with Counsel Assisting after the proceeding, that were referred to but the witness was not shown. I seek simply to enquire whether we might have access to some of those documents prior to my client appearing. As I said, it's not an application for now.

40 COMMISSIONER: Thank you, Ms Ford. That's clear, thank you very much. Ms Siavelis?

MS SIAVELIS: No, Commissioner.

45 COMMISSIONER: Thank you. Ms Saraceni?

MS SARACENI: One matter, sir. The witness was asked for various examples of inappropriate behaviour by Elected Members. He said on a few occasions his

memory wasn't good. He also asked to be shown his notebook and that was - he said that and then we just proceeded. It is my request, sir, that Mr Mileham's notebooks be shown to him so he can give some specific details in more detail than he has in the witness box, in answer to Ms Ellson's questions.

5

COMMISSIONER: Examples on inappropriate behaviour by Elected Members only?

10 MS SARACENI: I have never seen his notebook, sir, I don't know exactly what they entail, but my instructions are that there are specific examples with dates and words in inverted commas, contemporaneous notes taken that would assist this Inquiry and paint a more fulsome picture, rather than a memory that he has said is not 100 per cent.

15 COMMISSIONER: Yes, but what I'm seeking to ascertain from you is whether you would seek to ask him questions using his notebook, on inappropriate behaviour by Elected Members only? Is it going to be restricted in that way?

20 MS SARACENI: Yes, but to the extent that there might be some comments there in relation to his staff that have reported to him about Elected Members' inappropriate behaviour, as opposed to them to him, again without seeing it I don't know, but the main objective is limited to what he wrote down about inappropriate behaviour of Elected Members towards him.

25 COMMISSIONER: Thank you, Ms Saraceni. Ms Ellson?

MS ELLSON: Commissioner, I don't oppose the application.

30 COMMISSIONER: Ms Saraceni, I'm going to restrict you to asking questions about inappropriate behaviour by Elected Members, of which he was aware personally.

MS SARACENI: Thank you, sir.

35 COMMISSIONER: But that's all, otherwise there's little point in the Practice Direction. Thank you. Madam Associate, would you please bring Mr Mileham back into the hearing room. Thank you, Mr Mileham. Would you please come forward and resume your seat in the witness box

40 **MR Martin Nicholas MILEHAM, recalled on former oath:**

45 COMMISSIONER: Mr Mileham, there are two Council who wish to ask you questions. Mr van der Zanden, on behalf of Ms Scaffidi, has been granted leave to ask you questions about a discussion concerning free parking. That's the limit of the questions he will be able to ask you. Your own counsel has been granted leave to have you refer to your notebook or notebooks for the sole purpose of you giving evidence about inappropriate behaviour which you witnessed personally by

Elected Members, no more than that. Do you understand?---I do, thank you.

Thank you. Mr van der Zanden.

5 MR van der ZANDEN: Thank you, Commissioner

EXAMINATION BY MR van der ZANDEN

10 Mr Mileham, this morning you were asked about a Council meeting where a report of Ms Moore was presented on the costs to the City of introducing free parking, do you recall that?---I recall I spoke about it, yes.

As I understand your evidence, you said that there was a tone in the questioning by some Councillors that the costs were deliberately inflated?---Yes.

15 Can you tell the Inquiry which Councillors, if you recall, were those Councillors questioning along that line?---My recollection is predominantly Councillor Limnios, that he had - I can't recall the date as I've said, but he had a concern that the numbers were not accurate and had been inflated, i.e., the losses that would be
20 incurred had been inflated. I can't recall specific comments in that respect to that item. There was other debate opposing or should I say, supporting free parking but that particular line, I believe, I recall being Councillor Limnios predominantly, to the best of my recollection.

25 COMMISSIONER: Thank you, Mr Mileham.

MR van der ZANDEN: Thank you. I have no further questions, Commissioner.

COMMISSIONER: I didn't think so. Thank you. Ms Saraceni.

30 MS SARACENI: Perhaps if the notebook or notebooks could be brought up, sir.

COMMISSIONER: Yes.

35 MS ELLSON: They are on their way, Commissioner.

COMMISSIONER: Thank you. Do you know how far away they are?

MS ELLSON: No, Commissioner.

40 COMMISSIONER: Has Mr Parkinson gone to get them?

MS ELLSON: He did, yes.

45 COMMISSIONER: He's pretty speedy, he will be back soon, and here he is, as if by magic.

WITNESS: You owe me six bucks for those.

COMMISSIONER: It's not a place for humour, unless it's mine?---Pardon me, Commissioner.

5

COMMISSIONER: Do you want to see them first, Ms Saraceni?

MS SARACENI: I apologise, sir.

10 COMMISSIONER: That's all right, there's no need to apologise. Thank you, Madam Associate, please show them to Ms Saraceni.

[4.00 pm]

15 EXAMINATION BY MS SARACENI

MS SARACENI: Commissioner, I don't know what numbers they are for the purposes of the record. Sorry, if you could show me where. Sorry, there are two black notebooks, one is record number 10382 and one is 10383. Perhaps if the
20 witness could be shown these documents so they could be identified?---Thank you.

Mr Mileham, could you have a quick look at those documents and confirm whether they are your notebooks that you were referring to earlier today in your evidence?---Yes, they are.

25

Could you tell us the dates or the years of those notebooks?---Pardon me, could you repeat that?

30 Could you tell us the years or the dates that those notebooks cover?---I'm looking at a date here in one note - this first book covers from, and it's not obviously a full record, from 2015, notebook 1 goes up to close to the end of 2017 and the second book, from October 2017 and it completes - there's some redactions that were redacted under legal professional privilege - up to 16 July 2018 or thereabouts.

35 And the writing in those notebooks is your writing?---It is.

Could you tell the Inquiry when you made those notes over the time period you've just discussed?---Generally speaking they were made on the day or the day after. If they were made on a date that was not the date of the note, it's usually noted.

40

Mr Mileham, could I ask you to look at the first of the two notebooks?---Mm hmm.

45 COMMISSIONER: Before we go there, does the first of the two notebooks covering the earlier period in time have the number 10382 on its front?---Yes.

Thank you.

MS SARACENI: Mr Mileham, if I could ask you to look through the notebook and are there any instances that you can bring to the Inquiry's attention where you record what you personally witnessed by way of behaviour that you've described as inappropriate by Elected Members?---There's a note of a meeting here with
5 Councillor Adamos held on 25 October at 10 am.

Sorry, 25 October in which year?---I'm sorry, 2017.

10 MS ELLSON: Is there a page number, Commissioner?

WITNESS: No, there's no page number - sorry.

COMMISSIONER: Ms Saraceni, I'm sure we will deal with that in due course.
15

MS SARACENI: You will see that I don't have a copy of it, I've never seen it, I'm at a bit of a disadvantage.

COMMISSIONER: There's no reason why you can't if there's a page number
20 though, is there? Are there page numbers in this book?---There are not, Commissioner. I'm afraid I was not that thorough.

We will sort the problem this way: Madam Associate, please give Mr Mileham the sticky tabs and, Mr Mileham, if you put a sticky tab at the bottom of each page to
25 which you make reference, that will help?---Thank you.

Thank you. Take a pen and put a number on each sticky tab so I know which is the first reference, which is the second and the third and so on?---Thank you. I may not get past 3 but let me see. Thank you, Commissioner. The first one, and
30 I've not had access to my books so bear with me for a little while, I note Councillor Adamos, 25 October 2017 at 10 am. I believe this was subsequent to the debate surrounding who should be Deputy Lord Mayor at the City, at around that time. He noted that the role of Council for the Deputy Lord Mayor "included much debate as who could best the Administration. He noted that Jemma Green was not
35 a fan of Martin Mileham. He noted both that JL and RH were not happy with outcome."

MS SARACENI: Those initial, could you please - - -?---JL, James Limnios I'm assuming, and Reece Harley, I'm assuming, "He discussed his concern re
40 responsiveness of organisation", so he had a concern about the Chief Executive Inbox himself. "He relayed comment that both H and D Councillors" - I can't recall who they would have been - "had advised him of concern that he may have been bullied or threatened." I recall that I relayed to him that Councillors Harley and Davidson had advised me to ask Councillor Adamos, had he been bullied
45 because they were concerned he was being bullied by Councillor Limnios. "He noted that he could not work with Councillor Green as DLM, or at all." So that's one.

Is there another one?---Let me see.

5 COMMISSIONER: Did you put the sticky number under the number,
Mr Mileham?---Number 1.

10 Thank you?---The next one is 24 October 2017. It's a note of a telephone
communication I had with Neil Douglas of McLeods at 3.30 pm. "I asked his
advice in regard to a Councillor's comment made to me that that Councillor had
said his decision not to appoint me was based on politics and I was advised by
Mr Douglas that I should ask him to recuse himself from the CEO Performance
Review Committee." I've noted here in brackets, "(Mark Ridgwell was witness
and file noted the meeting.)" So that's number 2.

15 MS SARACENI: Mr Mileham, you haven't named the Councillor, does your note
name the Councillor?---I believe there will be another note, if you'll bear with me.
I'm going in chronological, so I'm hoping that note appears, going backwards.
There is a note here - sorry, sir, clarification, only in respect to witnessing Elected
Member behaviours?

20 COMMISSIONER: Yes?---Thank you. I did report to the chief of staff at the
Minister for Local Government on 12/7/17 that "there was bullying, threats to
employment on process grounds and Elected Members seeking to speak to
individual panelists post appointment and the independent audit committee had
25 resigned due to issues" and I reported that to the Minister on 12/7, or to Gary
Hamley, the Minister's chief of staff on that date.

Ms Saraceni, you do know what leave was granted for, don't you?

30 MS SARACENI: Yes?---Pardon me, I've made a mistake.

COMMISSIONER: Ms Saraceni, please.

35 MS SARACENI: Mr Mileham, when I asked you to look at the document, it was
to identify any notes you'd made in relation to - - -?---Okay.

If you could just listen, Mr Mileham?---Okay. I'm listening.

40 In relation to any inappropriate behaviour towards you, or that you personally
witnessed by Elected Members?---Yes. There's a note at 14/9/2016, 09.00, I put a
note on that.

45 What does that say?---"There was a discussion between the Lord Mayor, the
Deputy Lord Mayor Limnios and myself where the DLM indicated that he had
inside influence with the CCC, and he denied that and told me I'd misunderstood
him and I told the Deputy Lord Mayor and the Lord Mayor that I did not" - - -

MS ELLSON: Commissioner, I object to this evidence being given. It's not a demonstration of inappropriate behaviours.

WITNESS: I believe that - - -

5 COMMISSIONER: Mr Mileham, it's not your role to partake in this exercise?---Okay.

Just be quiet for a moment. That's the objection, Ms Saraceni, what do you say about it?

10

MS SARACENI: Given that I have no idea of what is in there and what's about to be read, it's a bit difficult until I hear what the witness says in answer to the question. I'm at a bit of a disadvantage there, sir.

15 COMMISSIONER: We are all at a disadvantage here because of the process that's been adopted but if your client, as he knows he should, confines himself to examples of inappropriate Elected Member behaviour without the lead-ins, I'm sure the process will work better.

20 MS SARACENI: Mr Mileham, if you could just take a moment - Mr Mileham, if you could just look at me. There's some difficulty in relation to some of the answers you're giving or some of the comments you're reading out?---Mm hmm.

25 Could you please, perhaps, before you read them out, take the time to check the contents and ensure that before you read it out, it refers to Elected Members' inappropriate conduct or behaviour towards you or that you personally witnessed?---Mm hmm.

And then perhaps read it out.

30

COMMISSIONER: Mr Mileham, may I put it to you in a different way - Mr Mileham?---Yes.

35 Please look at me. You've been given access to your notebook, two volumes of it - just look at me, please, don't look at the notebook - for a very specific reason and that reason is to identify for me examples of inappropriate Elected Member behaviour, that's all?---Thank you.

40 So when you come across something in your notebook that you believe will refresh your memory about that and that only, read it to yourself and then tell me about the inappropriate Elected Member behaviour. In other words, what I want to know is who was the Elected Member and what you say was the inappropriate behaviour, and no more than that. Are we clear on that?---Yes.

45 Thank you?---Commissioner, may I flag an item for future looking at without referencing it, because I believe it may be appropriate?

Is it going to assist you to give evidence on the topic that has now been identified three times?---No.

Yes or no?---No.

5

All right. Move on.

MS ELLSON: Commissioner, at the risk of interrupting, may I suggest an alternative course at this stage? I can see from what Mr Mileham is doing that this is likely to take up some time of the Inquiry and I perhaps have a suggestion as to how the process might continue, and yet not inconvenience the hearing.

10

COMMISSIONER: I'm listening.

MS ELLSON: I propose that Mr Mileham return Monday morning and be given the opportunity to go through his notebooks in the presence of Inquiry staff and identify - - -

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COMMISSIONER: Just a moment. Mr Mileham, can I just ask you to stop turning the pages for a minute and just hear what Counsel Assisting is saying so that you actually understand what's being said. Mr Mileham. Thank you. Carry on.

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MS ELLSON: That Mr Mileham be provided with his notebooks Monday morning in the presence of Inquiry staff, be allowed the opportunity to do what he's doing now and identify the potential passages. The documentation can be copied for those people that require it and perhaps Ms Saraceni and myself can have some discussions about what questions or what pieces of information Mr Mileham has flagged are relevant to the Inquiry, before Mr Mileham continues

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[4.15 pm]

COMMISSIONER: Thank you, Ms Ellson. Ms Saraceni, do you have a position on that?

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MS SARACENI: My friend's suggestion I think is eminently sensible, sir, given the time as well, where we are at today.

COMMISSIONER: I'm not concerned about the time but it does seem eminently sensible. So that's what we will do.

40

MS SARACENI: Thank you, sir.

COMMISSIONER: We will take the sensible approach. Mr Mileham, I will adjourn shortly but just so you know what will happen from this point on, the solicitor assisting the Inquiry will make an arrangement with your solicitor for a time for you to attend on Monday morning at the Inquiry's offices. You will be

45

given a proper opportunity to go through the notebooks?---Thank you.

For this purpose and this purpose alone, and then the Inquiry will resume at 10 am
and we will hear your evidence in answer to any further questions that Ms Saraceni
may have for you on this topic.

Unless there's any other housekeeping matters from any other counsel at the Bar
table, I propose to adjourn now until 10 am Monday morning.

WITNESS WITHDREW

**AT 4.16 PM THE MATTER WAS ADJOURNED
UNTIL MONDAY, 2 SEPTEMBER 2019**