



# Report of the Inquiry into the City of Perth

An Inquiry under Part 8, Division 2  
*Local Government Act 1995*

2



## Acknowledgment of Country

The Western Australian Government proudly acknowledges the Traditional Owners and recognises their continuing connection to their lands, families and communities.

We pay our respects to Aboriginal and Torres Strait Islander cultures and to Elders past, present and emerging.

The first step in living alongside and working with the Aboriginal community is built upon establishing respectful relationships. Crucial to these respectful relationships is acknowledging the history of Aboriginal people and recognising the importance of connection to family, culture and country.

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# Volume 2

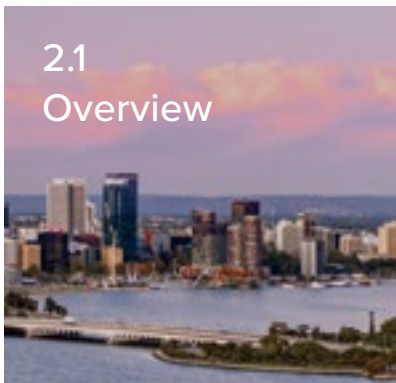
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# Volume 2

The case studies in this Volume explain what the Inquiry found in its investigation.

## 2.1 Overview



## 2.2 Community Leadership

This Part examines decisions of the City of Perth Council and actions of individual council members.



### 2.1.1 Key events and people

This Chapter identifies the key people, and their roles, at the City of Perth (City) during the Inquiry period, as well as the significant events between 2015 and 2018. These people included council members and senior City officers.

### 2.1.2 Culture and governance

This Chapter explains the culture and governance of the City and how this affected the way the City operated. 'Governance' refers to the systems and processes of an organisation, while the 'Culture' is how things are actually done.

### 2.2.1 Local government elections

Elections are the foundation of democracy. This Chapter examines in depth how some candidates interfered with election processes for the position of councillor, and subverted the democratic process.

### 2.2.2 Decision-making

The City of Perth Council (Council) made many important decisions which affected the lives of people who lived in, worked in or visited the City. Among the most important of these were planning decisions. The sections in this Chapter examine decision-making by the Council in relation to three situations in which information obtained by the Inquiry suggests that decisions may have been made for the wrong reasons, including to advance the personal interests of council members.

### 2.2.3 Disclosure, personal interest and entitlements

The sections in this Chapter examine:

- failure by some council members to disclose their financial or other interests;
- misuse by some council members of entitlements which were available to assist them in their official role, including use of the Council dining room and reimbursement for costs associated with restaurants, clothes and dry cleaning; and
- misuse by a council member of her official title, office, business cards, email and the dining room for private business purposes.

### 2.2.4 Grants and sponsorship

The Council allocated millions of dollars each year to community associations and events through sponsorships, grants and donations. Naturally, there were risks.

Two risks examined in this Chapter are whether:

- council members received gifts, including tickets to events, from sponsored organisations and then made decisions about funding for those organisations; and
- council members attempted to ensure the City allocated money to organisations and events with which they had a personal connection.

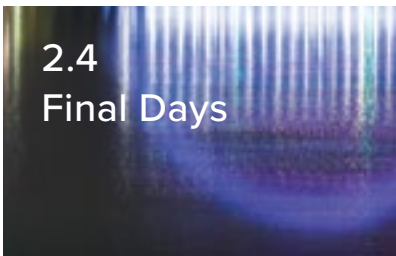


## 2.3 Administrative Leadership

This Part examines matters affecting the Administration of the City. The Administration consisted of the CEO, senior officers and employees.



## 2.4 Final Days



### 2.3.1 Chief Executive

The Chief Executive Officer (CEO) is the leader of the Administration.

The Council is responsible for appointing the CEO, for performance management of the CEO and, if necessary, for terminating the employment of the CEO. The CEO is responsible for implementing decisions of the Council and employing all other staff.

At the same time, the CEO is also responsible for keeping council members 'in line' and, if necessary, for reporting them to the Corruption and Crime Commission or the Local Government Standards Panel.

This Chapter examines the role of the CEO, through events surrounding the termination of the employment of a CEO by the Council, and the appointment of the subsequent CEO.

### 2.3.2 People management

This Chapter considers aspects of human resources and workforce management by the City. The sections in this Chapter examine examples of recruitment, probation and performance and termination of employment, which may not have been properly conducted, or where there may have been inappropriate interference by council members. The City's investigation of complaints and grievances is also examined.

### 2.3.3 Financial management and planning

A local government plans and manages significant programmes and finances on behalf of its community. They must sustainably and holistically plan for the future. Financial management and planning systems and processes are among the most important elements of governance for the City.

This Chapter identifies weaknesses in systems, capability and processes, and how these are being, and can be, addressed. It also examines:

- the City's integrated planning and reporting framework,
- the City's financial position and its financial management practices; and
- a partnership arrangement between the City and a not-for-profit organisation, involving significant funding.

### 2.3.4 Procurement and contracting

The sections in this Chapter examine five specific procurement exercises conducted by the City in which the consequences of failing to follow appropriate procedures ranged from unauthorised expenditure and undeclared conflicts of interest to manipulation of tender documents to the detriment of a tenderer.

This Chapter also provides examples of allegations about serious misconduct by employees which were not appropriately dealt with by the City.

### 2.4.1 Events leading to the suspension of the Council

This Chapter describes events within the Council and Administration of the City at the end of 2017, and the beginning of 2018, which led to calls from council members, the CEO and senior officers for intervention. The level of dysfunction and lack of good government within the City caused the Minister for Local Government to suspend the Council on 2 March 2018.



The investigative processes used by the Inquiry are described in Chapter 1.1.3: About the Inquiry.



# 2.1

## Overview







## 2.1.1 Key events and people

The City of Perth (City) is the State's capital city local government. The City and its Council hold a special status, afforded by its own legislation.

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The City, its leaders, both the Council and the Administration, and its people should embody an exemplar local government.

The City should lead and demonstrate to the community all the aspects of 'good government'.

However, this was not the case. In March 2018, the Minister for Local Government suspended the Council of the City of Perth, because the City had ceased to function properly.

The City had a history, in the three years prior, of significant dysfunction, cultural issues and failings in governance. On several occasions, individuals put self-interest before their statutory role and service to the community.

Issues were not just limited to the Council. The Administration failed too. It was siloed, there was poor morale, inefficiencies and claims of bullying.

The position of Chief Executive Officer (CEO) became a focal point. Council members and senior staff were factionalised and were working against each other. In their own words, there was *"defensiveness"*, *"stonewalling"*; *"dishonesty/anxiety/no leadership"*, *"Butt covering"*, *"Attacking"*, *"Self-centred"*, *"No accountability"*, and *"Game playing"*.

Following the 2017 local government election, there was a new majority on Council.

On 27 February 2018, it all came to a head, with a Special Council Meeting called by the new majority to amend a Council Policy and appoint a different Acting CEO. Earlier in the day, a group of senior staff, tried to take control of the City by activating the City's Crisis Management Plan at Priority 1 – even though there was no crisis.

To understand how the City fell apart like this, it is worth understanding the events which led to it, and who was involved, the City's prevailing culture and the governance arrangements that should have prevented the failings that have been identified in this Report.

# Key events

On 2 March 2018, the Minister for Local Government; Heritage; Culture and the Arts, Hon David Templeman MLA announced the suspension of the Council of the City of Perth. This timeline sets out the key events leading to the suspension of the Council.

## 2015



30 April

Council endorsed an organisational restructure programme called *The New City of Perth* initiated by the Chief Executive Officer (CEO), Mr Gary Stevenson.



26 August

The CEO, Mr Stevenson referred a *Report on Gifted Travel* to the Corruption and Crime Commission (CCC).



5 October

The CCC issued a *Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth*.



17 October

Ordinary Local Government election.



**Elected Lord Mayor**

Ms Lisa Scaffidi

**Elected Councillors**



Mr Jim Adamos



Ms Janet Davidson



Ms Lily Chen



Dr Jemma Green



22 October

Ordinary Council Meeting.



**Elected Deputy Lord Mayor**

Mr James Limnios

## 2016



14 January

Mr Stevenson provided Ms Scaffidi with his *Report on Gifted Travel*.



20 January

Special Council Meeting.



**CEO employment terminated**

Mr Gary Stevenson



**Appointed Acting CEO**

Mr Martin Mileham



4 March

The *City of Perth Act 2016* came into operation.



11 May

A report by the Department of Local Government, Sport and Cultural Industries (Department) into receipt of gifts and travel by Ms Scaffidi found that she had committed 44 breaches of the *Local Government Act 1995* for failing to disclose gifts and contributions to travel, and one breach for failing to lodge an annual return by the required date.



3 October

Mr Mileham commenced as CEO of the City on a five-year contract.



31 October

The Local Government Standards Panel (LGSP) found that council members Ms Scaffidi, Ms Davidson and Ms Judy McEvoy breached regulations relating to a vote of no confidence against the Deputy Lord Mayor, Mr Limnios, at a Council Meeting on 17 May 2016.



The situation at the City of Perth has become untenable and I have formed a view that if I do not intervene I am failing in my responsibilities as Minister ...

Hon David Templeman MLA



## 2017



9 May

State Administrative Tribunal (SAT) found that Ms Scaffidi “committed 45 serious breaches of her reporting obligations under the Local Government Act 1995”.



4–7 September

SAT disqualified Ms Scaffidi from office for 18 months from midnight 7 September 2017. Ms Scaffidi appealed to the Supreme Court. The Court of Appeal stayed the SAT disqualification of Ms Scaffidi until the determination of her appeal. Ms Scaffidi stood aside as Lord Mayor pending the decision.



21 October

Ordinary Local Government election.

### Elected Councillors



Mr Steve Hasluck



Ms Lexi Barton



Mr James Limnios



Mr Reece Harley



24 October

Ordinary Council Meeting.



**Elected Deputy Lord Mayor**  
Dr Jemma Green



9 November and 28 November

Dr Green met with representatives from Herbert Smith Freehills Lawyers (HSF) and provided information containing allegations that Mr Mileham and Ms Scaffidi had offered an inducement to Mr Adrian Fini, a property developer. The HSF investigation was called ‘Project Percy’.



1 December

The Court of Appeal dismissed 26 of the 45 breaches alleged against Ms Scaffidi, and found that 19 breaches were established.

## 2018



8 January

Ms Scaffidi resumed the duties of Lord Mayor.



An Authorised Inquiry was commenced by the Department into gifts and benefits received by council members at the City.



29 January

HSF provided its investigation report on ‘Project Percy’ to the City.



12 February

The CEO, Mr Mileham, supported by the Executive Leadership Group (Group), wrote to the Director General of the Department, expressing concerns about dysfunction in the City, including council members’ involvement in administration of the City.



16 February

Mr Mileham took personal leave, citing health issues caused by the Council.



**Appointed Acting CEO**  
Mr Robert Mianich



22 February

Mr Mianich sent complaints about council members, Dr Green and Mr Harley to the LGSP alleging interference in the administration of the City.



24 February

Mr Mianich was requested by a group of council members to convene a Special Council Meeting on 27 February 2018 for the purpose of changing Council policy so that the Council could appoint an Acting CEO.



26 February

Mr Mianich took personal leave for health reasons and also said “... the environment at work is not safe at present”.



27 February

Three directors activated the City’s Crisis Management Plan.



Special Council Meeting.  
**Appointed Acting CEO**  
Ms Annaliese Battista

## Key people

This identifies the key people, and their roles, at the City of Perth (City) during the period of the Inquiry's Terms of Reference, 1 October 2015 to 1 March 2018 (Inquiry period). These people included council members (Lord Mayor and councillors) and senior City officers (including the Executive Leadership Group (ELG)).

People identified in this Section appeared as witnesses before the Inquiry.

The City of Perth Council (Council) had a number of committees.

These Council committees were operating during the Inquiry period:

- Marketing, Sponsorship and International Engagement Committee (MSIE Committee);
- Works and Urban Development Committee;
- Finance and Administration Committee;
- Planning Committee;
- Audit and Risk Committee; and
- Chief Executive Officer (CEO) Performance Review Committee.

Council members were appointed to these committees at a Special Council Meeting held soon after each local government election. During the Inquiry period, these meetings were held on:

- 22 October 2015; and
- 24 October 2017.

Each committee had a membership of three council members and two deputies, with the exception of the CEO Performance Review Committee on 24 October 2017 when all council members were appointed to it. The committee memberships listed in this Section do not include the deputies.

At these meetings, the Deputy Lord Mayor was elected and appointments of council members to other external bodies occurred. These are not listed here, but where membership of an external body is relevant to issues examined by the Inquiry, they are identified in the relevant chapter of this Report.

## Council member (Lord Mayor), City of Perth



### Ms Lisa-Michelle (Lisa) Scaffidi

Lord Mayor – 20 October 2007 to 19 October 2019

Councillor – 8 July 2000 to 19 October 2007

Ms Scaffidi was elected as a councillor of the City on 8 July 2000 and served two terms before being elected Lord Mayor on 20 October 2007.

Ms Scaffidi was re-elected as Lord Mayor in 2011 and 2015. Her third term as Lord Mayor commenced on 17 October 2015 and expired on 19 October 2019. Ms Scaffidi was suspended from this position when the Minister for Local Government suspended the Council on 2 March 2018.

On 31 October 2016, the Local Government Standards Panel (LGSP) found that Ms Scaffidi breached regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations) at an Ordinary Council Meeting on 17 May 2016, by allowing “*Councillor Janet Davidson to move a motion of no confidence in the Deputy Lord Mayor, Councillor James Limnios, as a matter of urgent business to be considered by Council without notice to the Deputy Lord Mayor or other councillors, thereby making improper use of her office as a council member to cause detriment to the Deputy Lord Mayor*”. On 20 March 2017, the LGSP censured Ms Scaffidi for this breach.

On 4 September 2017, the State Administrative Tribunal (SAT) made an order that Ms Scaffidi be disqualified from holding office as a member of Council for 18 months, commencing at midnight on 7 September 2017. SAT determined that Ms Scaffidi committed 45 serious breaches of sections 5.76 and 5.78 of the *Local Government Act 1995* (LG Act) – “*who failed to comply with her statutory obligations to lodge an annual return and to disclose relevant gifts and contributions to travel, thereby committing multiple serious breaches of her reporting obligations*”.

That order was stayed by the Western Australian Court of Appeal on 7 September 2017. Ms Scaffidi stood aside as Lord Mayor on 7 September 2017 pending a Court of Appeal decision. In early December 2017, the Court of Appeal set aside the SAT order. It dismissed 26 of the 45 breaches alleged against Ms Scaffidi, and found that 19 breaches were established. It then remitted the matter to SAT for re-consideration.<sup>a</sup> Ms Scaffidi returned to her duties as Lord Mayor on 8 January 2018.

Ms Scaffidi was appointed to the following Council committees:

### 22 October 2015

- Works and Urban Development Committee;
- Audit and Risk Committee; and
- CEO Performance Review Committee.

### 24 October 2017

- CEO Performance Review Committee.

<sup>a</sup> On 24 July 2018, the State Administrative Tribunal ordered that Ms Scaffidi be suspended from office for a “total effective” period of seven months – commencing within three days of the date of the order.



### Council members (councillors), City of Perth



#### Mr Jimmy (Jim) Adamos

Councillor – 15 October 2011 to 19 October 2019

Mr Adamos was elected as a councillor of the City on 15 October 2011 and re-elected on 17 October 2015, until 19 October 2019. Mr Adamos was suspended from this position when the Minister for Local Government suspended the Council on 2 March 2018.

Mr Adamos was appointed to the following Council committees:

#### 22 October 2015

- Planning Committee.

#### 24 October 2017

- Planning Committee; and
- CEO Performance Review Committee.



#### Ms Alexis (Lexi) Louise Foster Barton

Councillor – 21 October 2017 to 30 January 2020

Ms Barton was elected as a councillor of the City on 21 October 2017, until 16 October 2021. Ms Barton was suspended from this position when the Minister for Local Government suspended the Council on 2 March 2018. On 30 January 2020, His Excellency the Governor revoked the 2018 *“Suspension and Appointment Order”* and issued a *“Declaration of Vacancies ... Order”*, which declared the *“remaining [four] offices of elected members of the council of the City of Perth”* vacant, including the office of councillor held by Ms Barton.

Ms Barton was appointed to the following Council committees:

#### 24 October 2017

- MSIE Committee; and
- CEO Performance Review Committee.

## Council members (councillors), City of Perth



### Mr Robert (Rob) John Butler

Councillor – 3 May 2003 to 17 October 2015

Deputy Lord Mayor – 22 October 2013 to 17 October 2015

Mr Butler was elected as a councillor of the City on 3 May 2003, and was appointed Deputy Lord Mayor by the Council on 22 October 2013, an office which he held until 17 October 2015. He was not re-elected at the October 2015 local government elections.

Mr Butler was a member of the following Council committees:

#### Until 17 October 2015

- Finance and Administration Committee;
- Planning Committee; and
- Audit and Risk Committee.



### Ms Lily Chen

Councillor – 15 October 2011 to 19 October 2019

Ms Chen was elected as a councillor of the City on 15 October 2011 and was re-elected on 17 October 2015. Ms Chen was suspended from this position when the Minister for Local Government suspended the Council on 2 March 2018. Ms Chen's term of office expired on 19 October 2019.

Ms Chen was appointed to the following Council committees:

#### 22 October 2015

- MSIE Committee; and
- Finance and Administration Committee.

#### 24 October 2017

- MSIE Committee;
- Works and Urban Development Committee; and
- CEO Performance Review Committee.

## Council members (councillors), City of Perth



### Ms Janet Elizabeth Davidson OAM

Councillor – 14 February 1998 to 27 May 2019

Deputy Lord Mayor – 2009 and 2011 to 2013

Ms Davidson was elected as a councillor of the City on 14 February 1998 and re-elected on 1 May 1999 and at subsequent elections. She was suspended from this position when the Minister for Local Government suspended the Council on 2 March 2018. Ms Davidson's term of office was due to expire on 19 October 2019, but she resigned on 27 May 2019.

On 31 October 2016, the LGSP found that Ms Davidson breached regulation 7(1)(b) of the Conduct Regulations at an Ordinary Council Meeting on 17 May 2016, by making *“improper use of her office as a council member to cause detriment to the Deputy Lord Mayor, Councillor James Limnios, by: (i) seeking the Lord Mayor's approval to move a motion of no confidence in the Deputy Lord Mayor as a matter of urgent business to be considered by Council without notice to the Deputy Lord Mayor or other councillors; and (ii) moving the motion of no confidence as a matter of urgent business to be considered by Council without notice to the Deputy Lord Mayor or other councillors”*. On 20 March 2017, the LGSP censured Ms Davidson for this breach.

Ms Davidson served as Deputy Lord Mayor in 2009 and during the period 2011 to 2013.

Ms Davidson was appointed to the following Council committees:

#### 22 October 2015

- Finance and Administration Committee;
- Audit and Risk Committee; and
- CEO Performance Review Committee.

#### 24 October 2017

- Finance and Administration Committee;
- Planning Committee;
- Audit and Risk Committee; and
- CEO Performance Review Committee.



## Council members (councillors), City of Perth



### Dr Jemma Marie Green

Councillor – 17 October 2015 to 19 October 2019

Deputy Lord Mayor – 24 October 2017 to 19 October 2019

Dr Green was elected as a councillor of the City on 17 October 2015 and appointed Deputy Lord Mayor by the Council on 24 October 2017. At that time, owing to the absence of the Lord Mayor, Dr Green was empowered to perform the functions of the Lord Mayor pursuant to section 5.34 of the LG Act, until the return of Ms Scaffidi to duties as Lord Mayor on 8 January 2018. Dr Green was suspended when the Minister suspended the Council on 2 March 2018. Dr Green's term of office as councillor expired on 19 October 2019.

Dr Green was appointed to the following Council committees:

#### 22 October 2015

- Audit and Risk Committee.

#### 24 October 2017

- Finance and Administration Committee;
- Audit and Risk Committee; and
- CEO Performance Review Committee.



### Mr Reece James Harley

Councillor – 19 October 2013 to 30 January 2020

Mr Harley was elected as a councillor of the City on 19 October 2013. He was re-elected on 21 October 2017, until 16 October 2021. Mr Harley was suspended from this position when the Minister for Local Government suspended the Council on 2 March 2018. On 30 January 2020, His Excellency the Governor revoked the 2018 *"Suspension and Appointment Order"* and issued a *"Declaration of Vacancies ... Order"*, which declared the *"remaining [four] offices of elected members of the council of the City of Perth"* vacant, including the office of councillor held by Mr Harley.

Mr Harley was appointed to the following Council committees:

#### 22 October 2015

- Finance and Administration Committee.

#### 24 October 2017

- Works and Urban Development Committee;
- Finance and Administration Committee;
- Audit and Risk Committee; and
- CEO Performance Review Committee

## Council members (councillors), City of Perth



### Mr Steven (Steve) Jeffrey Hasluck

Councillor – 21 October 2017 to 30 January 2020

Mr Hasluck was elected as a councillor of the City on 21 October 2017, until 16 October 2021. Mr Hasluck was suspended from this position when the Minister for Local Government suspended the Council on 2 March 2018. On 30 January 2020, His Excellency the Governor revoked the 2018 *“Suspension and Appointment Order”* and issued a *“Declaration of Vacancies ... Order”*, which declared the *“remaining [four] offices of elected members of the council of the City of Perth”* vacant, including the office of councillor held by Mr Hasluck.

Mr Hasluck was appointed to the following Council committees:

#### 24 October 2017

- MSIE Committee;
- Planning Committee; and
- CEO Performance Review Committee.



### Mr Dimitrios Athanasios (James) Limnios

Councillor – 17 October 2009 to 30 January 2020

Deputy Lord Mayor – 22 October 2015 to 21 October 2017

Mr Limnios was elected as a councillor of the City on 17 October 2009 and re-elected on 19 October 2013 and 21 October 2017, until 16 October 2021. He was appointed Deputy Lord Mayor by the Council on 22 October 2015, until 21 October 2017. Mr Limnios was suspended from this position when the Minister for Local Government suspended the Council on 2 March 2018. On 30 January 2020, His Excellency the Governor revoked the 2018 *“Suspension and Appointment Order”* and issued a *“Declaration of Vacancies ... Order”*, which declared the *“remaining [four] offices of elected members of the council of the City of Perth”* vacant, including the office of councillor held by Mr Limnios.

Mr Limnios was appointed to the following Council committees:

#### 22 October 2015

- MSIE Committee;
- Works and Urban Development Committee; and
- CEO Performance Review Committee.

#### 24 October 2017

- Works and Urban Development Committee; and
- CEO Performance Review Committee.

## Council members (councillors), City of Perth



### Ms Judith (Judy) Sabina McEvoy

Councillor – 3 May 1997 to 21 October 2017

Ms McEvoy was elected as a councillor of the City on 3 May 1997 and continued as councillor until 21 October 2017. She was not re-elected at the October 2017 local government elections.

On 31 October 2016, the LGSP found that Ms McEvoy breached regulation 7(1)(b) of the *Conduct Regulations* at an Ordinary Council Meeting on 17 May 2016 by seconding “*Councillor Janet Davidson’s motion of no confidence in the Deputy Lord Mayor, Councillor James Limnios, the motion having been moved as a matter of urgent business to be considered by Council without notice to the Deputy Lord Mayor or other councillors. In seconding the motion Councillor McEvoy made improper use of her office as a council member to cause detriment to the Deputy Lord Mayor*”. On 20 March 2017, the LGSP censured Ms McEvoy for this breach.

Ms McEvoy was appointed to the following Council committees:

#### 22 October 2015

- Works and Urban Development Committee; and
- Planning Committee.



### Mr Yit-Kee (Keith) Yong

Councillor – 19 October 2013 to 21 October 2017

Mr Yong was elected as a councillor of the City on 19 October 2013 and continued as councillor until 21 October 2017. He was not re-elected at the October 2017 local government elections.

Mr Yong was appointed to the following Council committees:

#### 22 October 2015

- MSIE Committee; and
- Planning Committee.



### Chief Executive Officers, City of Perth



#### **Mr Gary John Stevenson**

29 October 2012 to 20 January 2016

Prior to commencing as CEO of the City on 29 October 2012, Mr Stevenson held numerous senior local government positions in Queensland.

The Council terminated the employment of Mr Stevenson as CEO, effective 20 January 2016.



#### **Mr Martin Nicholas Mileham**

20 January 2016 to 29 October 2018 — substantive from 3 October 2016

Mr Mileham commenced employment at the City on 3 September 2012 as Director, Planning and Development. On the termination of the employment of Mr Gary Stevenson as CEO on 20 January 2016, Mr Mileham was appointed Acting CEO, a position he was substantively appointed to from 3 October 2016.

The City of Perth Commissioners, who were appointed on 2 March 2018, terminated the employment of Mr Mileham as CEO on 29 October 2018.



#### **Mr Murray Alan Jorgensen**

19 November 2018, *in situ* at 30 June 2020

Mr Jorgensen was appointed Acting CEO of the City on 19 November 2018. He became substantive CEO from 27 November 2018. His contract was extended until 1 August 2020.

### Executive Leadership Group, City of Perth



#### **Ms Erica Margaret Barrenger**

Director, Planning and Development  
2 May 2016 to 21 December 2018

Ms Barrenger commenced employment at the City on 2 November 2015 as Manager, Co-ordination and Design. On 2 May 2016, Ms Barrenger was appointed Acting Director, Planning and Development – substantive from 5 July 2017 (by contract, due to expire on 5 July 2022). Ms Barrenger was Acting CEO of the City from 12 October 2018 until 19 November 2018.

Ms Barrenger resigned from her position as Director, effective 21 December 2018.

## Executive Leadership Group, City of Perth

**Ms Annaliese Maria Battista**

Director, Economic Development and Activation  
16 May 2016 to 22 June 2018

Ms Battista commenced employment at the City on 20 October 2015 as Manager, Communications and Engagement (and on 23 February 2016, became Manager, Marketing and Communications). On 16 May 2016, Ms Battista was appointed to the position of Acting Director, Economic Development and Activation – substantive from 5 July 2017 (by contract, due to expire on 5 July 2022). On 27 February 2018, Ms Battista was appointed Acting CEO of the City, until 5 March 2018.

Ms Battista resigned from her position as Director, effective 22 June 2018.

**Mr Michael James Carter**

Director, Economic Development and Activation  
21 September 2015 to 26 February 2016

Mr Carter was the inaugural Director, Economic Development and Activation. He was appointed on 21 September 2015, for a period of five years, until 25 September 2020.

Mr Carter's employment by the City ended effective 26 February 2016.

**Mr Luciano Paola (Paul) Crosetta**

Director, Construction and Maintenance  
11 August 2015 to 5 July 2019

Mr Crosetta commenced employment at the City on 11 August 2015 as Director, Construction and Maintenance (by contract, due to expire on 11 August 2020).

Mr Crosetta resigned from his position as Director, effective 5 July 2019.

**Mr Robert David Mianich**

Director, Corporate Services  
7 November 2005 to 1 July 2019

Mr Mianich commenced employment at the City on 7 November 2005 as Director, Corporate Services. Mr Mianich was appointed Acting CEO of the City during the periods 16 to 26 February 2018, 31 August 2018 to 27 September 2018 and 1 October 2018 to 11 October 2018.

Mr Mianich resigned from his position as Director, effective 1 July 2019.

### Executive Leadership Group, City of Perth



**Ms Rebecca Therese Moore**

Director, Community and Commercial Services  
7 September 2015 to 5 July 2019

Ms Moore commenced employment at the City on 7 September 2015 as Director, Community and Commercial Services (by contract, due to expire on 31 August 2020). Ms Moore was appointed Acting CEO of the City during the period 8 August 2017 to 22 August 2017.

Ms Moore resigned from her position as Director, effective 5 July 2019.

### City officer, City of Perth



**Mr Mark Hunter Ridgwell**

Manager, Governance  
22 October 2013 to 3 April 2020

Mr Ridgwell commenced employment at the City on 22 October 2013, as Manager, Governance. Mr Ridgwell was Acting Director Corporate Services during the period 27 February 2018 to 9 March 2018.

Mr Ridgwell resigned from his position as Manager, Governance, effective 3 April 2020.

### Chair Commissioner, City of Perth



**Mr Andrew Charles Hammond**

Commissioner of the City of Perth – 2 March 2018 to 8 August 2019  
Chair Commissioner – 9 August 2019, *in situ* at 30 June 2020

On 2 March 2018, Her Excellency the Governor ordered the suspension of the Council, and the appointment of three Commissioners, Mr Eric Lumsden AM, Ms Gaye McMath and Mr Hammond. In accordance with section 2.38(1) of the LG Act, the role of a Commissioner “... *is to exercise the powers and discharge the duties of the council of the local government and its mayor or president*”.

On 9 August 2019, Mr Hammond was appointed as Chair Commissioner until 17 October 2020, being the date of the local government election to fill the vacant offices of Council.



## 2.1.2 Culture and governance

The dysfunction and failures at the City of Perth (City) were caused by a combination of factors relating to the organisation and to the people.

As explained in [Chapter 1.1.5: Good government](#), the Inquiry has identified two core themes:

- **Culture:** The norms of behaviour for individuals and groups that affected the functioning of the City, relationships, and ultimately, decision-making.
- **Governance:** The legislation, policies, processes and systems established for making and implementing decisions. It also refers to the way in which the City of Perth Council (Council), the Chief Executive Officer (CEO) and City employees, individually and collectively, fulfilled their responsibilities and were accountable for their decisions.

Essentially, governance guides *the way things should be done*, while culture is *the way things are done around here*.

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### Overview

The Inquiry has examined:

- the adequacy of governance arrangements;
- the prevailing culture of the Council and the Administration (that is, the CEO, the Executive Leadership Group (ELG) and other employees) including interactions between the groups and within them;
- the effect of culture on governance practices; and
- the impact of deficiencies in governance and/or culture on the ability of the Council and Administration to make decisions, to encourage community participation in decision-making, to be accountable to the community, and to be responsible for the City's efficiency and effectiveness.

### Culture

The Inquiry has identified instances where, because of the prevailing culture of the organisation, or of a group within the organisation, good governance practices were not followed, or were deliberately ignored. This reduced the City's ability to deliver good government.

The Culture Section examines the culture of the City, including that of the Council, the ELG and other employees of the Administration. Relationships between and within these groups is also considered. Other chapters within this Volume provide instances of behaviour which was driven by cultural norms instead of sound governance practices.

## Governance

Culture was not the only cause of dysfunction. There were also numerous instances of governance failures across the Council and Administration, including:

- lack of understanding of, and compliance with, legislative and procedural obligations;
- policy and procedures that were not current, or were inconsistent or lacking;
- weaknesses in the City's control framework for managing and mitigating risk, including fraud and misconduct detection;
- a need for better internal auditing, which forms part of the 'lines of defence model';<sup>1</sup>
- inability to identify, declare and manage interests and conflicts;
- poor complaint handling and investigation processes;
- lack of capacity to deliver quality and timely performance information to enable sound decision-making; and
- poor or non-existent record-keeping.

The Governance Section provides an overview of the governance framework that existed at the City during the Inquiry period. It identifies aspects of the City's governance structures and highlights areas that the Inquiry considers significant, including:

- Planning, monitoring and reporting, including the 'lines of defence' model.
- Accountability features, including:
  - conflicts of interest;
  - records management;
  - complaint and allegation handling; and
  - misconduct management.

## Key aspects of the City of Perth's culture and governance

### Structure

The role of the Council is to be the governing body of the City.<sup>2</sup> It governs the City's affairs and is responsible for the performance of the City's functions, including by overseeing the allocation of its finances and resources and determining its policies.<sup>3</sup> It consists of nine elected council members, the Lord Mayor and eight councillors.

The Administration of the City consists of the employees who support the Council, implement the decisions of the Council and provide services to the ratepayers of the City, to the businesses which operate in the City and to visitors to the City. The CEO is the person charged with ensuring that the decisions of the Council are properly implemented by the Administration and managing the day-to-day operations of the City.<sup>4</sup>

## Leadership

Leadership behaviour is best demonstrated from the top of an organisation downwards. It influences an organisation's culture and governance. An organisation's employees rely on their leaders to lead by example.<sup>5</sup> They should motivate and develop people.

Those in leadership roles play a critical part in establishing direction and shaping strategic thinking, setting culture, implementing governance, communicating effectively, supporting productive and collaborative working relationships, driving change and exemplifying personal integrity. All of these things promote the outcomes and results sought by the organisation and benefit those it serves, namely, the constituents of the City.<sup>6</sup>

An effective leader looks beyond the immediate-term and beyond his or her own organisational unit to build long-term capability and strategy for the organisation.<sup>7</sup>

The City has two significant leadership positions. The Lord Mayor, as the leader of the Council, and the CEO, as the leader of the Administration. During the Inquiry period, Ms Lisa Scaffidi was the Lord Mayor and Mr Gary Stevenson and Mr Martin Mileham were the CEOs. Mr Stevenson was the CEO for the first four months of the Inquiry period.

The Lord Mayor occupies a special role, which carries additional responsibilities. The Lord Mayor, among other things, is to provide leadership and guidance to the Council, preside over all Council meetings, speak on behalf of the City and liaise with the CEO on the City's affairs and the performance of its functions.<sup>8</sup> This requires the Lord Mayor to model good behaviour and ethics. The Lord Mayor should facilitate inclusive decision-making by Council and encourage all points of view to be expressed and respected, to enable conflict and differing views within Council to be managed constructively.<sup>9</sup>

It was Ms Scaffidi's role as Lord Mayor to lead and guide the Council. It required her to lead the whole of the Council in performing its duties. It was not her role to lead only some council members and exclude others. The Lord Mayor's role required Ms Scaffidi to lead and guide the whole team, not divide it.

It was the CEO's role to efficiently and effectively implement the decisions of the Council. The CEO and the Lord Mayor were the direct conduit between the Council and the Administration. Both positions required responsible, strong and principled leaders, exemplifying the importance of, and practising, good governance. Each needed to lead by example.

During the Inquiry's Terms of Reference, the City had an ELG which consisted of the CEO and a number of directors. Each of the directors was responsible for a different directorate in the City. Each directorate carried out different aspects of the City's functions and operations: Planning and Development; Construction and Maintenance; Community and Commercial Services, Corporate Services and Economic Development and Activation.

## Culture

An organisation's culture is *"the shared values and beliefs that guide how members of that organisation approach their work and interact with each other"*. It is manifested through the *"behaviours, customs and practices"* that are collectively displayed. The custodians of organisational culture are the leaders, employees, the community and other stakeholders, who all have a role in shaping culture.<sup>10</sup>

A *"functional culture"* is one with strong alignment between individual values and the values the organisation requires to succeed. When organisational cultures are dysfunctional, people become disengaged, and serious underperformance becomes a risk. Ultimately, *"an organisation with a dysfunctional culture is at a higher risk of failing in its role by neglecting the expectations of its stakeholders and those that rely on the service it provides"*. This can also have serious consequences in relation to maintaining public trust and integrity and implementing change.<sup>11</sup>

### Conduct required of council members and employees

During the Inquiry period the City of Perth (City) had a *"Code of Conduct"*, which council members and the Administration were required to follow. The Code of Conduct was endorsed by City of Perth Council (Council) and was Council Policy CP10.1.<sup>12</sup> It articulated the values and ethics of the City.

These values were:

<b>1. Trust and Respect</b>	<ul style="list-style-type: none"> <li>• Be Honest</li> <li>• Keep your promises</li> <li>• Respect others</li> <li>• Be fair</li> <li>• Support each other</li> <li>• Appreciate each other's contributions</li> <li>• Recognise that we are all different</li> <li>• Share information and communicate openly</li> </ul>
<b>2. Strive for excellence</b>	<ul style="list-style-type: none"> <li>• Do your best</li> <li>• Be enthusiastic</li> <li>• Be outcome-focussed</li> <li>• Take ownership (be accountable and responsible)</li> <li>• Take pride</li> </ul>
<b>3. Be Creative</b>	<ul style="list-style-type: none"> <li>• Look for new ways</li> <li>• Think laterally</li> <li>• Seek opportunities</li> <li>• Be flexible and adaptive</li> <li>• Be receptive to ideas and feedback</li> </ul>



A set of ethical principles were also prescribed:<sup>13</sup>

<b>Justice</b>	<p>A responsibility to:</p> <ul style="list-style-type: none"> <li>• be fair and equitable in our treatment of others, not treating people as a means to an end;</li> <li>• use and share power for the common good of both individuals and society; and</li> <li>• avoid discrimination, abuse or exploitation of others.</li> </ul>
<b>Respect for persons</b>	<p>A responsibility to:</p> <ul style="list-style-type: none"> <li>• respect the rights of individuals and groups allowing them their opinion and their right to be different;</li> <li>• enable and empower others to achieve their potential by promoting their physical, mental and social wellbeing; and</li> <li>• encourage honest working relationships by being truthful and sincere when dealing with others.</li> </ul>
<b>Responsible Care</b>	<p>A responsibility to:</p> <ul style="list-style-type: none"> <li>• contribute to the wellbeing of individuals and society by exercising due diligence and a duty of care to others;</li> <li>• treat others as they would like to be treated, doing good and not doing harm;</li> <li>• uphold the rights of those who are unable to do so, advocating for others where required; and</li> <li>• protect and responsibly manage the resources of the City of Perth.</li> </ul>

In addition, principles governing the behaviour of council members were set out in regulation 3 of the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations).

The legislative framework for local government not only required principled and ethical behaviour from council members and employees, it also required a separation of their functions and powers.<sup>14</sup> The Conduct Regulations contain sections entitled “*Prohibition against involvement in administration*” and “*Relations with local government employees*”, which prohibit council members from undertaking “*a task that contributes to the administration of the local government*”, or attempting to direct or influence a local government employee.<sup>15</sup>

There are good reasons for this demarcation of roles and responsibilities. Council members are elected to office to represent the interests of the local community as a whole.<sup>16</sup> It is not necessary for them to have the experience, or the expertise, to do all of those things which the City, as a local government, must do. The experience and expertise to undertake the functions, and provide the services, of the City is held by its employees.

The potential danger in council members becoming involved in the day-to-day operations of the City is that, lacking the relevant experience or expertise, they may act on wrong considerations or act inappropriately, resulting in the Administration not properly discharging its roles and functions.<sup>17</sup>

### Dysfunction at the City of Perth

By March 2018, when the Council was suspended, the City was characterised by low morale and a lack of trust, respect and integrity.<sup>18</sup> It was the subject of a number of claims of bullying, intimidation and harassment.

Earlier, on 4 September 2017, Catalyse Pty Ltd, which had been engaged by the City, produced the “*CULTYR Employee Scorecard 2017*”, which had 588 employee respondents. It found:

*“Employees feel that the culture of the City has deteriorated, with trust, staff morale and positive engagement decreasing across the organisation”.*<sup>19</sup>

The findings of this survey are indicative of a dysfunctional culture.

### Investigation by the Inquiry

The Inquiry is to consider, inquire into and report on the relationships between the Council, its members, the Chief Executive Officer (CEO) and other employees of the City and the effect of those relationships on the performance of the City’s functions and obligations.<sup>20</sup>

The period specified in the Terms of Reference is from 1 October 2015 to 1 March 2018, but the Inquiry is permitted to consider and examine periods before 1 October 2015, if it considers that to be necessary for the purpose of properly discharging its function and placing the matters inquired into within a relevant context in the circumstances.

In considering the culture of the City during the Inquiry period, the Inquiry examined the following:

- Relationships and communication between council members, between employees, and between council members and employees. This included the:
  - impact of relationships between council members on Council decision-making; and
  - interference, or improper or undue influence, by council members in matters relating to the City’s administration, including human resource matters.
- Leadership of the City by the Lord Mayor, Ms Lisa Scaffidi, and the CEO.
- Relationships between the CEO and the Executive Leadership Group (ELG) and between ELG members.
- The ability or capability of the City’s Administration to provide good government.

## Evidence obtained by the Inquiry

The Inquiry heard evidence about the culture at the City from witnesses from a cross-section of the City.

Employees outside the ELG were asked about both positive and negative experiences of working at the City. On a positive note, many of them spoke fondly of their relationships with the people with whom they worked,<sup>21</sup> their pride or enjoyment from their work,<sup>22</sup> the environment within their team or directorate,<sup>23</sup> the ability to develop or learn,<sup>24</sup> and the support from the City in relation to time off for family reasons.<sup>25</sup>

When giving examples of the negative aspects of their work, many witnesses described, among other things, a fractured and siloed workplace where communications and working relationships across business units were difficult. Many became visibly distressed when speaking about their negative experiences.

Although it was clearly difficult for many of the witnesses to speak openly about the things which troubled them about the culture of, and working at, the City, their evidence was generally frank and candid.

Evidence about the dysfunctional culture at the City is broadly consistent with the findings of the:

- “*City of Perth Organisational Capability and Compliance Assessment Report*” (OCCA Report) conducted by Deloitte and provided to the Council on 6 June 2017;
- “*CULTYR Employee Scorecard 2017*” conducted by Catalyse and provided to the City on 4 September 2017;
- “*Confidential City of Perth Performance, Analysis and Review – Human Resources Report*” by the Tower Human Capital Group, dated December 2018; and
- “*Report to the City of Perth – Stakeholder Engagement and Corporate Communications*” by OneDegree, dated December 2018.

The evidence obtained by the Inquiry establishes that there was an entrenched culture of self-entitlement among some council members.<sup>26</sup> This culture, which allowed self-interest to prosper over service to the City and its stakeholders, occurred against the background of a widespread, long-standing and systemic lack of good governance.<sup>27</sup>

Processes for decision-making were not consistently defined<sup>28</sup> and there was a lack of consistent adherence to proper processes, which sometimes saw policies and procedures being ignored. This could be taken advantage of by those who did not want to, and/or failed to, observe the rules and principles of appropriate conduct.<sup>29</sup>

The Council was factionalised.<sup>30</sup> Ms Scaffidi led her faction, often in conflict with the remainder of Council, rather than leading the Council as a whole.<sup>31</sup> Ms Scaffidi was a popularly elected Lord Mayor. She was not elected as Lord Mayor by other council members, she was elected by voters in the community.<sup>32</sup>

In October 2015, after the local government elections, Ms Scaffidi, created a WhatsApp “Team” group, comprised of those council members who were aligned with her.<sup>33</sup> This WhatsApp group was used for sharing views about Council business and other council members. The team consisted of Ms Scaffidi, and council members Ms Judy McEvoy, Ms Janet Davidson, Ms Lily Chen, Mr James Limnios, Mr Keith Yong and Mr Jim Adamos.<sup>34</sup>

The WhatsApp messaging in the team communications too often included childish and spiteful observations about other council members.<sup>35</sup> This type of communication was indicative of the breakdown in relationships between the members of Council, and of significant dysfunction in Council under Ms Scaffidi’s leadership. Mr Limnios subsequently fell out of favour with Ms Scaffidi and her team and stopped communicating in that group from around the middle of 2016.<sup>36</sup>

### Mr Martin Mileham’s time as Chief Executive Officer

On 20 January 2016, the Council terminated Mr Gary Stevenson’s employment as CEO and Mr Mileham was appointed as Acting CEO.

Under Mr Stevenson’s leadership, a major restructure of the City had begun.<sup>37</sup> Following the termination of Mr Stevenson, the completion of the restructure fell to Mr Mileham and, among other things, he became responsible for overseeing the integration of three new directors, a new directorate and a number of new managers into the City’s structure. The restructure engendered feelings of uncertainty and insecurity among employees at the City.<sup>38</sup>

Mr Mileham faced a number of other challenges on his appointment as the Acting CEO. The sudden termination of Mr Stevenson’s employment by the Council meant that there was no real opportunity for a proper handover on the organisational restructure. Mr Stevenson recognised the importance of such a handover and had previously suggested to Council that if it were contemplating terminating his employment he would:

*“... work constructively with Council to ensure that such transition can be implemented in a respectful and efficient manner that minimises impact on the organisation and maintains its reputation”.<sup>39</sup>*

About a month later, on 19 February 2016, Ms Michelle Howells, Manager Human Resources, prepared speaking notes for Mr Mileham to use in a meeting later that day. Those notes were based on discussions which had taken place between Ms Howells and Mr Mileham.<sup>40</sup> They gave a blunt assessment of the state and capabilities of the City at that time. They included the following points:

- “1. Organisation riddled with cancer. Most unit [sic] have system, process or performance issues, or all three. Huge impacts on productivity and ability to deliver services efficiently.*
- 2. Unstable and ineffective organisation. Huge amount of change and level of uncertainty. Moral [sic] low, lack of capable staff and skills within organisation. Services currently being delivered but at high costs to the organisation.*
- 3. 3 new Directors, 11 new Managers, with 9 more being recruited for. Huge amount of disruption. Directors and Managers trying to asses [sic] roles, responsibilities and parameters causing unease”.<sup>41</sup>*



While Mr Mileham believed some of the language used in the note was “extreme”, he said this was a “fair assessment from Michelle’s point of view” of the position of the City as at 19 February 2016.<sup>42</sup>

Ms Howells explained in her evidence to the Inquiry in this way:

*“... we had a very strained organisation. We had a very unproductive organisation ... the organisation hadn’t any change in over 20 years. There were [sic] hadn’t been new structures, so the systems in place, processes in place were there and had not been reviewed in over 20 years, so they were very archaic. There was a lot of performance issues with individuals who had just been left and allowed to perform in that manner. So we had a lot of productivity issues, we had more people than we needed to perform the roles of the organisation due to performance issues. So that kind of just created such an issue throughout the organisation”.*<sup>43</sup>

By this time, there was also significant turnover of employees and a lack of local government experience among ELG members:

- Mr Mileham had no experience in local government before his employment as the City’s Director Planning and Development in September 2012.<sup>44</sup>
- Mr Michael Carter, who was employed as the City’s first Director Economic Development and Activation from 21 September 2015 to 26 February 2016, had no previous experience in local government.<sup>45</sup>
- Mr Paul Crosetta had only been employed by the City as Director Construction and Maintenance since 21 September 2015. He had no previous experience at any level of government, including local government, in Australia.<sup>46</sup>
- Ms Erica Barrenger, who acted as Director Planning and Development from 2 May 2016, had only been employed by the City as a Manager since November 2015 and had no previous local government experience.<sup>47</sup>
- Ms Rebecca Moore had only been employed by the City as Director Commercial and Community Services since 7 September 2015.<sup>48</sup>
- Ms Annaliese Battista, who acted as the Director Economic Development and Activation from 16 May 2016, had over five years previous experience in local government, although she had only been employed by the City as a Manager since 20 October 2015.<sup>49</sup>

Furthermore, Mr Mileham had no relevant experience as a CEO, although he did have experience in senior positions in the private sector.<sup>50</sup>

This lack of experience among the ELG members would have made it more difficult, at least initially, for the ELG to provide the required executive leadership to the City.

The Administration was siloed and inefficient in its delivery of services.<sup>51</sup> Effectively, it was operating as a number of separate businesses rather than one.

The OCCA Report found that the new structure implemented by the City from July 2015 had led to increased siloes between business units and directorates. It noted:

*“The lack of organisation-wide clarity and shared understanding of roles and responsibilities is causing indecisiveness, wasted effort and unconstructive tension between teams. Siloes are deepening due to ineffective team collaboration, which left unchecked may impact staff morale and retention of talent.”<sup>52</sup>*

The 2017 CULTYR Employee Scorecard for the City found:

*“Inter-departmental communication is a concern. At present, departments do not appear to communicate or collaborate positively leading to a ‘siloed’ environment where teams are distanced from each other, they do not work together and they are unclear about each others’ roles and functions”.*

and

*“Silos continue to be seen as a challenge to effective and collaborative work practices. Respondents want a more cooperative and inclusive work environment that aims to produce the best possible outcomes for all stakeholders.”<sup>53</sup>*

Challenges associated with decision-making, which crossed organisational boundaries, were identified in the OCCA Report as:

*“Delays, inefficiencies in resolving decisions, including a high degree of escalation to the ELG for resolution;*

*Lack of awareness of meeting forums, their intent and authority to make decisions;*

*Challenges with scheduling and availability of interested parties given the high number of internal stakeholders;*

*Relevant stakeholders not being consulted early enough in a process; and*

*Increasing instances of managers only including a subset of relevant stakeholders in the decision-making process.”<sup>54</sup>*

Furthermore, as Catalyse reported:

*“There is a perception that certain management roles are not being carried out professionally or with the necessary expertise to manage their teams. In addition, respondents feel that more needs to be done to address work-place bullying at management level and to encourage a less hierarchical management system.”<sup>55</sup>*

Mr Mileham's style in leading the ELG and decision-making was different to Mr Stevenson's.<sup>56</sup>

Under Mr Mileham's leadership, the ELG did not function effectively as an executive team.<sup>57</sup>

This was also noted in the work completed by external consultants engaged by the City:

- Among the findings in the OCCA Report was a finding that the ELG was *"insufficiently aligned to support successful transformation"* of the City through the restructure.

The report observed:

*"There are natural tensions between the goals of the City's various services, and consequently, debate within the ELG is to be expected and welcomed. However, in the absence of an organisational strategy that articulates clearly prioritised strategic objectives, conflict arising from competing priorities is difficult to resolve and is visible to staff".*

- The OCCA Report also found *"The ELG's capacity to shape and lead the change [the restructure of the City] is constrained by a high proportion of time devoted to operational matters"*. The report also observed *"It will remain hard for ELG to commit sufficient energy to strategy and change unless it can manage down the volume of operational commitments"*.<sup>58</sup>
- In its survey of City employees, Catalyse found that only 25 per cent of respondents to the survey agreed that the *"ELG provides inspirational leadership"*, with 41 per cent disagreeing or strongly disagreeing with that statement. Comments from employees in the surveys and subsequent workshops referred to the lack of leadership by and the lack of cohesion among the ELG.<sup>59</sup>

There were tensions between Mr Robert Mianich and Ms Moore, between Ms Barranger and Mr Crosetta and from late 2017 between Ms Battista and Ms Moore and between Ms Battista and Mr Mileham.<sup>60</sup> Some of the directors, at times, displayed an aggressive style of management and/or communication.<sup>61</sup> This, and the absence of defined decision-making processes,<sup>62</sup> were likely to have accentuated the competition and divisions between the directorates and increased the lack of co-operation between them.

These dysfunctions in the ELG required firm, clear and consistent decision-making from the CEO. By many accounts, Mr Mileham was often incapable of making firm, clear and consistent decisions.<sup>63</sup> Many senior employees in the City believed that he would not give firm or clear instructions, or if he did, he would subsequently forget them or change his mind.<sup>64</sup> Senior employees gave evidence that Mr Mileham did not hold directors accountable to deadlines.<sup>65</sup> He was, in some respects, unsuited to the role.<sup>66</sup> This was not the kind of leadership required by the ELG at this time.

There was also an increase in the number of requests for information made by council members directly to the employees in the Administration, which added further to the workloads of already strained City employees.<sup>67</sup>

### Shift in the balance of power on Council

On 4 September 2017, Ms Scaffidi was disqualified by the State Administrative Tribunal from holding office as a member of Council for 18 months. Although this order was stayed by the Court of Appeal, Ms Scaffidi undertook to the Court that she would not exercise or discharge any of the powers or duties conferred on her as Lord Mayor until the determination of her appeal. The Court ultimately set aside her disqualification on 1 December 2017 and remitted the matter to the State Administrative Tribunal for reconsideration of penalties.<sup>68</sup> Ms Scaffidi returned to the position of Lord Mayor on 8 January 2018.

In the October 2017 elections, Ms Lexi Barton and Mr Steve Hasluck were elected as council members. Ms McEvoy and Mr Yong were not re-elected. Ms Barton and Mr Hasluck tended to vote with Mr Limnios, Dr Green and Mr Harley. From this point onwards, Ms Scaffidi and those council members aligned with her no longer had the balance of power in Council. Factions were reformed and by January 2018 there was a new majority in Council dictating Council decision-making.<sup>69</sup>

By October 2017, there can be little doubt that there was significant dysfunction in the Council as well as in the Administration.

Mr Mileham had already recognised before this time that there were some matters which needed addressing and had taken some steps to do this.

### Strategies to identify and address poor behaviours in the Administration

In October 2016, Mr Doug Aberle of Marple Bridge Pty Ltd, at Mr Mileham's instigation, began providing coaching to the ELG to establish *"an effective leadership team and a clear direction and plan to guide the City's administration to ensure delivery against the City's objectives"*.<sup>70</sup> Mr Aberle conducted workshops for the ELG in October 2016, November 2016, January 2017 and February 2017 and strategic planning sessions for the ELG in April 2017 and May 2017.<sup>71</sup>

On 14 July 2017, Mr Mileham, Mr Mark Ridgwell (Manager, Governance) and key human resource staff met with WorkSafe<sup>72</sup> inspectors at Mr Mileham's request. According to Mr Ridgwell, the meeting occurred because it had recently been announced that WorkSafe had investigated whether a council member at another local government had engaged in bullying.<sup>73</sup> In the meeting, Mr Mileham sought advice from WorkSafe on how the City could meet its obligations to provide a safe workplace for its employees, in particular, what strategies could be used to reduce or manage inappropriate conduct from council members.<sup>74</sup>

WorkSafe recommended that employees *"Pair up for in person meetings"* and centralise communications with council members, measures which had already been implemented by the City. WorkSafe also recommended that the City conduct a risk assessment on psychological or *"psychosocial hazards"* in the workplace.<sup>75</sup> That was not done, although there was an increased focus in the City on mental well-being.<sup>76</sup>



By 4 September 2017, the CULTYR Employee Scorecard for the City showed that only 44 per cent of employees agreed that the organisation was free from discrimination, sexual harassment and bullying, and only 38 per cent agreed that people were treated fairly and equally across the organisation. The CULTYR Employee Scorecard noted that *“respondents feel that more needs to be done to address work-place bullying at management level and to encourage a less hierarchical management system”*. Widespread concern about elected members not behaving in line with the *“Code of Conduct”* was also reported.<sup>77</sup> It also found:

*“Employees want to feel that they are appreciated and respected. The ability and want of respondents to take pride in their work is being impacted by the perception of a poor organisational culture that has allowed bullying, harassment and micro-management free reign”*.<sup>78</sup>

In workshops which followed the creation of the CULTYR Employee Scorecard, employees raised bullying and inappropriate behaviour by Council and ELG members as issues that needed to be addressed.<sup>79</sup>

There were also some issues identified between employees in senior management at the City and those they were responsible for supervising. This kind of bullying behaviour was described by at least one witness as a style of management which *“... had created results at the cost of the people, at the cost of the staff because she had flattened them, like a bull in a china shop”*.<sup>80</sup> As Catalyse reported:

*“Employees perceive that there is a lack of effective communication between the leadership and general staff. Respondents want open channels and clear, concise and relevant messages that provide useful knowledge and information. Respondents also want greater opportunities for open dialogue with their superiors, allowing staff to be honest without fear of retribution”*.<sup>81</sup>

Bullying behaviour has been described as unreasonable and repeated behaviour by an individual or group of individuals towards an employee or group of employees, which results in a risk to their health and safety.<sup>82</sup> This includes both mental and physical health and safety.<sup>83</sup>

Depending on the nature and context of the behaviour in question, bullying can include many things. It can include aggressive and intimidating conduct, belittling or humiliating comments, victimisation and unreasonable work demands.

Some of the communications considered by the Inquiry which were said to be evidence of bullying by council members towards employees do not seem, when considered individually, to constitute bullying behaviour. However, what is experienced as bullying can often depend on the context, on aspects such as whether it is an isolated example or part of a course of conduct, on whether a request is reasonable, on the difference in levels and roles, and on the timing and manner in which a communication is made. It is not always easy for a person looking at a communication from the outside to see the bullying aspects, but for the person on the receiving end, it is often obvious.

The fact that a significant number of employees identified bullying-type behaviour, or lack of fair treatment, as a problem, whether by council members or senior managers, indicates that there was a significant deterioration in the culture and in good governance at the upper levels of the City, in both the Council and the Administration.











**Strategies to identify relationship issues between council members, the Chief Executive Officer and the Executive Leadership Group**

In October 2017, the City engaged Bartlett Workplace Training to develop a “*One Team’ values and positive cultural/behavioural framework for Executive and Council*”. This included workshops with Council and the ELG together, and for the ELG.

Mr Glen Bartlett, the principal of Bartlett Workplace Training, who facilitated those workshops, observed that the culture between the ELG and Council was “*really dysfunctional*” and there was “*not a lot of trust between the two groups*”. He also observed that council members complained that the ELG did not properly respect or communicate with them. Members of the ELG complained that council members were interfering in operational matters within the City, while some council members expressed the view that Council was different to a board and that they had the “*right to delve into areas and make public comments on certain things*”.<sup>84</sup> Mr Bartlett recalled telling Council and the ELG at a “*critical time*” during the workshop:

*“You need to learn to work as one team. We need to set some non-negotiable behaviours and values of the group and you need to get off the front page of The West ... I said to them, ‘if I was the Minister and you actually don’t adopt this and buy in, I would be sacking the Council’ ... it was desperate times to actually do something and to really try to work with Councillors, the Exec Group and to find a way forward”.*<sup>85</sup>

In the workshop, council members and ELG members described the current cultural state of the City in the following terms:

 Culture of defensiveness	 Self-centred
 No current values	 Council/admin impenetrable
 Attacking	 Butt covering
 Elements of stonewalling	 No accountability
 Culture – dishonesty/anxiety/ no leadership	 Game playing <sup>86</sup>

In his workshop with the ELG, Mr Bartlett recalled:

*“... very early on throwing the agenda out the window, basically, because it became clear that there were a whole lot of issues that they weren’t even really talking to each other about and they had never given each other feedback ... The level of issues between them and the fundamentals missing surprised me”.*

Mr Bartlett was also surprised that these workshops were the first time in the history of the City that the Council and ELG had participated in a workshop to commit to the way they were going to behave.<sup>87</sup>

### **Other initiatives by Chief Executive Officer, Mr Martin Mileham**

In a memorandum to council members on 11 December 2017, Mr Mileham set out a range of initiatives in order to enhance “communications processes”.<sup>88</sup>

This memorandum included “a summary of the roles of Council, Councillors, Lord Mayor and Chief Executive Officer as detailed in the Local Government Act 1995 and City of Perth Act 2016”. It is telling that Mr Mileham believed that he needed to remind the council members of their roles.

Mr Mileham also introduced the “Council Hub” to centralise communications from council members and to disseminate information completely and transparently, “the reason being that [he] 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”.<sup>89</sup>

Mr Mileham also introduced a “CEO Inbox” which was intended to limit direct communications between council members and employees.<sup>90</sup> Communications from council members were to be received by the CEO for dissemination to employees for a response by the CEO.

However, the long-standing practice of council members communicating directly with employees in the Administration resulted in the CEO Inbox becoming a cause of frustration among some council members.<sup>91</sup> It was described as taking too long to get a response on matters which required a timely response, and/or the response provided was not adequate for the purpose.<sup>92</sup> Council members considered a discussion was a much more satisfactory way of obtaining an outcome.

A significant part of this dissatisfaction by council members with the measures taken by Mr Mileham seems to have stemmed from a misunderstanding or disregard of what council members were supposed to do and what they were entitled to ask of employees.

Mr Mileham's memorandum of 11 December 2017 reiterated the:

- role of the 'CEO Inbox';
- protocol for after-hours urgent matters;
- purpose of elected member briefings; and
- creation of elected member forums.

Mr Mileham also described in this memorandum:

- a proposed CEO and director "*Buddy Program*", between Council committee chairs and directors;
- invited council members to meet with him regularly;
- set out when contact outside the above parameters to the CEO or directors would be permissible; and
- referred council members to relevant City policies.<sup>93</sup>

Regrettably, none of these initiatives appear to have achieved their purpose.<sup>94</sup>

By early 2018, relationships between council members and most members of the ELG had deteriorated to such a degree that the proper and effective good government of the City was near impossible.<sup>95</sup>

### **Suspension of the Council**

During the Inquiry period, the City was subject to a number of unsettling events. These included:

- the organisational restructure and associated redundancies;
- changes in management and management style;<sup>96</sup>
- factionalism within the Council;
- a Corruption and Crime Commission report critical of Ms Scaffidi's failure to disclose contributions to travel and accommodation, and her hearings before the State Administrative Tribunal and the Court of Appeal; and
- sustained negative media coverage.

These issues created organisational instability.<sup>97</sup> It led to concerns among many of the City's employees about job security and what the future held for them.<sup>98</sup>

By the beginning of 2018, matters had reached a flashpoint. In February 2018, Mr Mileham took personal leave citing an unsafe workplace and, on 27 February 2018, members of the ELG declared a crisis and invoked the City's Crisis Management Plan.<sup>99</sup> The Council was suspended by the Minister for Local Government on 2 March 2018.

## Findings

### Finding 2.1.2 – 1

The Inquiry makes the following findings.

- i. Between 1 October 2015 and 1 March 2018, the City was characterised by low morale and a lack of trust, respect and integrity. It was dysfunctional in a number of important respects. There were difficulties in the working relationships between council members,<sup>b</sup> between council members and the Administration and within the Administration itself, particularly the ELG.<sup>c</sup> It suffered from a poor culture.
- ii. The role of the Lord Mayor is a leadership role. Ms Scaffidi, as the Lord Mayor, failed in her duty to lead and guide the whole of Council. Instead, she created and encouraged divisions and factions. She led her own faction to the exclusion of other council members. Ms Scaffidi also often interfered in matters which should have been left to the Administration.<sup>100</sup> She did not exemplify how council members should behave. This was not how the role of a Lord Mayor should have been conducted, and it was poor leadership.
- iii. The role of the CEO is also a leadership role. Mr Mileham was appointed the CEO on 20 January 2016. His appointment came at a difficult time for the City and its Administration. The City was in the process of a re-structure. Its directorates were siloed and not co-operating with one another. As a result, the City as a whole was not efficient. It was a time of considerable upheaval and dysfunction. It required someone with sufficient experience as a local government CEO. This was not something Mr Mileham brought to the role. In addition, it was a time which required clear, consistent and firm decision-making from the CEO. Mr Mileham often did not demonstrate these qualities. He was not an effective CEO, at a time when one was required. Under his leadership, the ELG did not function effectively as an executive team and suffered from a combined lack of local government experience.
- iv. During the Inquiry period, the City was dysfunctional. The dysfunction was entrenched. The culture was poor. Drastic action was required, but nothing effective was done. It required good effective leadership from the Lord Mayor and the CEO. Neither delivered what was required.

b From the October 2105 election between Ms Scaffidi, Mr Limnios, Ms Davidson, Ms McEvoy, Ms Chen, Mr Adamos, Mr Yong on the one hand, and Dr Green and Mr Harley on the other. From mid-2016 Mr Limnios was no longer part of the majority, and joined with Dr Green and Mr Harley. From the October 2017 election, Dr Green, Mr Limnios, Mr Harley, Ms Barton and Mr Hasluck formed a new majority.

c Between Mr Mianich and Ms Moore, Ms Barrenger and Mr Crosetta, Ms Battista and Ms Moore and Ms Battista and Mr Mileham.



## Governance

Governance is a key element of a thriving and successful organisation. It is made up of the structures, rules and processes which direct and control an organisation. It helps the organisation to set its objectives, make decisions, grant powers to get things done, drive and monitor performance and hold people accountable. It is the framework by which what needs to be done is spelled out, and then determines how things should be done.

Good governance in local government requires good leadership, clear and timely decision-making, a strong vision, a sound strategy and an appropriate system of checks and balances. It also requires that the structures, systems and policies underpinning each of these things is firmly in place, respected and followed, to make sure the organisation is run efficiently and effectively. There should be clear accountabilities and effective risk management and performance monitoring.

Good governance for a local government also requires the right culture with appropriate behaviours, sound leadership and good communication. There should be capable, principled and committed council members and administrative employees.

Governance is about processes and can be difficult to measure. However, there are ways in which governance can be monitored and reported on, to ensure it contributes to good government. A written and agreed governance framework, and policies which align with it, is an important step in being able to measure compliance against governance principles.

Strong governance models are of little value if organisations do not encourage their officers to take responsibility for issues within their control and to actively deal with matters as they arise.

As the City of Perth (City) operates within the local government sector, it has legislative obligations imposed by various Acts of Parliament, most significantly the *Local Government Act 1995* (LG Act) and its regulations.

In order to comply with, and enforce, obligations imposed on it by statute,<sup>101</sup> the City has various governance documents and processes in place. This Section does not explore all of these in detail but will provide an overview of the essential elements relevant to matters considered by the Inquiry. Some chapters of this Report provide detailed information about the policies, procedures and processes, including **Chapter 2.3.1: Chief Executive**, **Chapter 2.3.2: People management**, **Chapter 2.3.3: Financial management and planning** and **Chapter 2.3.4: Procurement and contracting**.<sup>102</sup>

Strengthening elements of the City's governance will assist in mitigating current and future risks to the organisation.

During the time that the Inquiry was conducting its investigation, the City developed a Corporate Governance Framework.<sup>103</sup> The Inquiry supports this development, but also notes that the City of Perth Council (Council) and Administration of the City are ultimately made up of people, and the problems which led to the suspension of the Council, and are described in this Report, were not necessarily caused by a lack of policies or a governance framework, but by the preparedness of people, council members and employees alike, to subvert the rules in their self-interest and to use their power to ensure that the requirements of the law and policies were not applied to them.

## Policy and procedures

The City has two types of policy: Council Policy and Organisational Policy. The City's Administration also has procedures established to guide the actions of employees in undertaking the activities of the local government.

This Report refers to numerous Council policies, organisational policies and procedures (**Part 1.2: About this Report** provides a list of legislation and policies relevant to the matters examined).

### Council Policy

Council policies are adopted by the Council to provide the Chief Executive Officer (CEO) and Administration with direction in respect to matters requiring decision and action. There are two types of policies:

- General Council Policy: A policy adopted by Council that is not statutory in nature. This includes Council 'directives' on general matters.
- Legislative Policy: A policy that is either required by law or created to supplement the City's Local Planning Scheme or a City local law.

The "*Council Policy Manual*" contains and consolidates policy decisions made by the Council. It provides the Council, committees, the CEO and employees with guidelines over a range of issues.

In the Inquiry's view, during the Inquiry period, 1 October 2015 to 1 March 2018, the City maintained good governance practices for the approving and recording Council policies.

### Organisational Policy

Organisational policies consist of standards and guidelines to guide employees in relation to operational matters.<sup>104</sup> They govern the day-to-day operations of the City and do not require Council approval.

The "*Organisational Policy Manual*" contains policy statements relevant to corporate administration and operational management of the City. The manual provides the scope and procedure for dealing with specific issues within the organisation.

### Corporate procedures

The City's corporate procedures are formalised processes to be used by specific employees for the governance, management and administration of corporate units within the City. Procedures may be business unit specific, or apply across the City.

### Planning, monitoring and reporting

Councils are required to undertake certain planning and reporting functions. This ensures they responsibly manage resources and are accountable to the public. They are often required to consult with the public while exercising these functions.<sup>105</sup>

### Integrated Planning and Reporting Framework

In Western Australia, local governments are required to “*plan for the future*”. This is known as an Integrated Planning and Reporting Framework.<sup>106</sup> During the Inquiry period, the City had the following elements of this Framework in place:

- Strategic Community Plan;
- Corporate Business Plan;
- Long-Term Financial Plan;
- Asset Management Plan;
- Workforce Plan; and
- Annual Budget.

The City also publishes an Annual Report each year. It “*is a key mechanism by which your council reports to, and is accountable to, the community. The annual report outlines your council's achievements against objectives included within ... relevant plans*”.<sup>107</sup>

Local governments manage substantial finances to enable them to provide a wide range of public services and maintain public infrastructure. In order to finance their activities, councils are granted certain powers to raise funds. These are raised mainly by levying municipal rates or through other activities, including commercial enterprises.

Local governments require effective processes and procedures to facilitate efficient financial management. This is critical to the overall operations of a local government and to protect assets used for the delivery of services.

**Chapter 2.3.3: Financial management and planning**, examines the nature of the City's integrated planning and reporting framework, the City's financial position, and its financial management practices.

## Risk, audit and assurance

It is vital that local governments have well-established processes for monitoring all aspects of the business, and for escalating issues of significant risk and ensuring they are resolved by the right people at the right time. A strong focus on building and sustaining effective governance frameworks and on detecting signs of poor governance can assist in dealing with problems before they develop into serious performance issues.

Risk, assurance and audit mechanisms provide for better practice governance, create alignment with the strategic direction and enable the achievement of outcomes. These should also be linked to the strategic, corporate and business planning processes.

In Western Australia, the Auditor General adopts a ‘four lines of defence’ model<sup>108</sup> (Figure 2.1), a variation of the ‘3 lines of defence model’ of the Institute of Internal Auditors.<sup>109</sup> This is a valuable tool for monitoring how the risk profile of a local government is managed and governed. It provides for an integrated view of risk, audit and assurance.

Without a risk-management focused culture, outcomes are less likely to be achieved, both in terms of efficiency and expectation, reputation can be damaged, and misconduct and corruption are more likely. A clear understanding of roles and responsibilities for risk, including how it occurs and can be identified and prevented, can also positively affect organisational effectiveness.

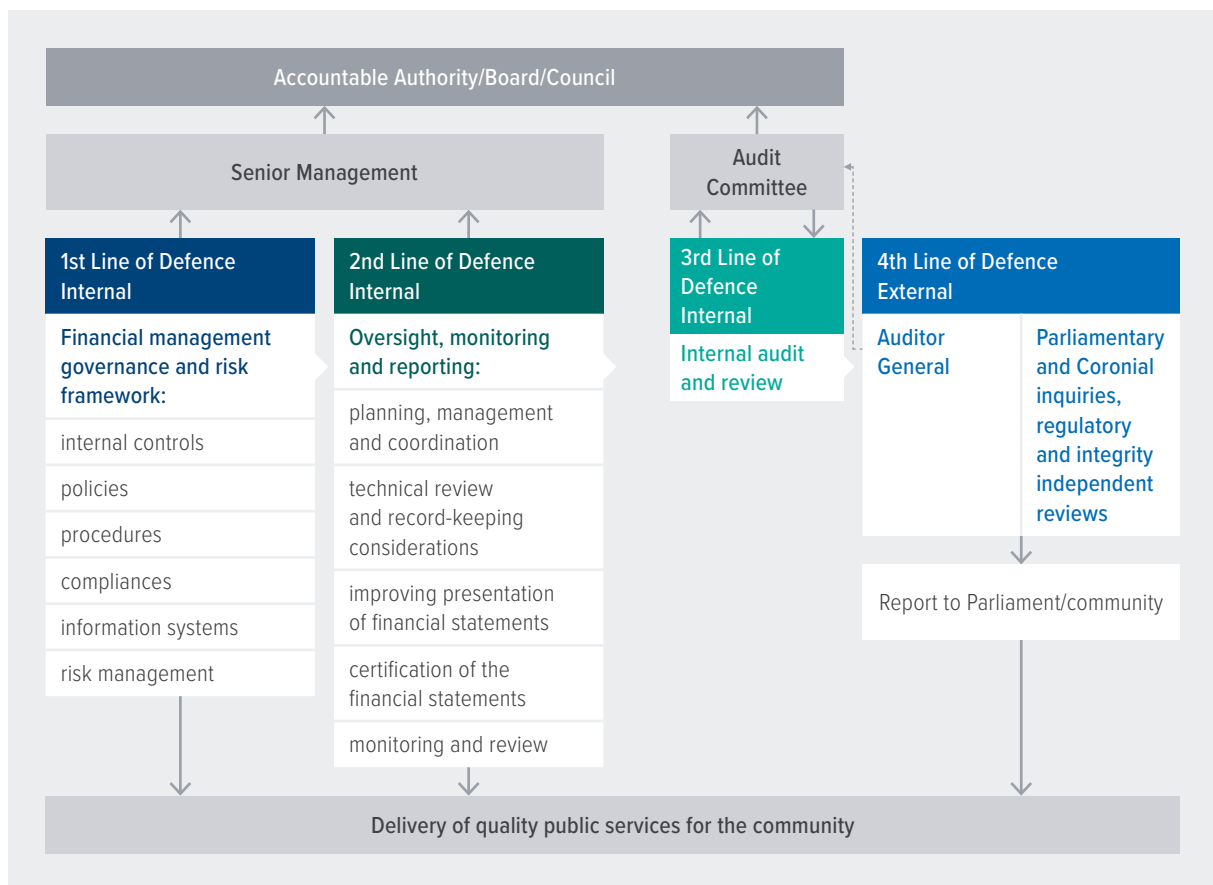


Figure 2.1: Western Australian Auditor General, ‘Four lines of defence’ model, March 2020.

The legislation provides for local governments to have an audit committee of Council, with the *Local Government (Audit) Regulations 1996* setting out its functions and the requirement to conduct a compliance audit each year.<sup>110</sup>

At the City, there is evidence that the risk, audit and assurance mechanisms were not as effective as would be expected for a large local government. They were not strategically focused and lacked assurance elements. There was also limited capability in the functions supporting these activities, and organisational engagement and value derived from the activities could be greater. Misconduct, fraud and corruption risks were not adequately identified and documented. This is examined further in **Chapter 2.3.3: Financial management and planning**.<sup>111</sup>

## Accountability

### Conflict of interest

A conflict of interest is a situation in which a person has a conflict between their private interests and their public (or sometimes other) duty. Conflicts of interest can affect council members and employees of local governments. For example, where:

- a council member is voting on a planning issue, which will affect a property which he or she owns; or
- an employee is sitting on a selection panel and is related to one of the applicants.

Having a conflict of interest is not wrong or bad, it happens to most people at some time, and to council members regularly. The problem arises where a council member or employee fails to identify or acknowledge a conflict or, worse, deliberately uses his or her official role to benefit his or her private interest.

In deciding whether there is a conflict of interest which should be declared, the question is not only whether it would *actually* affect the performance of official duties, but also whether it could give the *appearance* of doing so.

The question the person with the conflict should ask themselves is: *If the public became aware of the undeclared conflict, would it raise a suspicion about motive, a suspicion that the decision or action was taken for the wrong reasons?*

State Government legislation provides rules about how conflicts of interest should be addressed. This is supplemented by the City in its “*Code of Conduct*” and other policies.

The LG Act and its subsidiary legislation, including the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations), sets out the law intended to ensure that private interests are disclosed.

The LG Act requires council members and employees to disclose an interest when a relevant matter is to be discussed at a Council or committee meeting. ‘Interest’ is defined to include a financial interest, proximity interest, gift and contribution to travel. With some exceptions, a council member making a disclosure of a financial or proximity interest is not permitted to remain in a meeting and vote.



The Conduct Regulations provides “General principles to guide the behaviour of council members”, and specific rules of conduct. Regulation 7 states:

***“Securing personal advantage or disadvantaging others***

*A person who is a council member must not make improper use of the person’s office as a council member---*

- (a) to gain directly or indirectly an advantage for the person or any other person; ...”.*

Regulation 11 requires a council member to disclose an interest in any matter to be discussed at a Council or committee meeting. It defines ‘interest’ as being:

*“an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association”.*

During the Inquiry period, the City had a “Code of Conduct” at Policy CP10.1 of the “Council Policy Manual”. This Code applied to council members and employees.

Although the City revamped the “Code of Conduct” in 2017, at all times it was clear about preventing conflicts of interest. Part 3 of the “Code of Conduct” dealt with “Conflict and Disclosure of Interests”. Clause 3.1 headed “Conflict of interests” stated that council members and employees:

*“must ensure there is no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their public duties and functions”.<sup>112</sup>*

The conflict between public and private interests underlies many of the situations investigated by the Inquiry. These include:

- Council decisions on:
  - a development application relating to the Adagio, an apartment building; and
  - a sponsorship application to rejuvenate the Piccadilly Theatre.

These matters are examined in **Chapter 2.2.2: Decision-making**, Section: *The Adagio, 90 Terrace Road, East Perth*; Section: *Sponsorship Proposal to rejuvenate the Piccadilly Theatre*.

- Council decisions on sponsorships or grants to organisations or events:
  - when a council member had a personal connection to the organisation; and
  - when council members or employees received a benefit, such as tickets to an event.

These matters are examined in **Chapter 2.2.4: Grants and sponsorship**.

A decision to employ a contractor when the contractor had provided a gift to the CEO.

This matter is examined in **Chapter 2.3.4: Procurement and contracting**, Section: *Request for quotation 057-17/18 and the engagement of Bartlett Workplace Training Pty Ltd.*

Tender processes in which employees may have improperly assisted tenderers to obtain contracts with the City.

This matter is examined in **Chapter 2.3.4: Procurement and contracting**, Section: *Award of irrigation tender 031-17/18 to Western Irrigation Pty Ltd.*

Misuse by a council member of her official position to help her to obtain commissions through her private business.

This matter is examined in **Chapter 2.2.3: Disclosure, personal interest and entitlements**, Section: *Improper use of Councillor position to obtain a private benefit.*

Failures to make financial disclosures as required by the LG Act.

This matter is examined in **Chapter 2.2.3: Disclosure, personal interest and entitlements**, Section: *Disclosure of financial interests.*

## Records management

A key element of sound governance and accountability is adequate recording or documentation of the business of government, in this case, local government. The Western Australian Auditor General expressed it succinctly:

*“Local governments are involved in a range of activities and make decisions on a daily basis that directly impact their local community. .... In addition, councillors debate, set policy and can make local government rules and resolutions. All of these activities generate records”.*

Records can take many forms and *“Most importantly, records and good recordkeeping practice promote accountable and transparent decision making”*.<sup>113</sup>

According to the Western Australian State Records Office, *“Accurately created and managed records provide reliable, legally verifiable evidence of decisions and actions”*. This includes records created or received by elected members that relate to local government business.<sup>114</sup>

In the course of its investigations, the Inquiry has examined the records of the City and individual council members and officers of the City. In the opinion of the Inquiry, there were shortcomings in record-keeping in some areas. These included records of the Council and the Administration.

Despite the willingness of City employees to assist, sometimes significant documents and electronic records requested by the Inquiry were either missing, or were difficult to find, because they were not captured in the City's records management system but were stored on internal local network drives or in separate business systems. Many emails, personal communications and electronic documents relevant to the business activities and decisions of the City had not been captured.

Under section 5.41 of the LG Act. The CEO's functions are to:

*“(h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law”.*

*The State Records Act 2000* (SR Act) sets out the requirements for records management by government organisations. Local governments, including the City, are government organisations.<sup>115</sup> Section 19 of the SR Act requires that “every government organisation must have a record keeping plan that has been approved by the [State Records] Commission” (Commission).

The City's Record-Keeping Plan during the Inquiry period was approved by the Commission on 4 December 2009.<sup>116</sup> The review date for the plan was 4 December 2014, but this was not met. On 13 May 2015, Mr Robert Mianich, Director, Corporate Services, requested from the Commission an extension of time until June 2017 for submitting the City's amended Record-Keeping Plan, due to a review of the organisational structure. On 26 May 2015, the Commission approved the request.<sup>117</sup>

At its meeting on 23 March 2018, the Commission approved the City's amended Record-Keeping Plan.

During the course of the Inquiry, it became clear that many of the City's records had not been kept in accordance with City's policy “*OP[10] Record Keeping*” and the SR Act. In particular, the Inquiry noted that many electronic communications and documents relevant to decisions and activities had not been captured in the City's record-keeping system.

### Records of reasons for decisions by Council and committees

The Inquiry noted a number of situations in which Council and committee deliberations, including reasons for decisions, were not recorded, and are therefore not available to the public or to the Inquiry. Often at Council and committee meetings there was a record of the motion and the vote, but little or no indication of the reasons for the decision, or what was said and by whom, during the discussion.

The recording of reasons for decisions is an essential requirement of accountability, of administrative law and of good governance.

Without such records it is not possible to be sure that council members received full and unbiased information, or that they were acting for reasons relating to the community interest rather than their private interests.

Examples of decisions where reasons were not recorded are provided in the relevant chapters:

- Activation of the Crisis Management Plan by several ELG members on 27 February 2018. The Inquiry found that, although there were file notes made by officers involved, there was no official record of the reasons for the decision, when it was made or how it was made (**Chapter 2.4.1: Events leading to the suspension of the Council**).
- Council and committee meetings at which key decisions were made relating to the termination of CEO Gary Stevenson and the appointment of Martin Mileham as CEO (**Chapter 2.3.1: Chief Executive**).
- Decisions relating to the allocation of some sponsorships and grants, including a decision to refuse sponsorship for the refurbishment of the Piccadilly Theatre building (**Chapter 2.2.2: Decision-making**, Section: *Sponsorship Proposal to rejuvenate the Piccadilly Theatre*).

### Records relating to workforce and finances

At his hearing before the Inquiry, Mr John Nicolaou of ACIL Allen Consulting, which reported on aspects of the City's financial management for the Inquiry, said he had experienced difficulty in obtaining workforce information about the City. He said the City had no accurate record of how many people were working for it or had worked for it at any time in the past.

Mr Murray Jorgensen, who became CEO of the City in November 2018, advised the Inquiry that when he commenced at the City he asked how many employees there were on the payroll:

*"The best I could get initially was that there was around about 750 staff, give or take 10 or 20, which I found an unacceptable answer at that point in time because, give or take 10 or 20 is actually give or take several millions of dollars or not."*

Mr Andrew Hammond, Commissioner and Chair Commissioner of the City since the suspension of the Council was asked about accessing key financial information at the City:

*"Was it difficult to obtain financial data to explain the big picture?---Yes.*

*When you commenced on 2 March 2018?---Yes, absolutely.*

*Can you tell me why?---Well, on 2 March 2018 I didn't know – it's become apparent since then that the reporting and the financial accounting systems were less than good and the way that the accounting system was, I guess, not interconnected effectively with other programs around the place, and also we did find out that there was not actually an enterprise approach to accounting and each division had its own accountant, and in some cases, as we understand it, actually its own accounting records."*

This is examined in **Chapter 2.3.3: Financial management and planning**.

### People management records

In respect of recruitment records, the Inquiry found that some records were not maintained in accordance with either the State Records Commission General Disposal Authority or the City's Organisational Policy "*Record Keeping*".

In addition, when the Inquiry investigated matters relating to individual employees, such as grievances and performance appraisals, records could not be located on the employee's personal file. Records on recruitment decisions and processes were not located in the official record-keeping system. There were also some instances found on an internal local network drive or in hard copy files not connected to the official record-keeping system.

This is examined in **Chapter 2.3.2: People management**.

Good record-keeping is an essential element of good governance. A failure to record decisions accurately, or at all, is not good government.

### External oversight

In addition to the internal governance framework, to ensure good governance by local governments the following external agencies have a role in monitoring local governments.

In local government, an individual can also be held accountable by others. For a Council, it could be the community, specific groups in the electorate, other council members, oversight agencies or the CEO. For employees, this could be the CEO or a line manager.

### Office of the Auditor General

Since 28 October 2017, the Auditor General has had a mandate to audit local governments in Western Australia. The Auditor General currently has jurisdiction to conduct performance audits and has taken responsibility for conducting annual financial audits of local governments, as the existing audit contracts expire. It undertook the financial audit for the City for the 2017/2018 financial year.<sup>118</sup>

### Department of Local Government, Sport and Cultural Industries

The Department of Local Government, Sport and Cultural Industries (Department) states, on its website, "*The department partners with local government to deliver good governance to the community*".<sup>119</sup>

The Department advises the Minister for Local Government and issues operational guidelines and circulars. The Department is also responsible for investigative and regulatory aspects of the local government sector, including breaches of the LG Act and associated regulations.

### Complaint and allegation investigation bodies

The Local Government Standards Panel (LGSP) deals with complaints of minor breaches of the LG Act by council members. Minor breaches include a contravention of the Conduct Regulations. The LGSP does not deal with complaints about local government employees.



Under the *Corruption Crime and Misconduct Act 2003*, the Public Sector Commissioner has jurisdiction to investigate allegations of minor misconduct by public officers, including employees of a local government, but not council members. The Corruption and Crime Commission (CCC) has jurisdiction to investigate allegations of serious misconduct by public officers, including council members and employees.

The Western Australian Ombudsman will investigate “... *any decision or recommendation made, or any act done or omitted, that relates to a matter of administration and affects any person or body of persons in his or its personal capacity in or by any department or authority to which this Act applies in the exercise of any power or function*”. The term “authority” includes a local government.<sup>120</sup>

### Complaint and allegation handling

An essential feature of accountability for an organisation is to be able to deal honestly, accurately and thoroughly with complaints and allegations.

On 2 April 2020, the CCC published “*Review of an inadequate investigation by the Department of Communities into allegations of bribery*”.

This was an examination of an internal investigation conducted by the Department of Communities into an allegation of possible bribery of departmental officers by people wishing to jump the queue for housing. The CCC considered the investigation to be inadequate. Specifically, the CCC was concerned about the length of time taken to undertake the investigation and the inadequate investigation techniques used.

‘Complaints and allegations’ made in relation to the City, refer to situations in which a person states that he or she is not satisfied with something that a person associated with the City has done. Complaints and allegations can be made by members of the public, by employees, or they may be formally referred by the CEO or a delegate to an external agency.

The types of complaints and allegations made to and about the City can vary from the minor, “*a customer service officer was chewing gum*” to the significant, “*an employee accepted a bribe*”.

Complaints and allegations can include the following:

- Complaints by members of the public about customer service or another facet of the City.
- Grievances about human resources matters, including:
  - recruitment, promotions, ‘higher duties’, performance management; and
  - treatment of employees, including harassment, discrimination and bullying.
- Allegations of misconduct by council members or employees relating to conflicts of interest, bribery, fraud, corruption or other offences.

In **Chapter 2.3.2: People management**, the Inquiry deals with complaints and grievances made about the conduct of employees at the City.

In **Chapter 2.3.4: Procurement and contacting**, the Inquiry has examined several examples of the way in which the City dealt with, or failed to deal appropriately with, complaints and allegations of serious and minor misconduct relating to tender processes and procurements conducted by the City. These matters may also, more broadly, highlight concerns about procurement procedures and controls in the local government sector generally.<sup>121</sup>

These chapters highlight weaknesses in City governance processes which, in many cases, failed to prevent the situations complained of from developing, and failed to appropriately deal with them after a complaint had been made.

The City's processes for the handling of complaints had flaws in areas such as staff capability, processes and procedures. Internal investigations may have failed to identify all issues and sources of evidence. The complaint handling system at the City was not effective and did not contribute to good governance and good government.

When complaints and allegations are not properly addressed, bad behaviour and misconduct is often not identified or prevented, and can flourish.

### **Misconduct management**

Misconduct is defined in section 4 of the *Corruption, Crime and Misconduct Act 2003*. In brief:

- Serious misconduct involves a public officer acting corruptly in his or her official capacity, corruptly taking advantage of his or her office to gain a benefit, or committing a serious offence while acting in his or her official capacity.
- Minor misconduct includes a range of other conduct relating to a public officer failing to act in a way which is honest or impartial, or which constitutes a breach of the trust placed in the public officer, or misusing information officially obtained.

Allegations of serious misconduct by council members or local government employees are within the jurisdiction of the CCC.

Matters relating to minor misconduct by local government employees, but not council members, are within the jurisdiction of the Public Sector Commissioner.

In 2014 and 2018, two City employees were sentenced to prison for corruption and related serious misconduct arising from their dealings with contractors to the City. Several contractors were also convicted.

Good governance is one of the primary means by which misconduct can be prevented, or if it has already occurred, then it can be identified and properly investigated, and action taken to prevent its recurrence.

Several examples of the role of governance in relation to misconduct are given in **Chapter 2.2.1: Local government elections**. That Chapter examines how the governance processes of the City operated in relation to three separate potential abuses of electoral processes, with varying success:

- Governance processes were sufficient to prevent a council member, who was a candidate for election, from using his own private post office box as an address for ballot papers for people enrolled to vote as corporate nominees.
- Governance processes were able to detect a sham lease being used by a candidate to create his eligibility to stand. However, those processes did not prevent the candidate from improperly using the sham lease.
- Governance processes were not able to prevent the enrolment of people, who should not have been eligible, to vote as corporate nominees. It appeared that governance officers simply accepted the forms presented to them on face value, or with a simple check that the company was genuine, but without independently verifying that it met the property ownership or occupation qualifications.

Other chapters in this Report also examine possible misconduct by council members and employees in which governance processes did not prevent the conduct in question.

This included:

- Failures to declare gifts and financial interests.<sup>122</sup>
- Failures to properly use contracting procedures, such as Sole Supplier Justifications.<sup>123</sup>
- Failures to properly conduct tender evaluations.<sup>124</sup>
- Allocations of sponsorships and grants.<sup>125</sup>
- Failures to properly investigate complaints or allegations of misconduct.<sup>126</sup>

Comprehensive governance processes, and the resources to properly implement them, are a vital tool in dealing with misconduct, actual or potential. Although the City had governance processes, the Inquiry's investigation has shown that all too often they were not implemented in a way which was sufficient to prevent, detect, investigate and deal with misconduct.

## Endnotes

- 1 Report, Western Australian Auditor General, Audit Results Report – Annual 2018–19 Financial Audits of Local Government Entities, Report 16: 2019–20, 11 March 2020, p 27; Factsheet, Institute of Internal Auditors Australia, ‘3 Lines of Defence’ Combined Assurance Model, 2020.
- 2 *Local Government Act 1995*, s 2.6(1).
- 3 *Local Government Act 1995*, s 2.7.
- 4 *Local Government Act 1995*, s 5.41(c), 5.41(d).
- 5 Report, CULTYR Employee Scorecard 2017, Catalyse, 4 September 2017.
- 6 Website, Australian Public Service Commission, Senior Executive Leadership Capability framework; Website, Australian Public Service Commission, 02 Leadership, culture and conduct.
- 7 Website, Australian Public Service Commission, Senior Executive Leadership Capability framework.
- 8 *City of Perth Act 2016*, s 10(1)(d), (e), (f), (g); *Local Government Act 1995*, s 5.6(1).
- 9 For example, Report, City of Joondalup, Governance Framework 2016, p 18.
- 10 Report, State Services Authority Victoria, Organisational Culture, 2013, p 5, 9.
- 11 Report, State Services Authority Victoria, Organisational Culture, 2013, p 10.
- 12 Policy, City of Perth, Council Policy Manual, CP10.1, Code of Conduct, 6 June 2017.
- 13 Policy, City of Perth, Council Policy Manual, CP10.1, Code of Conduct, 6 June 2017.
- 14 *Local Government Act 1995*, s 2.7, 2.10, 5.41; *City of Perth Act 2016*, s 10, 11; *Local Government (Rules of Conduct) Regulations 2007*, reg 3(1).
- 15 *Local Government (Rules of Conduct) Regulations 2007*, reg 9, 10.
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- 22 Transcript, H Yan, private hearing, 29 April 2019, p 35-36; Transcript, S Ranjan, private hearing, 7 May 2019, p 54; Transcript, R Munro, private hearing, 24 April 2019, p 19; Transcript, K O’Brien, private hearing, 13 May 2019, p 54-55; Transcript, M Wilson, private hearing, 14 May 2019, p 18-19; Transcript, B Moyser, private hearing, 15 May 2019, p 55-56; Transcript, S Pascoe, private hearing, 16 May 2019, p 45. The enjoyment City employees drew from their work was also a popular response in the City’s CULTYR survey: Report, Catalyse, CULTYR Employee Scorecard 2017, 4 September 2017.
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- 37 Transcript, G Stevenson, private hearing, 28 February 2019, p 41-42; Transcript, R Mianich, private hearing, 17 July 2019, p 19-20.
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- 41 Notes, M Howells, 19 February 2016.
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- 44 Application, CEO City of Perth, M Mileham, undated.
- 45 Transcript, M Carter, private hearing, 19 June 2019, p 28, 50.
- 46 Transcript, P Crosetta, private hearing, 26 July 2019, p 4.
- 47 Transcript, E Barrenger, private hearing, 19 August 2019, p 3-4, 15.
- 48 Contract of Employment, R Moore and the City of Perth.
- 49 Curriculum vitae, A Battista.
- 50 Application, CEO City of Perth, M Mileham, undated; Transcript, M Mileham, private hearing, 22 July 2019, p 23. Mr Mileham gave evidence that he was Vice President of Operations in Dubai for a multi-national company and *"was in effect CEO"* and *"was a director and founder of my own company which again was, in effect, in my view, not altogether different from being a CEO"*.
- 51 Transcript, M Smith, private hearing, 10 December 2018, p 9-11; Transcript, N Brandon, private hearing, 27 March 2019, p 8-13, 24; Transcript, M Smith, private hearing, 2 April 2019, p 38; Transcript, R Munro, private hearing, 24 April 2019, p 19-20; Transcript, M Wilson, private hearing, 14 May 2019, p 19, 23-24; Transcript, M Copeman, private hearing, 22 May 2019, p 71-72; Transcript, K Pember, private hearing, 14 June 2019, p 60; Transcript, A Battista, private hearing, 24 June 2019, p 33, 36; Transcript, D Richards, private hearing, 15 July 2019, p 5; Transcript, R Mianich, private hearing, 17 July 2019, p 16-17; Transcript, M Mileham, 22 July 2019, private hearing, p 27-, 28; Transcript, L Crosetta, private hearing, 26 July 2019, p 46; Transcript, R Moore, 20 August 2019, private hearing, p 3-4; Transcript, J Nicolaou, public hearing, 7 October 2019, p 29; Transcript, R Mianich, public hearing, 8 October 2019, p 10-11, 50-51; Transcript, R Mianich, 9 October 2019, public hearing, p 19-21; Transcript, M Jorgenson, public hearing, 9 October 2019, p 52, 113; Transcript, M Mileham, 9 October 2019, p 93-94; Chapter 2.3.4: Procurement and contracting, Section: Refurbishment of Council House; Report, Catalyse, CULTYR Employee Scorecard 2017, 4 September 2017.
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- 56 Transcript, R Munro, private hearing, 24 April 2019, p 21-22; Transcript, D Quinlivan, private hearing, 23 April 2019, p 38-39; Transcript, M Ridgwell, private hearing, 24 July 2019, p 74-76, 78, 81-83, 86; Transcript, R Mianich, private hearing, 17 July 2019, p 19, 21-22; Transcript, P Crosetta, private hearing, 26 July 2019, p 9-10; Transcript, R Moore, private hearing, 20 August 2019, p 4-5.
- 57 Transcript, A Battista, private hearing, 24 June 2019, p 30-33, 36; Transcript, K Pember, private hearing, 14 June 2019, p 61-62; Transcript, K Pember, private hearing, 17 June 2019, p 72-73, 83-84; Transcript, Mr Ridgwell, private hearing, 24 July 2019, p 82; Transcript, private hearing, G Bartlett, 8 May 2019, p 21.
- 58 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017.
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- 61 Transcript, M Howells, private hearing, 20 June 2019, p 46; Transcript, M Howells, private hearing, 21 June 2019, p 36; Transcript, M Mileham, private hearing, 23 July 2019, p 3-4, 8; Transcript, M Mileham, private hearing, 22 July 2019, p 69; M Ridgwell, private hearing, 24 July 2019, p 64, 70; Transcript, E Barrenger, private hearing, 19 August 2019, p 23-24; Transcript, R Moore, private hearing, 20 August 2019, p 8.



- 62 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017.
- 63 Transcript, E Barranger, private hearing, 19 August 2019, p 5; Transcript, M Ridgwell, private hearing, 24 July 2019, p 78, 86; Transcript, A Battista, private hearing, 24 June 2019, p 34-37; Transcript, A Battista, private hearing, 19 July 2015, p 11-12; Transcript, R Moore, private hearing, 20 August 2019, p 4; Transcript, N Brandon, private hearing, 27 March 2019, p 12.
- 64 Transcript, K Pember, private hearing, 14 June 2019, p 60-61; Transcript, R Moore, private hearing, 22 March 2019, p 6 (in relation to the “*Target Business Model*”); Transcript, A Battista, private hearing, 24 June 2019, p 34-37; Transcript, M Ridgwell, private hearing, 24 July 2019, p 86; Transcript, E Barranger, public hearing, p 5; Transcript, R Moore, private hearing, 20 August 2019, p 4.
- 65 Transcript, M Ridgwell, private hearing, 24 July 2019, p 82.
- 66 Transcript, M Copeman, private hearing, 22 May 2019, p 73; Transcript, R Munro, private hearing, 24 April 2019, p 21-22; Transcript, P Crosetta, private hearing, 26 July 2019, p 10; Transcript, G Stevenson, private hearing, 28 February 2019, p 69.
- 67 Transcript, R Mianich, private hearing, 17 July 2019, p 12-15.
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- 70 Form, City of Perth, Sole Supplier Justification, Application and Approval, D Aberle, 9 November 2016.
- 71 Memorandum, Review of Services Provided by Marple Bridge, K Pember.
- 72 WorkSafe is a division of the Department of Mines, Industry Regulation and Safety.
- 73 File note, M Ridgwell, 14 July 2017.
- 74 File note, M Ridgwell, 14 July 2017; File note, J McGillivray, 21 January 2019; Transcript, M Mileham, public hearing, 30 August 2019, p 23, 24. Mr Mileham was asked about this meeting in his evidence before the Inquiry but did not have a complete recollection of the meeting or what was discussed. As a result, the Inquiry considers Mr Ridgwell’s contemporaneous file note to be a more reliable account of the meeting, particularly where it is consistent with or corroborated by the WorkSafe investigator’s file note (which appears to have been made in January 2019).
- 75 File note, M Ridgwell, 14 July 2017; File note, J McGillivray, 21 January 2019.
- 76 Transcript, M Mileham, public hearing, 30 August 2019, p 55.
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- 86 Report, Bartlett Workplace, Values and Culture Framework, Analysis Report, November 2017.
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- 88 Transcript, M Mileham, public hearing, 30 August 2019, p 59; Memorandum, M Mileham to Elected Members, 11 December 2017.
- 89 Transcript, M Mileham, public hearing, 30 August 2019, p 60.
- 90 Memorandum, M Mileham to Elected Members and ELG, 4 January 2018; Memorandum, Mileham to Lord Mayor and Elected Members, 29 January 2018.
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- 92 Transcript, L Barton, public hearing, 19 September 2019, p 51; Transcript, J Green, public hearing, 2 September 2019, p 64-65; Transcript, J Green, public hearing, 3 September 2019, p 10; Transcript, R Harley, public hearing, 4 September 2019, p 48-49; Transcript, J Limnios, public hearing, 6 September 2019, p 11-12.; Transcript, L Scaffidi, public hearing, 17 September 2019, public hearing, p 46-47; Transcript, L Barton, public hearing, 19 September 2019, p 51.
- 93 Memorandum, M Mileham to Elected Members, 11 December 2017.
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- 95 Chapter 2.4.1: Events leading to the suspension of the Council, Section: Activation of the Crisis Management Plan and holding of a Special Council Meeting on 27 February 2018.
- 96 Chapter 2.4.1: Events leading to the suspension of the Council, Section: Activation of the Crisis Management Plan and holding of a Special Council Meeting on 27 February 2018; Chapter 2.3.1: Chief Executive, Section: Termination of a Chief Executive Officer; Chapter 2.3.1: Chief Executive, Section: Appointment of a new Chief Executive Officer; Chapter 2.3.2: People management, Section: Performance management and termination of employment of an employee; Chapter 2.3.2: People management, Section: Recruitment of a new Director, Economic Development and Activation.
- 97 Transcript, P Gale, private hearing, 28 March 2019, p 33-34; Transcript, B Moyser, private hearing, 15 May 2019, p 57; Transcript, S Pascoe, private hearing, 16 May 2019, p 48; Transcript, M Ridgwell, private hearing, 24 July 2019, p 60-61, 64; Transcript, M Ridgwell, private hearing, 26 August 2019, p 16.
- 98 Transcript, R Moore, private hearing, 22 March 2019, p 98; Transcript, R Munro, private hearing, p 26-27; Transcript, R Ibrahim, private hearing, 29 April 2019, p 84; Transcript, S Kan, private hearing, 2 May 2019, p 11; Transcript, S Pascoe, private hearing, 16 May 2019, p 48.
- 99 Chapter 2.4.1: Events leading to the suspension of the Council, Section: Activation of the Crisis Management Plan and holding of a Special Council Meeting on 27 February 2018.
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- 114 Document, State Records Office, Information Management Advice, Local Government Elected Members’ Records: Which records to capture?, October 2019.
- 115 *State Records Act 2000*, s 3 and Schedule 1.
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- 124 Chapter 2.3.4: Procurement and contracting.
- 125 Chapter 2.2.4: Grants and sponsorships.
- 126 Chapter 2.2.1: Local government elections; Chapter 2.3.4: Procurement and contracting.

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# 2.2

## Community Leadership





## About this Part

The Perth City Council (Council) and its members perform an important strategic leadership role for the community.

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Council members are drawn from across the community. They are elected to represent the interests of their community.

As representatives, they plan for and make decisions for the local government's future. They are required to act with the highest level of integrity when they undertake their official duties.

On accepting office, the Lord Mayor and councillors of the City of Perth (City) promise to:

*"... duly, faithfully, honestly, and with integrity, fulfil the duties of the office for the people in the district ...".*

Council members should perform their role in the best interests of the community by working constructively with each other and managing disagreements, conflicts or differences in a professional manner.

By continually improving their skills and knowledge, council members perform their roles better and improve the quality of their decision-making, thereby benefiting the local government and their community.

Good government occurs when council members demonstrate the behaviours of good community leaders, when they show integrity in their actions, decisions are made in the community's interests and not their own, and they are accountable for their actions and decisions to the community they serve.

**This Part: Community Leadership** explores integrity and decision-making by the Council and its members.

## 2.2.1 Local government elections

Elections are the cornerstone of a democracy. There are two key parts to the electoral system in local government:

- elected council members, representing the interests of the community as a whole; and
- voters exercising their democratic right to elect leaders in their community to represent them.

This Chapter examines in depth how some candidates interfered with election processes for the position of a council member, and thereby subverted the democratic process.

### Timeline

2011	15 October	Local government ordinary election.
2012	22 March	Mr Keith Yong was nominated as a corporate nominee to vote in the City's elections by Lex Legal, his family's company with an office in the City.
	21 September	City officer, Ms Cathryn Clayton, told Mr Yong that being a nominee did not make him eligible to run for election at the City. He would need a lease or similar in his own name.
2013	24 August	Lex Legal emailed Ms Clayton a copy of a lease for Mr Yong dated 1 January 2012. <ul style="list-style-type: none"><li>• Mr Yong later admitted to the Inquiry that the lease was a sham and falsely backdated.</li></ul>
	5 September	Mr Yong nominated himself as a candidate for election.
	23 September	Mr Yong's mother, Ms Lilly Yong, emailed City officers alleging fraud on the electoral roll – that company nominees with voting rights were not authorised.
	24 September	Mr Yong emailed the election Returning Officer with letters from the directors of five companies stating that nominees for their companies were not authorised, and they would be reporting fraud to the police.
	2 October	AWEC officer and a City officer met with the company directors – Mr Yong, his parents and a friend. They found that in all cases the companies had approved the nominees. <ul style="list-style-type: none"><li>• Mr Yong admitted to the Inquiry that he made the complaints, because the nominees had been nominated to support another candidate, and they may not vote for him.</li></ul>
	19 October	Local government ordinary election. Mr Yong was elected as a council member with a margin of 54 votes over one candidate and 59 votes over another.
2015	3 and 5 February	Ms Lilly Yong, Mr Yong, his brother, Mr Jonas Yong and his sister Ms Angie Yong made statutory declarations applying to be silent electors on the basis that publication of their addresses would put their safety at risk. <ul style="list-style-type: none"><li>• There was no proper basis for these alleged concerns.</li></ul>
	17 October	Local government ordinary election.
	During 2015 and 2016	Mr Yong arranged for at least 45 of his friends, friends of his family and family members to be corporate nominees, and for the ballot papers for these voters to be sent to post office boxes (PO Boxes) controlled by him and other family members.



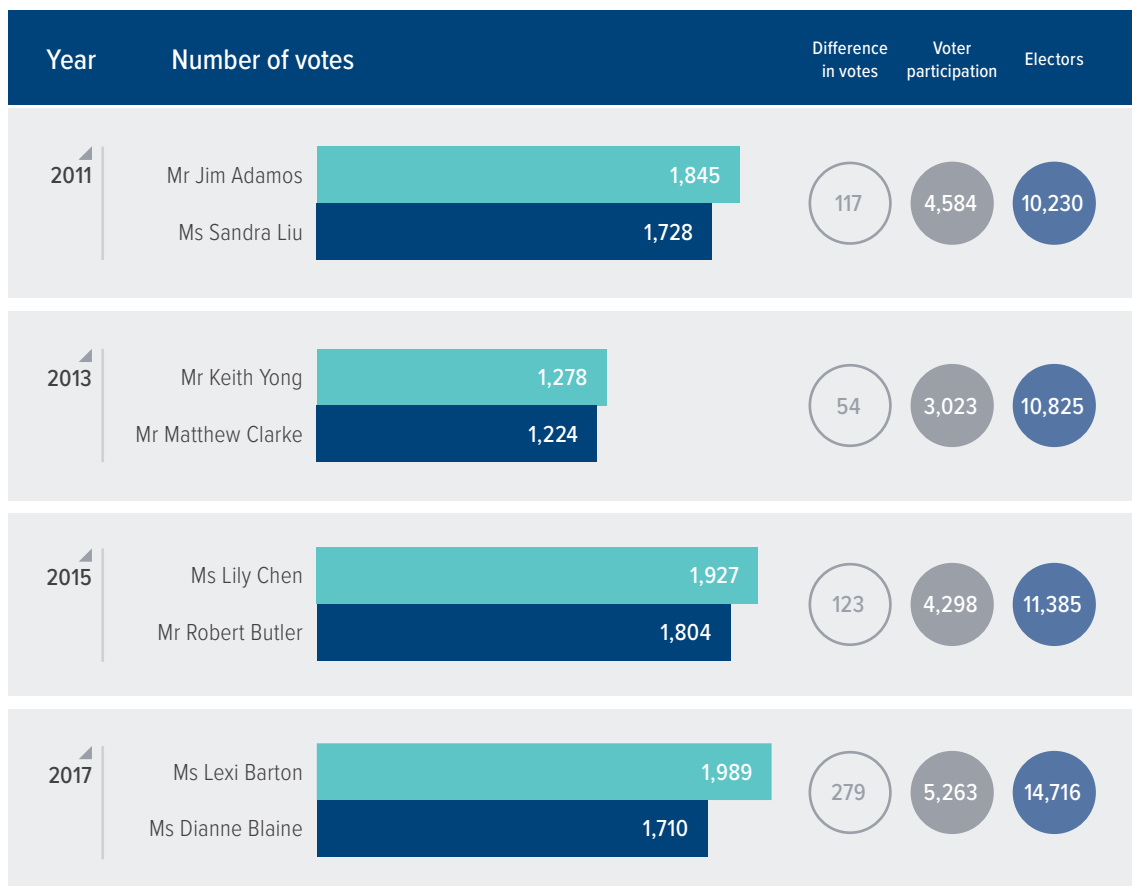
2016	During May	Ms Clayton noticed that a large number of electoral applications gave Mr Yong's PO Box as a postal address.
	30 May	Mr Mark Ridgwell, Manager Governance, met Mr Yong and recommended these addresses be changed to the electors' residential addresses. Mr Yong did not do this.
	8 July	Mr Ridgwell wrote to Mr Yong stating the electors would be contacted and told that their residential address would be used for the elections.
	24 November	Mr Yong was asked by Mr Ridgwell for a copy of his new lease, to verify he was eligible to stand for election again. It was not provided.
2017	21 October	Local government ordinary election. Mr Yong was unsuccessful.
	5 March	<p>During a hearing, Ms Angie Yong was directed by the Inquiry to produce a copy of a lease. The following day she produced a copy of the lease which she said she had found, it was dated 1 September 2009.</p> <ul style="list-style-type: none"> <li>At a public hearing on 12 August 2019, Ms Angie Yong admitted that she had prepared a new lease which she and her mother had signed and falsely backdated.</li> </ul>

## City of Perth elections

### Introduction

1. Elections are a fundamental part of democracy in local government. They allow the community to elect representatives and hold the local government to account. A transparent and effective electoral system is essential to good government.
2. The Council of the City of Perth (Council) consists of eight council members and the Lord Mayor who are elected for four-year terms. Elections for the Council are held every two years and four council members are elected. At each alternate election (that is, at an election every four years) the Lord Mayor is elected.
3. Unlike State and Federal elections, it is not compulsory to vote in local government elections and voter turnout is often low. For example, the 2013 Council elections had a voter turnout of 26.98 per cent. This increased to 35.93 per cent for the 2015 Council elections and 37.08 per cent for the 2017 Council elections.<sup>1</sup>

4. By reason of the small size of the electorate, and low voter turnout, results can be determined by a relatively small number of votes (Figure 2.2)<sup>2</sup>. For the last four City of Perth (City) elections, the number of votes between the successful candidate with the lowest vote, and the unsuccessful candidate with the highest vote, was as follows:



**Figure 2.2:** City of Perth election results, 2011 to 2017.

5. That means that every vote in a Council election is important.
6. This Section will examine whether the City's electoral system has been improperly manipulated by candidates for election and if so, how.
7. While this Section will principally examine the actions of Mr Yong and his family members as a case study, the Inquiry's investigations suggest this conduct was not isolated and that other council members engaged in similar conduct.
8. Furthermore, the evidence before the Inquiry indicates the City's electoral system and its internal processes were vulnerable to manipulation.

### Legislative background

9. It is necessary to briefly explain the electoral system established by the *Local Government Act 1995* (LG Act).
10. There are two categories of electors who are eligible to vote in elections for the Council and who can nominate as a candidate for Council:
  - People who are enrolled to vote in elections for the Western Australian Legislative Assembly (Legislative Assembly) in relation to a property in the City. These electors are enrolled on the “*residents roll*”, which is maintained by the Western Australian Electoral Commission (WAEC).<sup>3</sup>
  - People who are enrolled to vote in elections for the Legislative Assembly or the House of Representatives for a property outside of the City, but who “*own or occupy*” rateable property within the City. These electors are enrolled on the “*owners and occupiers roll*”, which is maintained by the City. The Chief Executive Officer (CEO) of the City decides whether people are eligible to be enrolled on the owners and occupiers roll and may make any inquiries needed to make those decisions.<sup>4</sup>
11. To occupy property, a person must have “*a right of continuous occupation under a lease, tenancy agreement or other legal instrument*” and must, at the time they applied to be enrolled as a voter, have that right for at least the next three months.<sup>5</sup>
12. Bodies corporate (such as companies or incorporated associations) which own or occupy property within the City may nominate two people to vote in elections for the City.<sup>6</sup> That is done by a director of the body corporate completing an “*enrolment eligibility*” form and providing it to the City. That form includes a declaration that the body corporate owns or occupies property in the City. The form must be signed by the two voters and requires their contact details (including their postal address) be provided. The City should then assess whether the body corporate is eligible to enrol voters.
13. A person nominated by a body corporate is only required to be enrolled as an elector for the Legislative Assembly or the Commonwealth House of Representatives. There is no requirement that nominees have any connection to the company or the City. However, these voters are not entitled to nominate as a candidate in the City’s ordinary election.<sup>7</sup>
14. A person successfully elected to Council must continue to be eligible to be enrolled on the residents roll or the owner and occupiers roll to continue to hold office as a council member.<sup>8</sup>
15. A returning officer is responsible for conducting an election for Council including, for example, investigating whether misconduct, malpractice or maladministration has occurred in relation to an election. Where a local government nominates the Western Australian Electoral Commissioner (Electoral Commissioner) as responsible for conducting an election, the Electoral Commissioner may appoint a returning officer and that officer is to conduct the election under the Electoral Commissioner’s direction.<sup>9</sup>

## Issues considered by the Inquiry

16. This Section will consider:

- Whether candidates for election and council members engaged in improper or unlawful conduct in relation to elections that undermined, or had the capacity to undermine, the integrity of the City's elections and the Council.
- The City's internal processes in managing Council elections and its responses to suspected unlawful or improper conduct.

17. Specifically, the Inquiry has investigated whether:

- Mr Yong used a sham lease to purportedly become eligible to stand for election to Council in 2013 and 2017 and remain a council member until October 2017.
- Mr Butler used sham leases to purportedly become eligible to stand for election to Council and remain a council member until October 2015.
- Mr Adamos used a sham lease to enrol his family members to vote.
- The City had adequate processes in place to ensure that candidates and voters were eligible to be on the electoral roll and therefore eligible to nominate for election and vote.
- Mr Yong made, and arranged for a family friend and members of his family to make, fraudulent complaints to the City prior to the 2013 election for the purpose of removing electors from the electoral roll.
- Mr Yong arranged for his family and friends to be nominated to vote on behalf of companies owning or occupying property in the City, and whether that conduct was improper or unlawful.
- Mr Yong arranged for companies to enrol voters, when he knew those companies were not entitled to do that.
- Mr Yong arranged for ballot papers for the 2017 election to be directed to post office boxes (PO Boxes) controlled by his family, rather than to electors, and whether that conduct was improper or unlawful.
- Whether the action taken by the City and the WAEC, in circumstances that suggested misconduct had occurred in relation to an election, was adequate.

## Investigation by the Inquiry

### Witnesses

18. The Inquiry held private and public hearings with a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section.

- Council members Mr Yong, Mr Butler, Mr Adamos and Mr James Limnios.
- Mr Yong's mother, Ms Lilly Yong, and his sister, Ms Angie Yong.
- Mr Michael Sutherland, former council member with the City and Member for Mt Lawley in the Legislative Assembly (Western Australian Parliament) and current member of the Administrative Appeals Tribunal.
- Mr Martin Mileham, CEO of the City.
- Mr Mark Ridgwell, Manager, Governance with the City.
- Dr Kenneth Evans, Electoral Co-ordinator with the City.
- Ms Cathryn Clayton, Governance Electoral Officer with the City.
- Ms Lyn Cavanagh, an employee of the WAEC and the returning officer for the 2013 City local government election.
- Mr Keiji Takemori, Managing Director of Osaka Gas Australia Pty Ltd (Osaka Gas Australia).
- Seven witnesses who had been nominated to vote in the City's ordinary election by companies associated with Mr Yong, his family and friends.

19. Most of the hearings were held in private, although the Inquiry held public hearings on these matters with Mr Yong, Ms Lilly Yong, Ms Angie Yong, Mr Adamos and Mr Ridgwell.
20. In the course of its inquiries, the Inquiry heard evidence and received information on the alleged conduct of Mr Yong's brother, Mr Jonas Yong. The Inquiry did not hear evidence from Mr Jonas Yong and makes no findings in relation to him.

### Evidence of Mr Keith Yong

21. Mr Yong's evidence before the Inquiry was frequently evasive, inconsistent and dishonest.
22. In a hearing on 6 August 2019, Mr Yong gave evidence that was inconsistent with evidence he had given before the lunch adjournment. Mr Yong admitted that he had spoken to Mr Jonas Yong about his evidence during the lunch adjournment.<sup>10</sup>

23. After the Inquiry adjourned to provide an opportunity for Mr Yong's lawyers to give him advice on his obligations as a witness, Mr Yong agreed with Counsel Assisting that he had given false evidence following his discussion with Mr Jonas Yong. Mr Yong agreed with Counsel Assisting that he and Mr Jonas Yong had attempted to pervert the course of justice.<sup>11</sup>
24. Except where Mr Yong's evidence went against his own interests or the interests of his family members, the Inquiry has treated Mr Yong's evidence with extreme caution.

### Evidence of Ms Angie Yong

25. Ms Angie Yong was frequently non-responsive and evasive when giving evidence at her private hearing on 5 March and 6 March 2019. She delayed answering questions and appeared to be crafting her answers with a view to protecting her interests and the interests of her brother and family.
26. On 5 March 2019, Ms Angie Yong was directed by the Inquiry to produce a copy of a lease for premises within the City for Beau Geste Pty Ltd (Beau Geste). She was reminded that she should not discuss her evidence or that direction with anyone.<sup>12</sup>
27. On 6 March 2019, she produced a document that was purportedly a copy of the lease and gave evidence about how she had found it the previous evening.
28. At a public hearing on 12 August 2019, Ms Angie Yong admitted that she had failed to find this lease on the evening of 5 March 2019 and had prepared a new lease which she and her mother had signed and dated 1 September 2009. That new lease was provided to the Inquiry on 6 March 2019. She agreed with Counsel Assisting that she had repeatedly lied about that lease on 6 March 2019 and had discussed her evidence with Mr Yong and Ms Lilly Yong on 5 March 2019, contrary to the Inquiry's direction.<sup>13</sup>
29. Except where her evidence went against her own interests or the interests of her family members, the Inquiry has had little regard to Ms Angie Yong's evidence.

### Evidence of Ms Lilly Yong

30. Ms Lilly Yong was an evasive witness at her private hearing on 5 March 2019.
31. At her private hearing, Ms Lilly Yong was directed not to discuss her evidence with anybody and was reminded of that direction twice.
32. At a public hearing on 12 August 2019, she gave evidence she had spoken to Mr Yong, Ms Angie Yong and her husband Mr Tet Khiong Yong about her evidence in the private hearing. She claimed that she had forgotten the Inquiry's directions.
33. Ms Lilly Yong agreed with Counsel Assisting she had signed a lease on or about the date she gave evidence at the private hearing that pretended to be a lease that was supposedly signed on 1 September 2009, knowing that it was going to be provided to the Inquiry by her daughter to prove the existence of a lease in 2009.<sup>14</sup>
34. Except where her evidence went against her own interests or the interests of her family members, the Inquiry has had little regard to Ms Lilly Yong's evidence.



## Evidence obtained by the Inquiry

### Sham leases used to create eligibility to stand for Council and enrol electors

35. At law, a “*sham*” refers to a document or transaction that the parties do not intend to have any legal effect yet is intended to appear to third parties to create legal rights and obligations.<sup>15</sup>
36. Parties may, for example, enter into a sham lease for property in the City that the parties do not intend to give rise to any rights, although it is intended to appear to be an enforceable lease. Such a document would not give a person “*a right of continuous occupation*” under the LG Act that would enable that person to enrol to vote.


#### Mr Keith Yong

37. Mr Yong has, at all relevant times, been a legal practitioner admitted to practice in Western Australia and employed as a solicitor by the firm Lex Legal Pty Ltd trading as Lex Legal (Lex Legal). Mr Jonas Yong is the sole director of Lex Legal and Mr Yong and Mr Jonas Yong are the only shareholders. Prior to the 2013 election, Mr Yong did not own or occupy any residential property in the City.
38. Since March 2012, Lex Legal has occupied an office at Suite 9, Level 3, 231 Adelaide Terrace, Perth.
39. Lex Legal Management Pty Ltd (Lex Legal Management) owned Suite 9, Level 3, 231 Adelaide Terrace, Perth. Ms Lilly Yong was the sole director, secretary and shareholder of Lex Legal Management.
40. On 1 January 2012, Lex Legal entered into a lease agreement with Lex Legal Management to lease Suite 9 at 231 Adelaide Terrace, Perth. The lease agreement was signed by Ms Lilly Yong as director of Lex Legal Management and Mr Jonas Yong as director of Lex Legal.
41. On 22 March 2012, Lex Legal Management nominated Mr Yong to vote in Council elections (Figure 2.3).<sup>16</sup>
42. On 19 September 2012, Ms Clayton, Governance Electoral Officer with the City, sent Mr Yong an email asking him to send the missing page of an enrolment eligibility form and a “*copy of the lease agreement/tenancy agreement or legal instrument for the two individual occupiers Mr Yit-Kee Yong and Mr Yit-Joon Yong*”.<sup>17</sup>
43. On 20 September 2012, Mr Yong sent Ms Clayton an email advising that the lease between Lex Legal Management and Lex Legal was sent the previous day.<sup>18</sup>
44. On 21 September 2012, Ms Clayton sent an email to Mr Yong confirming receipt of the lease between Lex Legal Management and Lex Legal and stating she understood Mr Yong wished to stand as a candidate for Council at the next election. She also advised him that being a nominee for Lex Legal Management did not make him eligible to nominate as a candidate.

**APPLICATION TO REGISTER A CORPORATE NOMINEE**

(Enrolment Eligibility Claim for Notice of Nomination of Corporate Nominees)

PLEASE RETURN TO City of Perth, 27 31 George's Terrace, Perth, WA 6000  
FACSIMILE : 9461 3083

  
 CITY of PERTH

See accompanying form for notes on when and how to complete this form.  
All sections must be completed for the City of Perth to consider the claim. For any assistance please contact telephone 9461 3302.

<b>Full Name of Corporate Body</b> (include Pty Ltd / Ltd as appropriate)  Lex Legal Management Pty Ltd	<b>Australian Company Number</b>  (Please complete)
---	---

**Rateable Property on which Claim is based** (complete whichever is applicable)<sup>4, 5</sup>

Suite 9/231 Adelaide Terrace  
 PERTH WA 6000

**Postal Address of Corporate Body** (complete whichever is applicable)

PO Box 6116  
 EAST PERTH WA 6892

**Person authorised by the Corporate Body to nominate person(s) to vote on its behalf**

Title (Mr / Mrs / Miss) (Mr)	Family Name YONG	Other Names LILLY	Work Email Address <div style="background-color: black; width: 100px; height: 20px;"></div>
---------------------------------	---------------------	----------------------	--

The Corporate Body is the owner ☒ or occupier ☐ of the rateable property (please tick one box only)<sup>6</sup>

For occupiers only (tick one box)<sup>5</sup>

The Corporate Body that is making this application to register a nominee(s) ☒ does ☐ does not have a right, under a lease, tenancy agreement or other legal instrument, to be in continuous occupation of that property for at least the next three months.

**Proof of your right of occupation may be requested.**

I am authorised as an Officer of the Corporate Body to nominate the following person(s) to vote on behalf of the Corporate Body.

Name of Nominee(s): (1) Mr / Mrs / Ms / Miss YIT-KEE YONG .....

(2) Mr / Mrs / Ms / Miss LILLY YONG .....

Signature of authorised person: [Signature] Date: 22/03/2012

**PLEASE TURN OVER**

CC 16/3/12

CQP Imaged Record - 23/03/2012

Figure 2.3: Application to register a corporate nominee, City of Perth, Lex Legal Management Pty Ltd, 22 March 2012.

**First Nominee<sup>2</sup>**

Title	Family Name	Other Names	Date of Birth	CONTACT NUMBERS
MR.	YONG	Yit-Ke	[REDACTED]	Home [REDACTED] Work [REDACTED] Mobile [REDACTED] Email [REDACTED]

**Postal Address**

Street No. or PO Box No.	Level	Building Name	Street	Suburb	State
6116					
EAST PERTH 6152					

**Entitlement to be enrolled (tick one box)**

- I am ☒ On the State or Commonwealth Electoral roll for a residence outside the electoral district address on that roll is [REDACTED]
- or ☐ Not on the State or Commonwealth Electoral Roll but I am qualified as an Elector under Clause 12 of Schedule 9.3 of the Local Government Act 1995

**Claim and Declaration (Making a False Declaration is an Offence)**

I claim eligibility to have my name included on the City of Perth Owners and Occupiers Roll and I declare that all of the details set out above are true and correct.

Signature: \_\_\_\_\_

Date: 22/3/2012

**Second Nominee<sup>2</sup>**

Title	Family Name	Other Names	Date of Birth	CONTACT NUMBERS
MRS.	YONG	LILLY	[REDACTED]	Home [REDACTED] Work [REDACTED] Mobile [REDACTED] Email [REDACTED]

**Postal Address**

Street No. or PO Box No.	Level	Building Name	Street	Suburb	State
6116					
EAST PERTH 6152					

**Entitlement to be enrolled (tick one box)**

- I am ☒ On the State or Commonwealth Electoral roll for a residence outside the electoral district address on that roll is [REDACTED]
- or ☐ Not on the State or Commonwealth Electoral Roll but I am qualified as an Elector under Clause 12 of Schedule 9.3 of the Local Government Act 1995

**Claim and Declaration (Making a False Declaration is an Offence)**

I claim eligibility to have my name included on the City of Perth Owners and Occupiers Roll and I declare that all of the details set out above are true and correct.

Signature: \_\_\_\_\_

Date: 23/03/2012

CC 18/3/12

45. Ms Clayton told Mr Yong he would need to be eligible as an *“individual occupier”* and show *“a lease/tenancy agreement or legal instrument”* in his name. Ms Clayton gave the example of *“a Lawyer who leases an office space from a Law firm who owns or occupies the Rateable property”*.<sup>19</sup>
46. On 24 August 2013, the ‘Secretary’ for Lex Legal sent an email to Dr Evans, Electoral Co-ordinator with the City, and Ms Clayton, attaching a copy of *“a lease agreement of Mr YitKee Yong”*. The email asked for confirmation that Mr Yong was *“now eligible to stand for election as a Council member”*.<sup>20</sup>
47. Ms Clayton responded by email two days later and provided Mr Yong with the contact details of the City’s Electoral Co-ordinator, Dr Evans, and the returning officer for the election, Ms Cavanagh, and advised that a disc titled *“Candidate Information Kit”* had been mailed.<sup>21</sup>
48. The attached lease agreement was between Lex Legal Management as landlord and Mr Yong as tenant. The lease stated that it was made and commenced on 1 January 2012. The lease was for *“A room / office situated at Suite 9, Level 3, 231 Adelaide Terrace, Perth ... having an area of 14.76 square metres”*. The premises were said to be outlined on a plan attached to the lease, although no plan was attached. The rent was \$9,600.00 per annum payable in monthly instalments. The agreement was, in almost all respects, identical to the lease agreement between Lex Legal and Lex Legal Management.
49. In his evidence before the Inquiry, Mr Yong admitted that the lease was drawn up in August 2013 and backdated to 1 January 2012. Mr Yong said that he had backdated the lease to make it look like a legitimate lease and he lied about the date *“To be consistent with the earlier lease”*, the lease between Lex Legal and Lex Legal Management. Mr Yong did not pay and never intended to pay any rent under the agreement. However, rent was included in the agreement to give the impression the lease was legitimate. Mr Yong admitted the lease agreement was solely drawn up so he could purport to be eligible to stand for election.<sup>22, (a)</sup>
50. Ms Lilly Yong also admitted the lease agreement was only drawn up so Mr Yong could stand for election, although she asserted that Mr Yong requested the office so he could have a separate office to complete his work as a council member.<sup>23</sup> However:
  - Mr Yong did not give evidence to that effect.
  - That is inconsistent with the terms of the lease, which provided Mr Yong was to use the premises only for the purpose of *“Office of law practice”*.
  - When he was elected as a council member, Mr Yong had the use of an office at Council House.
51. Mr Yong nominated himself as a candidate for election as a council member on 5 September 2013. He signed to verify *“I am eligible to nominate as a council member”*. Mr Yong was successfully elected to the Council for a four-year term at the election on 19 October 2013.

a While Counsel Assisting put to Mr Yong that the lease was drawn up in August 2012, it is apparent that Counsel Assisting was referring to August 2013 and it was clear that Mr Yong understood that to be the case.

52. On 24 November 2016, after Mr Yong had been a council member for three years, Mr Ridgwell emailed Mr Yong pointing out that his lease would expire on 31 December 2016 and asking him to update his eligibility status by providing a copy of his new lease and fresh enrolment form. Mr Yong replied, “*The lease agreement provides a further term of 5 years*”. However, he did not provide a copy of it. Mr Ridgwell said to Mr Yong “*there needs to be an evidentiary trail that the extension was exercised*”.<sup>24</sup> There is no evidence before the Inquiry that any evidence of an extension was provided to the City by Mr Yong.<sup>b</sup>
53. The Inquiry is satisfied on the evidence that the lease was a sham, created on or around August 2013, falsely backdated to 1 January 2012 and created purely so that Mr Yong was able to provide the City with a lease which appeared to make him eligible to stand for election to Council. Consequently, Mr Yong was not eligible to stand for election or take office as a council member.

#### Mr Jim Adamos

54. The Inquiry also heard evidence from Mr Adamos, who arranged for his family investment company, of which he and his wife were the sole directors and shareholders, to lease an office in his home, which was owned by him and his wife. Having drawn up the lease, Mr Adamos nominated his brother and sister-in-law to enrol to vote as the company’s nominees.<sup>25</sup> Those nominations were accepted by the City.
55. The rent payable under the lease was \$1.00 per annum, although no rent was ever paid. The term of the lease was for five years commencing from 1 July 2016. The lease was signed by Mr Adamos and his wife as guarantors, yet there was no guarantee under the lease. The lease also referred to the “*Commercial Tenancy Agreements Act 1995*” as legislation applying to the lease. However, that Act does not exist (Figure 2.4).<sup>26</sup>
56. Mr Adamos admitted the sole purpose of this lease was to enable his investment company to nominate two people to vote for him in the City’s ordinary election. Mr Adamos accepted that the lease was a sham and his behaviour was not ethical.<sup>27</sup>
57. Although Mr Adamos was not contesting the next Council election to be held on 21 October 2017, the term of the lease extended beyond October 2019 when he was due to stand for re-election. If the status quo remained, Mr Adamos’s brother and sister-in-law would have also been eligible to vote in that election.<sup>28</sup>
58. Mr Adamos claimed that, at the time, he did not know there was anything wrong with this behaviour. Mr Adamos held the view that it was the responsibility of the City’s Administration to tell him that creating a sham lease was the wrong thing to do.<sup>29</sup> As a consequence and notwithstanding his admissions at paragraph 56, the Inquiry is not satisfied that Mr Adamos accepted full responsibility for his conduct.

b In response to a notice to produce documents issued by the Inquiry, Ms Lilly Yong produced a document, signed by her as a director of Lex Legal Management and purportedly dated 1 September 2016, in which Lex Legal Management “*hereby consent to the Tenant a further term of five (5) years lease commencing 1st January 2017*”. Extension of Lease, 1 September 2016. However, the lease agreement provided that Mr Yong had the unilateral right to exercise an option to extend the lease for a further five years and the landlord’s (Lex Legal Management’s) consent to the extension was not required. Given this, and Ms Lilly Yong’s admission at paragraph 33, the Inquiry has concerns about the authenticity of this document.

## Lease of Commercial Office

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***Landlord:***

Jimmy and Helen Adamos of [REDACTED]

***Tenant:***

East Perth Investments Pty Ltd (ACN 103 590 192)

---

Part Premises: The front office space of [REDACTED]

Rent: \$1 per year inclusive of GST

Term of Lease: 5 Years commencing from 1/7/2016

How rent is to be paid: Annually on July 1<sup>st</sup> each year

Building outgoings which the Tenant must pay or reimburse: Nil

The Tenant's proportion of Building Outgoings: 0%

Interest rate on overdue money: 5% per annum

Permitted Use: Office

Application of Act: Commercial Tenancy Agreements Act 1995

Market Review date(s): Nil

CPI review date(s): Nil

Fixed review date(s) and percentage increases or fixed amount: Nil

Further Term: 10 years.

Latest date for Exercising Option for Renewal: 30/6/2021

Security Deposit: Nil

Additional Provisions: Nil

Figure 2.4: Lease of commercial office, Mr Jimmy Adamos and Ms Helen Adamos, and East Perth Investments Pty Ltd, 1 July 2016.



***EXECUTED AS A DEED ON THIS 1st Day of July 2016***

EXECUTED by the LANDLORD, Jimmy and Helen Adamos in accordance with Section 127 of the *Corporations Act 2001* (Cth) by being signed by the authorised persons:

Jimmy Adamos 

Helen Adamos 

Jimmy Adamos and Helen Adamos both of 8 Henry Lawson Walk East Perth as joint Directors

EXECUTED by the **TENANT, East Perth Investments**, in accordance with Section 127 of the *Corporations Act 2001* (Cth) by being signed by the authorised persons:

  
Director Jimmy Adamos of 8 Henry Lawson Walk East Perth WA 6004

  
Director Helen Adamos of 8 Henry Lawson Walk East Perth WA 6004

EXECUTED by the **GUARANTOR**, in accordance with Section 127 of the *Corporations Act 2001* (Cth) by being signed by the authorised persons:

  
Director Jimmy Adamos of 8 Henry Lawson Walk East Perth WA 6004

  
Director Helen Adamos of 8 Henry Lawson Walk East Perth WA 6004

### Mr Robert Butler

59. Mr Butler was a council member of the City from May 2003 until October 2015 and was previously a council member of the City of Subiaco from 1989 to 1999.
60. Mr Butler gave evidence before the Inquiry that he had not lived in the City while he was a council member and he relied on several leases with three commercial premises at different times for eligibility to stand for Council. He paid a very low rent for these premises. On two occasions, the landlords for the premises were friends or acquaintances of Mr Butler.
61. From 1 August 2012, Mr Butler entered into a third lease for an office space above a bar. The initial one page lease was set out like a letter, contained no provision for the payment of rent (although Mr Butler claimed he did pay some money to the putative landlords) and was signed by only one of the two owners of the premises.<sup>30</sup> A formal lease was prepared<sup>31</sup> after the City advised Mr Butler the lease agreement did not demonstrate that he had a right to occupy property in the City and he was therefore ineligible to enrol on the owners and occupiers roll.<sup>32</sup>
62. Mr Butler denied the leases were shams, but freely admitted that he procured these leases for the sole purpose of being eligible to stand for election, had no intention of using the premises in any meaningful way and did not require the premises for any other purpose.
63. Mr Butler was a difficult witness who obfuscated his answers and was frequently argumentative. The way Mr Butler gave evidence on this topic contrasts sharply with his evidence on other matters and suggests that he did not believe there was anything wrong with this approach. That is consistent, for example, with his assertion that his three leases were “*accepted by the City and ticked off*”.

### City of Perth’s practices in assessing enrolment claims from occupiers of property

64. Mr Ridgwell gave evidence to the Inquiry that the City can readily confirm whether a person or company is an owner of rateable property by checking the City’s rates database.<sup>33</sup>
65. However, Mr Ridgwell said that where an enrolment form is submitted to enrol voters on the basis that the person or a company occupies property, the City relies on the declaration made in the form and the only checks carried out by the City are:
- to confirm the proposed voter is an “*Australian elector*”;<sup>c</sup>
  - to confirm the property the person occupies is “*rateable property*”; and
  - where applicable, an Australian Securities and Investments Commission search of the company.<sup>34</sup>

<sup>c</sup> That is, they are enrolled as an elector for the Legislative Assembly or the Commonwealth House of Representatives: *Local Government Act 1995*, s 4.30(1)(a) and 4.31(1G).

66. Mr Ridgwell said the City had not requested proof that a person applying to be enrolled to vote occupies property, because of “*work capacity*” and “*resourcing*”.<sup>35</sup> Mr Ridgwell said he believed that the checks performed and the City’s reliance on the declaration in the form were “*appropriate at the time*”.<sup>36</sup>
67. Mr Ridgwell said that where a person nominates as a candidate for a Council election and claims to be eligible because they own or occupy property, the City will require proof of their eligibility, for example, by the production of a rates notice or a lease for the property and will check the person’s lease.<sup>37</sup>
68. However, Ms Clayton gave evidence that she would not have scrutinised the leases provided by Mr Yong in support of his eligibility to be enrolled on the owners and occupiers roll and would have simply accepted them on face value. She gave evidence that her role was administrative and that Dr Evans, as Electoral Co-ordinator, was “*responsible for the decisions*”, although she did not know if Dr Evans would have scrutinised the leases.<sup>38</sup>
69. Mr Ridgwell gave evidence that, had he known the facts of Mr Adamos’s lease, he would not have raised any concerns with Mr Adamos and would have only turned his mind to whether the requirements under the LG Act had been satisfied. Mr Ridgwell said it was Parliament’s role to address issues arising out of the legislation and that it was not his role, and he did not have the powers, to investigate the intent or purpose of a lease.<sup>39, (d)</sup>

### Conclusions

70. The Inquiry finds that Mr Yong and Mr Butler created sham leases to appear to be eligible to nominate as a candidate for Council elections and, in Mr Adamos’s case, he created a sham lease so his family investment company appeared to be able to enrol nominees to vote for him.
71. This conduct subverted the intent of the LG Act that only people with a sufficient connection with the City are permitted to vote in Council elections and hold office as a council member.
72. This conduct does not appear to be isolated. Mr Butler gave evidence that it was a common practice for council members to rent an office they either did not use or hardly used for the sole purpose of qualifying for election.<sup>40</sup> Mr Adamos claimed that another Council member, possibly Mr Butler, gave him the idea to lease a room in his house to his family company to obtain two votes.<sup>41</sup>

d The Inquiry notes the Chief Executive Officer of the City or the Chief Executive Officer’s delegate (which would include Mr Ridgwell) has the power to “*make any inquiries needed in order to make a decision*” on whether an occupier of property is eligible to enrol to vote or enrol others to vote: *Local Government Act 1995*, s 4.32(5). In the Inquiry’s view, that would include the power to make inquiries in circumstances that suggest a lease is not bona fide or is a sham.

73. It appears that the City's processes were inadequate to detect and prevent the use of sham leases. In the case of Mr Yong, the City should have been alert to the issue of whether his lease with Lex Legal Management was legitimate, because:
- the City was told Mr Yong intended to stand as a candidate, relying on his nomination by Lex Legal Management;
  - the City was then sent a copy of Mr Yong's lease with Lex Legal Management and asked if he was now eligible to stand for election;
  - the City, as at 24 August 2013, held two lease agreements which purported to lease the same premises (Suite 9, Level 3, 231 Adelaide Terrace) from the same date (1 January 2012) to different tenants; and
  - Mr Yong's lease agreement with Lex Legal Management stated that the premises being leased were outlined on a plan in the lease, but no plan was included.<sup>42</sup>
74. The Inquiry is concerned by Mr Ridgwell's evidence that had the facts of Mr Adamos's lease been brought to his attention, he would not have questioned it. It suggests that unless the City changes its processes and its approach to overseeing the owners and occupiers roll, there will continue to be the risk that candidates and council members will exploit vulnerabilities in the electoral system.
75. While the Inquiry accepts that the ability of City officers to detect fraudulent or improper conduct may be limited, it appears there are straightforward measures which could be adopted to verify that occupiers of property are eligible to vote in Council elections. For example, the City could require occupiers of property to provide a copy of the lease for the property and receipts of payments for rent. Mr Ridgwell agreed this would be relatively straightforward for the City to do.<sup>43</sup>
76. However, the City must scrutinise such documents and make further enquiries where necessary.


### False complaints orchestrated by Mr Keith Yong

77. In or around August 2011, Mr Yong assisted Ms Liu to enrol voters through companies affiliated with Mr Yong or members of his immediate family.<sup>44</sup>
78. Mr Yong completed an application form on behalf of Maxiwest Pty Ltd (Maxiwest), of which Mr Yong was the sole director and shareholder, to nominate himself to vote on the company's behalf and then gave the incomplete form to Ms Liu to procure "*her choice*" for the second nominee. Mr Yong did not know who the second nominee for his company would be and did not know who submitted the nomination form to the City (Figure 2.5).<sup>45</sup>
79. For Beau Geste Pty Ltd, for which Ms Angie Yong was the secretary, Mr Yong assisted her to complete the application form, register herself to vote on the company's behalf before providing the form to Ms Liu.<sup>46</sup> For Bellvista Pty Ltd (Bellvista), for which Ms Lilly Yong was a director, Mr Yong assisted her to complete the application form, register herself to vote on the company's behalf before providing the form to Ms Liu or her friend, Mr Sutherland.<sup>47</sup>

**APPLICATION TO REGISTER A CORPORATE NOMINEE**

(Enrolment Eligibility Claim for Notice of Nomination of Corporate Nominee)

PLEASE RETURN TO : City of Perth, 27 51 George's Terrace, Perth, WA 6000  
FACSIMILE : 9461 3083

  
CITY of PERTH

See accompanying form for notes on when and how to complete this form.  
All returns must be completed for the City of Perth to consider the claim. For any assistance please ring 9461 3122.

**Full Name of Corporate Body** (Include Pty Ltd / Ltd as appropriate) Australian Company Number

MAXIWEST PTY LTD

**Rateable Property on which Claim is based** (Include lot or lot number as appropriate)<sup>1, 2</sup>

Street No.	Lot	Building Name	Street	Suburb	Postcode
326		MINT HOUSE	HAY STREET	PERTH	6000

**Postal Address of Corporate Body** (Include lot or lot number as appropriate)

Street No. or PO Number	Lot	Building Name	Street	Suburb	Postcode
			AS ABOVE		

**Person authorised by the Corporate Body to nominate person(s) to vote on its behalf**

Title (Mr, Mrs, Ms, Miss)	Family Name	Other Name	Mobile Phone Number
MR	YONG	YIT-KEE	

The Corporate Body is the owner ☐ or occupier ☒ of the specified property. (Please tick one box only)<sup>3</sup>

For occupiers only tick one box<sup>3</sup>

The Corporate Body that is making this application to register a nominee(s) ☒ does ☐ does not have a right under a lease, tenancy agreement or other legal instrument to the continuous occupation of that property for at least the next three months.

**Proof of your right of occupation may be requested.**

I am authorised as an Officer of the Corporate Body to nominate the following person(s) to vote on behalf of the Corporate Body:

Name of Nominee(s) (1) Mr / Mrs / Ms / Miss KEITH YONG

(2) Mr / Mrs / Ms / Miss WILLIE LIM

Signature of authorised person: [Signature] Date: 12/8/11

**PLEASE TURN OVER**

Figure 2.5: Application to register a corporate nominee, City of Perth, Maxiwest Pty Ltd, 12 August 2011.

**First Nominee <sup>2</sup>**

Title      Family Name <b>MR.    YOUNG</b>		Other Names <b>YIT-KEE</b>		Date of Birth [REDACTED]		CONTACT NUMBERS Home    [REDACTED]	
Street No or PO Box No		Locality      Building Name		Street		Mobile  Fax	
		<b>AS Below</b>					

**Entitlement to be enrolled (tick one box)**

- I am ☒ On the State or Commonwealth Electoral Roll for a residence outside the electorate.  
 My address on that roll is [REDACTED]
- or ☐ Not on the State or Commonwealth Electoral Roll but I am qualified as an Elector under Clause 12 of Schedule 4 of the Local Government Act 1995.

**Claim and Declaration (Making a False Declaration is an Offence)**

I claim eligibility to have my name included on the City of Perth Owners and Occupiers Roll and I declare that all of the details set out above are true and correct.

Signature:  Date: **12/12/2011**

**Second Nominee <sup>2</sup>**

Title      Family Name <b>MR.    E</b>		Other Names <b>LOU    ALE</b>		Date of Birth [REDACTED]		CONTACT NUMBERS Home    [REDACTED]	
Street No or PO Box No		Locality      Building Name		Street		Mobile    [REDACTED]	
<b>5502</b>		<b>2.640.050.000</b>		<b>PERTH</b>		<b>[REDACTED]</b>	

**Entitlement to be enrolled (tick one box)**

- I am ☒ On the State or Commonwealth Electoral Roll for a residence outside the electorate.  
 My address on that roll is [REDACTED]
- or ☐ Not on the State or Commonwealth Electoral Roll but I am qualified as an Elector under Clause 12 of Schedule 4 of the Local Government Act 1995.

**Claim and Declaration (Making a False Declaration is an Offence)**

I claim eligibility to have my name included on the City of Perth Owners and Occupiers Roll and I declare that all of the details set out above are true and correct.

Signature:  Date: **12/12/2011**

CCP Imaged Record - 16/08/2011



80. Mr Yong nominated as a candidate on 5 September 2013.<sup>48</sup> After the City provided him with a copy of the electoral rolls, Mr Yong and Ms Lilly Yong examined those rolls to ascertain who had been registered as nominees for the companies affiliated with Mr Yong and his family. Mr Yong and Ms Lilly Yong could not identify the second nominee for several of those companies.<sup>49</sup>
81. By that time voter registration had closed and the consolidated electoral rolls were final. Nominees for Maxiwest, Beau Geste and Bellvista had been procured by Ms Liu or another third party in 2011. Mr Yong could not be assured those nominees would vote for him. As a result of the electoral rolls having closed, those companies could not nominate alternative voters.
82. On 23 September 2013, less than a month before the election, Ms Lilly Yong emailed Ms Clayton, Governance Electoral Officer at the City of Perth. She wrote *"We have found a number of irregularities in the Register of the Elector Mail List"*. Ms Clayton asked her for further details and Ms Lilly Yong replied:  
  
*"Yes, I was referring to the Electoral Rolls as supplied to Keith. The irregularities involved a number of voters purported to be authorised by companies that either did not authorise them or are non existent. That would amount to fraud. The scrutinising of the rolls is continuing and there may be more irregularities to be found"*.<sup>50</sup>
83. Ms Lilly Yong sent this email at Mr Yong's direction and with his assistance.<sup>51</sup> Ms Lilly Yong admitted that she had made these serious allegations so the City would have to act on them and that at the time she *"probably"* knew the allegations were wrong.<sup>52</sup>
84. Ms Clayton forwarded that complaint on to Ms Cavanagh, the returning officer for the 2013 City ordinary election.<sup>53</sup>
85. Around this time, Mr Yong telephoned Ms Cavanagh. He complained of corruption and said that he did not recognise the names of the people nominated and believed that it had been a *"set up"*.<sup>54</sup>
86. On 24 September 2013, Mr Yong sent an email to Ms Cavanagh lodging *"a complaint in relation to the irregularities and possible fraud in the City of Perth electoral roll"*.<sup>55</sup> It attached letters signed by the directors of Bellvista, Beau Geste, Maxiwest, MKF Investments Pty Ltd (MKF Investments) and Australian Education Pty Ltd (Australian Education).
87. Each of those letters were alleging fraud and worded in very similar terms. The letters from Bellvista, Beau Geste and Maxiwest were prepared by Mr Yong and by Mr Yong's parents with Mr Yong's assistance.<sup>56</sup>
88. In the letter from Mr Yong, in his capacity as a director of Maxiwest, he stated *"I will be lodging [a] police report for the alleged fraud"* (Figure 2.6).<sup>57</sup> When giving evidence Mr Yong admitted he had absolutely no intention of lodging a police report (Figure 2.6).<sup>58</sup>



**Figure 2.6:** Letter from Mr Yit-Kee (Keith) Yong, Director, Maxiwest Pty Ltd, to Ms Lyn Cavanagh, Returning Officer, 24 September 2013.

89. Mr Yong knew that each of the second nominees for Bellvista, Beau Geste and Maxiwest had been properly nominated. As a result of the owners and occupiers roll having closed, Mr Yong could not arrange for those companies to nominate different people. Mr Yong made the complaints, because he did not know whether the second nominees for Bellvista, Beau Geste and Maxiwest would vote for him and he therefore wanted to remove them from the electoral roll. Mr Yong agreed with Counsel Assisting that by making these complaints he had committed a fraud.<sup>59</sup>
90. Ms Lilly Yong denied she had made the allegations about the nominees, because she hoped to make changes to the electoral roll. However, she accepted that she wanted to make sure all the voters associated with her family's companies would vote for her son in the upcoming elections and that she would do whatever she could to help him get as many votes as possible.<sup>60</sup>
91. In relation to the letters from MKF Investments and Australian Education, Mr Yong contacted Mr Meng Wong, his friend and the sole director and secretary of those companies, about the nominees for those companies on the owners and occupiers roll. Mr Wong told Mr Yong, after Mr Yong asked, that he did not recognise the nominees and did not know if those nominees would vote for Mr Yong in the 2013 election.
92. Mr Yong suggested, and Mr Wong agreed, that this may be a fraud and that Mr Wong should make a complaint alleging fraud.<sup>61</sup> Mr Yong sent a copy of his Maxiwest letter to Mr Wong, who created two copies of the letter, edited them to refer to MKF Investments and Australian Education, signed the letters and sent copies to Mr Yong.
93. Those letters were in the same terms and contained the same typographical errors as the Maxiwest letter. Those letters also stated that Mr Wong would be lodging a police report. Mr Yong admitted that Mr Wong just did what he suggested and that he had a fair idea that the allegations were baseless.<sup>62</sup>
94. The Inquiry finds that Mr Yong and Ms Lilly Yong acted dishonestly in making, and arranging for other people to make, serious allegations of fraud, when they knew those allegations were baseless. Mr Yong and Ms Lilly Yong did so for the ulterior purpose of having those nominees removed from the electoral roll to benefit Mr Yong in the 2013 election.

#### **Mr Keith Yong gave inconsistent evidence**

95. Mr Yong gave the evidence at paragraph 89 before lunch at a public hearing before the Inquiry on 6 August 2019. When the Inquiry resumed after lunch on that day, Mr Yong recanted that evidence and denied that it was his intention, by making the complaints that were made, to have the nominees fraudulently removed from the electoral roll.<sup>63</sup>
96. Under questioning from Counsel Assisting, Mr Yong admitted that he had spoken, by telephone, to his brother, Mr Jonas Yong, about his evidence during the lunch break and that was the reason he provided a different explanation as to why the complaints were made.<sup>64</sup>

97. The Inquiry then adjourned to allow Mr Yong's legal representatives to give him some advice on his obligations as a witness. When the hearing resumed Mr Yong accepted that:
- he knew the second nominees for Bellvista, Beau Geste and Maxiwest had been nominated by Ms Liu; and
  - he deliberately made a complaint without any basis for the purpose of having those nominees removed from the electoral roll, because he did not know whether they would vote for him.
98. Mr Yong agreed with Counsel Assisting that the evidence he gave immediately after lunch was false. Mr Yong said that Mr Jonas Yong had told him, and he agreed, to give false evidence. Mr Yong agreed with Counsel Assisting, by doing that, he and Mr Jonas Yong had attempted to pervert the course of justice.<sup>65</sup>

### Investigation into Mr Keith Yong's complaints

99. The City and the WAEC appear to have formed the view that the complaints made and arranged by Mr Yong needed to be addressed urgently. That was because:
- the CEO, before making any decision that a person was not eligible to be on the owners and occupiers roll, was required to give that person 28 days to make submissions;
  - the CEO's decision could be appealed to the WAEC; and
  - consequently, the complaints needed to be resolved by 11 October 2013, to enable any appeals to be heard and the rolls to be corrected before election day.<sup>66</sup>
100. Ms Cavanagh had previously been a returning officer for many State and local government elections. Dr Evans was a former Electoral Commissioner of Western Australia.
101. On 2 October 2013, Ms Cavanagh and Dr Evans met with Mr Yong, Ms Lilly Yong, Mr Tet Khiong Yong (Mr Yong's father and Ms Lilly Yong's spouse) and Mr Wong at the same time to discuss the complaints.<sup>67</sup> At the meeting:
- Dr Evans produced the enrolment eligibility claim forms for Bellvista, Beau Geste, Maxiwest, MKF Investments and Australian Education and went through each one.
  - Mr Wong and Mr Tet Khiong Yong admitted they had signed the forms, but had not checked or did not know who the second voter was. Mr Wong and Mr Tet Khiong Yong quickly withdrew their complaints.
  - Ms Lilly Yong initially denied that it was her signature on the enrolment form, but later accepted it was likely her signature and that she had not checked the second voter on the form.
  - Mr Yong agreed that it appeared he, Ms Lilly Yong, Mr Tet Khiong Yong and Mr Wong did not check who the voters for their respective companies were.<sup>e</sup>

<sup>e</sup> Transcript, L Cavanagh, private hearing, 17 April 2019, p 26-29, 33; Letter, L Cavanagh to K Yong, 4 October 2013. In her evidence and her letter to Mr Yong, Ms Cavanagh referred to a "*Mr Meng Yong*", "*Mr Keith Yong*" and "*Mr Yit Kee Yong*". However, considering the evidence of Ms Cavanagh and Dr Evans in total, Ms Cavanagh's letter to Mr Yong and Dr Evans's report, it appears that "*Mr Meng Yong*" was a reference to Mr Meng Wong and "*Mr Yit Kee Yong*" a reference to Mr Tet Khiong Yong.

102. At the end of the meeting, Ms Cavanagh confirmed that Mr Yong, Ms Lilly Yong, Mr Tet Khiong Yong and Mr Wong did not wish to take the matter any further and considered the complaints to be resolved.<sup>68</sup>
103. Ms Cavanagh and Dr Evans respectively documented the outcomes of their inquiries in a letter to Mr Yong and a report, both dated 4 October 2013.<sup>69</sup>
104. Ms Cavanagh and Dr Evans did not consider contacting the second nominees for Bellvista, Beau Geste, Maxiwest, MKF Investments and Australian Education to find out how they were nominated. Ms Cavanagh thought it was not necessary to interview the nominees, because the complainants had agreed they had completed the forms without checking who the nominees would be. Dr Evans said that taking this step did not enter his mind.<sup>70</sup>
105. Dr Evans gave the following evidence:
- “And how did you reconcile your disbelief or your concerns about the honesty of what these people were telling you with the seriousness of the allegations that they had made which contended that the forms were fraudulent? How did you reconcile the two?---Well I – I’m not sure now but I – I suspect I sort of thought they were making up a story about something for some reason when, in fact, they did know that these people were on the roll. But now for some reason they’re trying to tell us they shouldn’t be on. You know, why would they be doing that I don’t know but that – what it looked to me, like they did know, they did sign the forms, they did nominate the people or didn’t care and got somebody else to write a name on. But they’d taken the initial action. Now, they’re trying to claim they didn’t do it. And that was my – what I thought”.<sup>71</sup>*
106. As to his conclusion in his report that Mr Yong “doesn’t appear to have committed an offence”,<sup>72</sup> Dr Evans admitted that, upon reflection, he “probably would’ve made a slightly different conclusion”. He gave this evidence:
- “... I’m not sure but I think it’s probably wrong because the – this is a statutory declaration, this form. And if somebody has signed it and then they’re claiming they don’t know what’s in it then I assume they probably have committed an offence so there might have been some – perhaps that’s where I should have been going back to the City and saying, ‘I think we should be investigating whether we could prosecute these people because they’ve clearly – they’re claiming they haven’t written this material but they’ve signed it’, I think”.<sup>73</sup>*
107. Ms Cavanagh formed the view Ms Lilly Yong had instigated the complaints and that her and Mr Yong had involved Mr Wong and Mr Tet Khiong Yong in the matter.<sup>74</sup>
108. Ms Cavanagh believed, based on her experience as a returning officer, that Mr Yong, his mother, his father and Mr Wong had initially not been concerned about the nominees for their companies, because Mr Yong was not standing for election:
- “But now that Mr Keith Yong was standing for election, they had taken much closer notice of the companies that his family were – I assume family were involved with and the votes that would come his way”.<sup>75</sup>*

109. Dr Evans gave evidence that he regarded the investigation as being conducted by the WAEC, although Ms Cavanagh wanted him present because of his knowledge of electoral procedures.<sup>76</sup> Dr Evans presumed Ms Cavanagh was conducting the investigation under briefing from the WAEC, but Ms Cavanagh gave evidence she had no assistance from the WAEC in dealing with the matter.<sup>77</sup>

#### **Conclusions on Ms Lyn Cavanagh's and Dr Kenneth Evans's investigation**

110. The Inquiry accepts that the investigation carried out by Ms Cavanagh and Dr Evans resolved the complaints in an effective and transparent manner. However, the Inquiry finds the process was flawed in two respects.
111. First, Ms Cavanagh and Dr Evans should have met with Mr Yong, Ms Lilly Yong, Mr Tet Khiong Yong and Mr Wong separately rather than together. That would have minimised the risk that their answers to questions were contaminated, because they would not have heard what the others had said. Dr Evans accepted that the better process would have been to speak to each complainant individually.<sup>78</sup> However, the Inquiry notes that neither Ms Cavanagh nor Dr Evans were legally trained and may not have been familiar with the appropriate witness interview techniques.
112. Secondly, Ms Cavanagh and Dr Evans should have contacted the disputed nominees of Bellvista, Beau Geste, Maxiwest, MKF Investments and Australian Education to discover how they had been enrolled to vote. That is, because:
- Mr Yong, Ms Lilly Yong, Mr Tet Khiong Yong and Mr Wong made serious allegations of fraud, but quickly withdrew these complaints when presented with the forms bearing their signatures.
  - Mr Yong, a candidate in the election, had made one of the complaints.
  - Ms Cavanagh formed the view that Mr Wong and Mr Tet Khiong Yong had been drawn into the matter by Mr Yong and his mother.
  - Dr Evans had formed the view that the complaints had been fabricated. Relevantly, it is an offence punishable by a fine of \$5,000.00 or one year's imprisonment to knowingly give a false statement in answer to a question asked by a returning officer investigating electoral misconduct.<sup>79</sup>

#### **Abuse of owners and occupiers roll**

##### **Mr Keith Yong attempted to redirect ballot papers to his family's post office boxes**

113. In or around 2015 and 2016, Mr Yong arranged for at least 45 of his friends, friends of his family and family members to be nominated by companies owning or occupying property in the City.



114. Mr Yong arranged for the ballot papers for these voters to be sent to PO Box 6116, East Perth and PO Box 862, Victoria Park. These PO Boxes belonged to Mr Yong and members of his family. He listed the PO Boxes as the voters' postal addresses on the enrolment eligibility claim forms submitted to the City. The City's records show that, as at 24 May 2016 and 31 May 2016, respectively:
  - PO Box 6116, East Perth was the postal address for 32 voters on the owner and occupiers roll, including Mr Yong, Ms Lilly Yong and Ms Angie Yong; and
  - PO Box 862, Victoria Park was the postal address for 16 voters on the owner and occupiers roll.<sup>80</sup>
115. This meant, in effect, Mr Yong would have access to at least 45 ballot papers at the time of the 2017 election. Mr Yong admitted that he intended to arrange for more of his friends and family members to be enrolled to vote before the 2017 City ordinary election.<sup>81</sup>
116. Mr Yong agreed his conduct was unethical and that he did this *"to encourage numbers of voters and second, to encourage their support for my election"*. Mr Yong appeared to accept this conduct was inconsistent with *"the intent and purpose of the electoral process"*.<sup>82</sup>
117. On almost all of the forms used to enrol these voters, the fields for the voters' telephone numbers, email addresses and other personal contact details were left blank. Mr Yong did this because he did not want the City contacting the nominees other than through the two PO Boxes and he did not want the nominees to know they were on the electoral roll.<sup>83</sup>
118. The City wrote to these voters confirming they had been enrolled and sent this correspondence to the two PO Boxes. Mr Yong admitted he did not forward these letters to the voters and he did not inform the voters or the directors of the companies that had nominated them that the voters were now on the electoral roll.<sup>84</sup>
119. Mr Yong denied that he intended to complete the ballot papers or arrange for persons other than the electors themselves to do so.<sup>85</sup> Mr Yong gave evidence that he intended to collect the ballot papers from the PO Boxes and *"distribute"* them to the appropriate electors to *"make sure they vote"*.<sup>86</sup>
120. However, Mr Yong could not plausibly explain how he would contact up to 45 electors and distribute their ballot papers to them in several weeks. While those electors were Mr Yong's family and friends, Mr Yong admitted he did not have contact details for all these electors.<sup>87</sup> Mr Yong agreed that his explanations as to how he would distribute the ballots defied logic,<sup>88</sup> but could not provide an alternative, logical explanation despite being given repeated opportunities to do so.<sup>89</sup>
121. Mr Yong conceded that any person who had access to the PO Boxes could have filled in the ballot papers to vote for him on behalf of the electors. He understood that these electors intended to vote for him and agreed with the proposition that if someone else had completed their ballot papers, that would have been *"just a technicality"*.<sup>90</sup>

122. Mr Yong denied that he was going to complete the ballot papers by asserting “the ballot paper requires signatures to verify [it] is actual person signing it”.<sup>91</sup> While that is correct,<sup>92</sup> Mr Yong had also kept copies of the enrolment eligibility claim forms, which contained the signatures of all the nominees.<sup>93</sup> In other words, he knew what they looked like.
123. The Inquiry does not accept Mr Yong’s denials that he did not intend to complete ballot papers belonging to other electors. It may reasonably be expected that allegations of serious criminal behaviour may result in Mr Yong giving an untruthful denial, particularly when earlier that day he admitted giving false evidence.

#### Yong family apply to become silent electors

124. Regulation 13(2) of the *Local Government (Elections) Regulations 1997* (Election Regulations) provides that electors may be entitled to have their address omitted from electoral rolls if they provide the CEO with a statutory declaration stating that publication of their address would place their safety or their family’s safety at risk.
125. On 28 January 2015, Mr Ridgwell sent an email to Lord Mayor Lisa Scaffidi and council members attaching an uncertified copy of the City’s owners and occupiers roll.<sup>94</sup>
126. On 2 February 2015, Mr Yong responded to Mr Ridgwell asking if he could be a silent elector on the roll.<sup>95</sup>
127. Mr Ridgwell replied to Mr Yong that day and advised him of regulation 13(2) of the Election Regulations. Mr Ridgwell noted that Mr Yong’s “brother and others” were listed on the roll and that it may be beneficial if they were also silent electors.<sup>96</sup>
128. On 3 February 2015, Mr Yong, Ms Lilly Yong and Mr Jonas Yong made statutory declarations on the same day (and likely at the same time) before the same authorised witness applying to be silent electors on the owners and occupiers roll. They each declared they believed the publication of their address would put their safety at risk.<sup>97</sup>
129. On 5 February 2015, Ms Angie Yong also made a statutory declaration applying to be a silent elector on the owners and occupiers roll, declaring that she believed the publication of her address would put her safety at risk.<sup>98</sup>
130. Ms Lilly Yong, Ms Angie Yong and Mr Jonas Yong declared that the basis for the belief that the publication of their address would risk their safety was that they were related to Mr Yong. Save and except for their names and occupations, Mr Yong’s, Ms Lilly Yong’s, Ms Angie Yong’s and Mr Jonas Yong’s statutory declarations were substantially identical with only minor differences.
131. Each of the statutory declarations gave the declarant’s address as PO Box 6116, East Perth. Had they not applied to be silent electors, the electoral roll would have listed Mr Yong’s, Ms Lilly Yong’s, Ms Angie Yong’s and Mr Jonas Yong’s address as PO Box 6116, East Perth.<sup>99, (f)</sup> It is difficult to understand how the inclusion of that address on the electoral roll could have put their personal safety at risk.

<sup>f</sup> This was because the City’s record-keeping system for the election listed the address for Mr Yong, Lilly Yong, Angie Yong and Jonas Yong as PO Box 6116, East Perth: Extract, City of Perth, Pathways system: owners and occupiers electoral roll.

132. The City accepted Mr Yong's, Ms Lilly Yong's, Ms Angie Yong's and Mr Jonas Yong's statutory declarations and omitted their address from the owners and occupiers register.<sup>100</sup> This omission made it more difficult for the City to identify that it was Mr Yong who had arranged to redirect ballot papers to the PO Box 6116, East Perth address.
133. Under examination, Mr Ridgwell agreed that the fact that the Yong family members were applying to remove a PO Box address (rather than a residential address) from the roll should have been considered by the City when determining their applications.<sup>101</sup>
134. Ms Lilly Yong and Ms Angie Yong gave evidence that they did not fear for their safety, because Mr Yong was a council member and admitted their statements that *"publication of my address would place my safety at risk being related to Cr Yong"* in their respective statutory declarations were false.
135. Ms Angie Yong could not explain why she made that statement. Ms Lilly Yong gave evidence that she applied to be a silent elector on the electoral roll, *"because keep on seeing my address there, maybe doesn't look so good"*.<sup>102</sup>
136. The Inquiry accepts Ms Lilly Yong's evidence on this issue and notes that admission was made voluntarily and had the potential to reflect poorly not just on her but also Mr Yong, Ms Angie Yong and Mr Jonas Yong.
137. Mr Yong gave evidence that the reason he applied to become a silent elector was because he believed that his election and the publishing of his residential address would risk his safety and his family's safety.
138. However, Mr Yong did not make the statutory declaration until 16 months after he was first elected and was never threatened or had his safety put at risk before he completed the declaration. Notwithstanding that his statutory declaration gave his address as PO Box 6116, East Perth and the letter from Mr Ridgwell confirming his successful application as a silent elector was sent to the PO Box 6116 address, Mr Yong said it was his residential address that should have been listed as silent.<sup>103</sup>
139. Mr Yong initially asserted that Ms Lilly Yong had told him her safety was at risk, because she was related to him and her address would be public. He then gave evidence that she had not told him that and instead he was concerned about her safety.<sup>104</sup>
140. Mr Yong accepted that it was logical for the PO Box 6116 address not to be listed on the electoral roll as the postal address for members of his family, when that address would be listed as the address for numerous other voters. He also accepted that it could be perceived that the purpose of omitting the PO Box 6116 address on the electoral roll was to distance members of the Yong family from that PO Box, but denied this was his intention.<sup>105</sup>
141. The Inquiry does not accept Mr Yong's evidence, which at times was inconsistent and evasive and which must be assessed, among other matters, in light of his admission that he was dishonest in giving evidence before the Inquiry.

### Voters nominated by Osaka Gas companies

142. Of the 45 voters who Mr Yong arranged to be nominated, and whose ballot papers were sent to the PO Box 6116 or PO Box 862 addresses, 16 voters were nominated by companies associated with Osaka Gas Australia. The parent company, Osaka Gas Co., Ltd, is an international Japanese gas company, which operates and has companies registered in Australia.
143. Mr Yong's girlfriend at the time worked at Osaka Gas Australia and introduced Mr Yong to Mr Takemori, the Managing Director of Osaka Gas Australia. Mr Yong and Mr Takemori saw each other at social events organised by the Japanese Chamber of Commerce and the Japanese Consulate in Perth, dined together at Mr Yong's invitation in the Council's Dining Room and developed a friendship.<sup>106</sup>
144. As at 2016, Mr Takemori was a director of Osaka Gas Australia and its seven wholly-owned subsidiary companies.<sup>107</sup> Mr Yong became interested when he learned of the number of Osaka Gas companies in Australia, because each of those companies could potentially nominate two voters and it would be in his interests if each of those voters voted for him in the October 2017 elections.<sup>108</sup>
145. On 5 March 2016, Mr Yong met with Mr Takemori at a café near Osaka Gas Australia's office on St Georges Terrace and brought with him enrolment for corporate nominees eligibility claim forms (the forms) for the eight Osaka Gas companies.<sup>109, (g)</sup> The names and addresses of the companies and Mr Takemori's name and position had been completed on the forms, but the names and addresses of nominees were blank.<sup>110</sup> Mr Yong asked Mr Takemori to sign the forms and told him he did not need to worry about completing the other parts of the forms because he, Mr Yong, would do that.<sup>111</sup> Mr Takemori signed each form, but did not complete any other parts of the form and Mr Yong dated his signatures.<sup>112</sup>
146. Mr Takemori gave evidence that he understood that the forms were a kind of performance assessment of Mr Yong as a council member. He understood that Mr Yong wanted as many forms as possible completed for the Osaka Gas companies, because that would show how many companies supported Mr Yong as a council member. Mr Takemori did not have the time to read the forms carefully, because he was leaving Perth permanently for Japan at the end of March 2016 and was very busy with work. Mr Takemori trusted Mr Yong and believed what Mr Yong had told him about the forms.<sup>113</sup>
147. Mr Takemori said that he told Mr Yong that he did not like to be involved in political matters, because Osaka Gas Australia was an Australian company and he was seconded from the Japanese parent company. Mr Takemori told Mr Yong he was anxious about signing the forms and Mr Yong told him he did not need to worry.<sup>114</sup>

g While Mr Takemori did not recall the precise date the meeting took place, he gave evidence that it was his practice to ensure that the date of his signature was accurate and on that basis, believes that he signed the forms on 5 March 2016.

148. Mr Takemori did not understand that the purpose of the forms was to nominate persons to vote on behalf of the Osaka Gas companies in local government elections. He did not know that companies could nominate people to vote, because that arrangement did not exist under Japanese law. Had Mr Takemori understood the true purpose of the forms, he would not have signed them. In Mr Takemori's experience as a long-serving and senior Osaka Gas employee, Osaka Gas did not become involved in or arrange for people to vote in local government elections.<sup>115</sup>
149. In his evidence before the Inquiry, Mr Yong twice asserted that he told Mr Takemori that signing the forms would nominate two people to vote on the company's behalf, but after being questioned by Counsel Assisting, admitted he did not explain this.<sup>116</sup> Mr Yong admitted that he should have explained the purpose of the forms to Mr Takemori and by asking him to sign the forms without explaining them, the forms had been signed by Mr Takemori under a false pretence.<sup>117</sup>
150. Mr Yong denied that Mr Takemori said that he did not want to get involved in local government politics. However, Mr Yong admitted that he thought that Mr Takemori may have simply signed the forms on his request, because Mr Takemori thought he was a man of integrity.<sup>118</sup> Furthermore, Mr Yong knew Mr Takemori would not have signed the forms if Mr Takemori understood their true purpose and as a result he had to come up with an explanation that was different or unclear.<sup>119</sup>
151. After Mr Takemori signed the forms, Mr Yong selected the nominees for the eight Osaka Gas companies.<sup>120</sup> Mr Takemori did not know any of the nominees and Mr Yong did not tell Mr Takemori their names.<sup>121</sup> All the nominees selected by Mr Yong were either his friends or friends of his family.<sup>122</sup>
152. Mr Yong deliberately did not provide Mr Takemori's contact details on the forms, so that the City could not contact him and so that Mr Takemori would not become aware that Mr Yong had nominated 16 nominees to vote on behalf of the Osaka Gas companies. He also wrote the postal address of the body corporate on each of the forms as being PO Box 6116, East Perth. On some of the forms, Mr Yong falsely dated the signatures of nominees and Mr Takemori to give the impression that Mr Takemori had been present when the nominees had signed and to cover up his improper conduct.<sup>123</sup>
153. The Inquiry accepts Mr Takemori's evidence, who presented as a witness of truth. The Inquiry does not accept Mr Yong's evidence, save and except where it is corroborated by Mr Takemori and/or goes against Mr Yong's own interests.

#### **Conclusions on Mr Keith Yong's, Ms Lilly Yong's and Ms Angie Yong's conduct**

154. The Inquiry is satisfied, to the required standard,<sup>124</sup> that Mr Yong arranged for ballot papers to be sent to the two PO Boxes so that he or others acting on his behalf could complete ballot papers and then return the postal votes to the City. The Inquiry finds accordingly. In effect, Mr Yong had done everything in his power to ensure that ballot papers belonging to other electors would be delivered to the PO Boxes under his and his family's control come election time.

155. The Inquiry is also satisfied, to the required standard, that Ms Lilly Yong, Ms Angie Yong and Mr Yong made false statutory declarations to conceal or obscure the Yong family's connection to the PO Box 6116, East Perth address, and finds accordingly.
156. The Inquiry finds that:
- Mr Yong deliberately did not provide Mr Takemori with a full explanation as to the purpose of the forms, because he knew that if he did provide that explanation and Mr Takemori understood the purpose, then Mr Takemori would not have signed the forms.
  - Mr Takemori signed the forms under a false pretence and was, in effect, misled by Mr Yong.
  - Mr Yong attempted to conceal his conduct from the City and from Mr Takemori by falsely dating when the forms were signed and falsely completing the postal address details for the Osaka Gas companies.
  - Mr Yong also attempted to conceal his conduct by deliberately omitting the personal contact details of the nominees on all but one of the forms.<sup>125</sup>
157. The Inquiry notes that the persons selected by Mr Yong (purportedly on behalf of the Osaka Gas companies) to be nominees had no connection to the companies that nominated them. That is not consistent with the intent of the LG Act, which is to enable businesses with property interests in the City to have the opportunity to participate in the electoral process and be represented by their preferred council members.
158. In the course of its investigations, the Inquiry received information and heard evidence that suggested it is common for council members and candidates to arrange for companies owning or occupying property in the City to enrol voters. It appears such voters often have no connection to the company nominating them.<sup>126, (h)</sup>
159. While this evidence and information was often hearsay, and the Inquiry does not rely on it as the basis for any findings against any other parties, it suggests that Mr Yong's conduct may not have been isolated.

#### City of Perth's investigation of the misuse of postal addresses

160. In or around early 2016, Ms Clayton noticed, quite fortuitously, that the address of PO Box 6116, East Perth had been provided as the postal address for numerous voters on the owners and occupiers roll. On further investigation, Ms Clayton found that many of these voters had been nominated by companies with an address at 108 St Georges Terrace, Perth.
161. At that stage, Ms Clayton did not identify that PO Box as being associated with Mr Yong, because Mr Yong, Ms Lilly Yong and Ms Angie Yong were listed on the City's silent electors extract, which was separate to the City's Pathways system.

<sup>h</sup> In exercising its power under section 8B of the *Royal Commissions Act 1968*, boxes of documents apparently belonging to council members were produced to the Inquiry by the City of Perth. Some of these boxes contained numerous completed and partially completed enrolment forms for companies owning or occupying property in the City of Perth.



162. Ms Clayton was concerned that come election time, numerous ballot papers would be sent to the same address and raised the issue with Mr Ridgwell.
163. Ms Clayton gave evidence that Mr Ridgwell said it was not unusual for tenancies in the one building to use the same PO Box address and said he was comfortable with the issue.<sup>127</sup>
164. Mr Ridgwell gave evidence that he recalled a conversation with Ms Clayton where he told her it was not unusual for the tenancies in the same building to use the same PO Box address. However, he did not believe he was not concerned as he had asked Ms Clayton to provide him with *“a fulsome report”*. Mr Ridgwell also said that he had *“encouraged [Ms Clayton] to look through the whole process, for any duplication”*.<sup>128</sup>
165. Ms Clayton subsequently discovered that PO Box 6116, East Perth was the postal address for Mr Yong, Ms Lilly Yong and Ms Angie Yong, after looking at the extract of silent electors. Ms Clayton also identified that PO Box 862, Victoria Park was also being used as the postal address for voters, although she could not recall this at the time she gave her evidence.<sup>129</sup>
166. Mr Ridgwell contacted the WAEC and discussed his intention to meet with Mr Yong and recommend that the postal addresses for these electors be amended to the address on the WAEC or Australian Electoral Commission’s system. The WAEC agreed that *“the collection of ballot papers could potentially constitute a breach of the [Local Government] Act and should be addressed to ensure it does not occur”*.<sup>130</sup>
167. On 30 May 2016, Mr Ridgwell met with Mr Yong and *“strongly recommended that the electoral addresses be amended to the individuals AEC/WAEC address”*.<sup>131</sup> According to Mr Ridgwell, Mr Yong said he would hand-deliver ballot papers to the nominees to ensure that they would participate in the election process.
168. Mr Ridgwell also gave evidence, which was corroborated by the contemporaneous file note he had written, that Mr Yong told him he would consider the matter. When Mr Ridgwell followed up with Mr Yong 24 hours later, Mr Yong advised him he was still considering it.<sup>132</sup>
169. Mr Yong initially gave evidence that he told Mr Ridgwell at that meeting *“Do it straightaway. I don’t want to get involved with anything illegal and this will be perceived as fraud”*. Under further examination from Counsel Assisting, Mr Yong then said he told Mr Ridgwell to change the addresses *“straight after – as soon as possible, if not immediate, will be hours or a day or two”*.<sup>133</sup>
170. On 28 June 2016, Mr Ridgwell and Mr Mileham met with Mr Yong to discuss the issue.<sup>134</sup>
171. On 8 July 2016, Mr Ridgwell sent Mr Yong an email attaching a memorandum stating all voters using PO Box 6116, East Perth or PO Box 862, Victoria Park as their postal address (except for Mr Yong, Ms Angie Yong, Ms Lilly Yong and Mr Jonas Yong) would be contacted and told the City would be using their residential address for all matters relating to the City’s elections.<sup>135</sup>

172. The Inquiry prefers the evidence of Mr Ridgwell on this issue, who presented as a witness of truth attempting to earnestly assist the Inquiry. The Inquiry does not accept Mr Yong's evidence, which is inconsistent with Mr Ridgwell's evidence and the contents of Mr Ridgwell's contemporaneous file note dated 30 May 2016.
173. On 13 July 2016, Mr Ridgwell wrote to the nominees whose postal address was listed as PO Box 6116, East Perth or PO Box 862, Victoria Park to advise that the City would be using their residential addresses in relation to the City's ordinary election. One of these letters was sent to Ms Christine Yong, who was a nominee for Osaka Gas Ichthys Development Pty Ltd and who had previously been employed by Lex Legal.<sup>136</sup>
174. On 18 July 2016, Ms Christine Yong called Ms Clayton and told her that she did not know she had been nominated to vote on behalf of Osaka Gas Ichthys Development Pty Ltd. Ms Christine Yong also informed Ms Clayton she had no recollection of that company and had not received a letter sent to the PO Box 6116, East Perth addresses, confirming her enrolment.<sup>137</sup>
175. That same day, Ms Clayton emailed Ms Christine Yong a copy of the enrolment form for Osaka Gas Ichthys Development Pty Ltd and asked her to confirm if it was her signature on the form and if she wanted to remain a nominee of the company on the electoral roll.<sup>138</sup>
176. Ms Christine Yong responded to Ms Clayton that day saying she did not want to remain on the electoral roll for the company.<sup>139</sup>
177. On 19 July 2016, Ms Clayton emailed Ms Christine Yong confirming that she would be removed from the electoral roll and asked her again to confirm if the signature on the enrolment form for Osaka Gas Ichthys Development Pty Ltd was hers and if she received the notice confirming that she had been enrolled.<sup>140</sup>
178. That same day, Ms Christine Yong confirmed by reply email that the signature was hers and that she did not receive any confirmation of her enrolment from the City.<sup>141</sup>
179. Ms Clayton forwarded her email correspondence with Ms Christine Yong to Mr Ridgwell. The subject line of that email was *"Please don't be a can of worms ..."*. In that email, Ms Clayton said:
- "... what worries me is that she did not receive her acceptance notice. This could be a problem as we don't know if all the Body Corporate entities have also received the copies of the acceptance notices to ensure that the people nominated are actually their nominees. This is a worry".*<sup>142</sup>
180. Ms Clayton said that she used that subject line for the email, because she was concerned more voters previously linked to the PO Box 6116, East Perth and PO Box 862, Victoria Park addresses would contact the City to say they did not understand what they were doing when they signed enrolment forms and they did not want to be on the electoral roll.<sup>143</sup>

181. On 22 July 2016, Mr Ridgwell replied to Ms Clayton's email and said *"It is a worry people sign documentation without knowing what it is, also that is exactly why we are changing the address to their home address. Was worth the changes made, great spotting!"*<sup>144</sup> Mr Ridgwell did not take any further action in relation to the matter.

### Conclusions on the City of Perth's investigation

182. The Inquiry accepts that Mr Ridgwell prevented Mr Yong from accessing ballot papers belonging to other electors by changing the addresses of the corporate nominees from the PO Boxes nominated by Mr Yong to their residential addresses.
183. However, given the seriousness of Mr Yong's conduct and Ms Clayton's email, Mr Ridgwell ought to have investigated the matter further or referred the matter to an appropriate authority, such as the WAEC or the Western Australian Police Force.
184. Mr Ridgwell was on notice that at least one of the voters with the postal address listed as PO Box 6116, East Perth apparently did not understand the effect of the enrolment form and had not received correspondence sent by the City. Combined with his knowledge of Mr Yong's use of the two PO Box addresses, that should have prompted Mr Ridgwell to take further action.
185. Ms Clayton gave evidence that, in hindsight, the City should have spoken to each nominee whose postal address was listed as PO Box 6116, East Perth or PO Box 862, Victoria Park and asked in what circumstances they had been nominated to vote on behalf of the relevant company.<sup>145</sup>
186. Mr Ridgwell accepted, when giving evidence before the Inquiry, that his failure to refer the matter was *"a massive oversight"*.<sup>146</sup> The Inquiry is satisfied that it was Mr Ridgwell, not Ms Clayton, who was responsible for taking further action on the matter.

### Mr Keith Yong arranged for voters to be enrolled who were not entitled to be enrolled

187. Mr Yong organised for companies who did not own or occupy property in the City to enrol voters on the electoral roll. These companies included:
- Yong Family Super Pty Ltd (Yong Family Super) for which Ms Angie Yong, Ms Lilly Yong, Mr Yong and Mr Jonas Yong were directors and shareholders;<sup>147</sup>
  - Burswood Development Pty Ltd (Burswood Development) for which Ms Lilly Yong and Mr Tet Khiong Yong were directors and their company, Bellvista, was the sole shareholder;<sup>148</sup>
  - Time Out Trading Pty Ltd (Time Out Trading);
  - Maxiwest;
  - Osaka Gas Ichthys Development Pty Ltd;
  - Osaka Gas Niugini E&P Pty Ltd;
  - Osaka Gas Niugini Pty Ltd;
  - Osaka Gas Crux Pty Ltd;
  - Osaka Gas Ichthys Pty Ltd;
  - Osaka Gas Sunrise (PSC 20) Pty Ltd; and
  - Osaka Gas Gorgon Pty Ltd.

188. The Inquiry considers it likely that Mr Yong, or others acting on his behalf, arranged for further companies to enrol when those companies did not have occupied property in the City. Among the companies which nominated voters who had PO Box 6116, East Perth or PO Box 862, Victoria Park as their postal address were:
- Twinspell Pty Ltd, for which Mr Jonas Yong was the sole director, secretary and shareholder,<sup>149</sup> Radiant Land Pty Ltd and PKG Group Pty Ltd. These companies enrolled voters based on their purported occupation of “10/231 Adelaide Terrace”. That was the property that Yong Family Super, Burswood Development and Time Out Trading each claimed to occupy when they enrolled voters;<sup>150</sup>
  - Dangie Pty Ltd, for which Ms Angie Yong and her husband were the sole directors and shareholders,<sup>151</sup> and Bellvista, for which Ms Lilly Yong and Mr Tet Khiong Yong were the sole directors and shareholders.<sup>152</sup> These companies enrolled voters based on their purported occupation of “9/231 Adelaide Terrace”.<sup>153</sup> That was the property owned by Lex Legal Management and leased by Lex Legal; and
  - the Hakka Association of WA Inc. (Association) enrolled voters based on its purported occupation of “3/231 Adelaide Terrace Perth”.<sup>154</sup> As of February 2019, Mr Yong appeared to be the president of the Association. The Association has the same registered address, postal address, telephone number and fax number as Lex Legal and lists Lex Legal as its sponsor.<sup>155</sup>
189. That Twinspell Pty Ltd, Dangie Pty Ltd and Bellvista did not occupy property in the City is consistent with Mr Yong’s admission that he arranged for “family companies” to enrol voters who did not have an interest in property in the City.<sup>156</sup>
190. In the case of Yong Family Super, Burswood Development Pty, Time Out Trading and Maxiwest, Mr Yong knew these companies were not entitled to vote, yet he submitted the nomination forms in the hope of increasing the votes that would be cast in his favour at the next Council election.<sup>157</sup>
191. In the case of the Osaka Gas companies, Mr Yong completed their enrolment forms on the basis that each of the seven subsidiaries were entitled to enrol nominees based on their occupation of Level 16, 108 St Georges Terrace Perth.
192. However, only Osaka Gas Australia had the right to occupy the premises under a lease and be entitled to enrol two voters. None of the other seven Osaka Gas companies had a lease over the premises and therefore could not enrol two voters. This appears to be because these Osaka Gas companies were established as subsidiaries to simplify the accounting for each Osaka Gas project in Australia and did not, for example, employ any employees.<sup>158, (i)</sup>

i Mr Takemori gave evidence that he did not think that any of the subsidiaries of Osaka Gas Australia held a lease. The Inquiry subsequently served a notice to produce documents on Osaka Gas Australia requiring the production of any leases, tenancies or other legal instruments giving Osaka Gas Australia or any of its subsidiaries the right to occupy the premises in or around March 2016: Notice to Produce Documents No. 044 of 2019, 26 July 2019. Osaka Gas Australia’s solicitors confirmed that the only document meeting that description was a lease held by Osaka Gas Australia: see lease, Level 16, 108 St Georges Terrace, Perth, Brookfield Funds Management Limited and Brookfield Australia Funds Management Limited & Osaka Gas Australia Pty Limited, 19 June 2012; Emails, Solicitor Assisting and Clayton Utz, 24-27 July 2019.

193. Mr Yong admitted he did not ask Mr Takemori on 5 March 2016 whether those companies had a lease over property in the City. Mr Yong also admitted, as a lawyer who works in property law, he did not seriously expect that each subsidiary would have a lease over the premises and agreed this situation would be “very extraordinary”.<sup>159</sup>
194. In his public hearing on 7 August 2019, Mr Yong claimed that at the meeting on 5 March 2016, Mr Takemori had signed a document confirming that each of the Osaka Gas subsidiaries had a lease over the premises. Mr Yong claimed the purpose of this letter was to ensure that Mr Takemori understood the effect of his declarations in the forms Mr Yong asked him to sign.
195. However, when the Inquiry directed Mr Yong to produce this document, its contents were inconsistent with his evidence. That document was undated, purportedly signed by Mr Takemori in his capacity as a director and read as follows:

*“Director Resolution*

*Osaka Gas Australia consent the following companies for the continue [sic] occupation and operation within the premises at Level 16, 108 St Georges Terrace, Perth WA:*

- *Osaka Gas Niugini Pty Ltd*
- *Osaka Gas Ichthys Development Pty Ltd*
- *Osaka Gas Ichthys Pty Ltd*
- *Osaka Ga [sic] Gorgon Pty Ltd*
- *Osaka Gas Crux Pty Ltd*
- *Osaka Gas Sunrise (PSC 20) Pty Ltd*
- *Osaka Gas Sunrise (PSC 19) Pty Ltd*
- *Osaka Gas Niugini E&P Pty Ltd”.*<sup>j</sup>

196. Mr Takemori was not shown this document and did not give any evidence about its existence at his private hearing in June 2019, because it was unknown to the Inquiry.<sup>k</sup>
197. The Inquiry does not accept Mr Yong’s evidence on this issue. The Inquiry notes the purported resolution uses some wording similar to the relevant provision of the LG Act.<sup>160</sup> However, it is not satisfied that Mr Takemori, by Mr Yong requesting him to sign this document, would have understood the effect of the declarations Mr Yong was asking him to make.
198. The Inquiry finds that Mr Yong knew it was extremely unlikely the seven Osaka Gas subsidiary companies met the requirements under the LG Act for a company occupying property within the City. He nevertheless arranged for his or his family’s friends to be enrolled to vote on behalf of these companies.

j Director resolution, undated.

k The Inquiry only became aware of the document during Mr Yong’s evidence on 7 August 2019.

**City of Perth's practices in assessing enrolment claims from occupiers of property**

199. The Inquiry has had regard to the evidence of Mr Ridgwell at paragraphs 64-69 in considering the adequacy of the City's practices in assessing enrolment forms from purported occupiers of property.
200. Consistent with the Inquiry's findings at paragraphs 73-76, it is apparent that these practices were inadequate. The City's reliance on declarations in enrolment forms meant that people who were not entitled to enrol to vote were enrolled.
201. The Inquiry notes Mr Ridgwell appeared to justify the City's reliance on declarations made in enrolment forms on the basis *"there are penalties that are applicable to ... people that falsely represent themselves in respect to making electoral applications"*.<sup>161</sup> That is so, the offence and penalties are set out in section 4.90 of the LG Act.
202. However, it is clear that the existence of this provision did not deter Mr Yong (or for that matter, Mr Butler or Mr Adamos) from engaging in this conduct, and the City's reliance on these declarations was misplaced.



## Findings

### Finding 2.2.1 – 1

The Inquiry makes the following findings:

- i. Mr Yong and Mr Butler created sham leases to appear to be eligible to nominate as a candidate for Council elections. Mr Adamos created a sham lease so his family investment company appeared to be able to enrol nominees to vote for him.
- ii. Mr Yong and Ms Lilly Yong made, and arranged for other people to make, serious allegations of fraud, when they knew those allegations were baseless, for the purpose of having nominees removed from the electoral roll to benefit Mr Yong in the 2013 election.
- iii. During and prior to the period 1 October 2015 to 1 March 2018 the governance arrangements in place, and the actions taken by, the City and the WAEC to ensure the integrity of the City's elections were inadequate. In particular:
  - The City failed to properly scrutinise the eligibility of Mr Yong to stand for election in October 2013, hold office as a council member or stand for election in October 2017.
  - The City (in particular, Dr Evans) and the WAEC (in particular, Ms Cavanagh) did not sufficiently investigate or take action in relation to the complaints of fraud from Mr Yong, Ms Lilly Yong, Mr Tet Khiong Yong and Mr Wong.
  - The City (in particular Mr Ridgwell) did not sufficiently investigate or take action in relation to Mr Yong's use of the PO Boxes and his actions in arranging the nomination of voters by companies occupying property within the City.
  - The City's processes to confirm the eligibility to nominate voters of companies purportedly occupying property within the City, and the eligibility of candidates standing for election, were inadequate.
- iv. Mr Yong arranged for companies to nominate voters, and gave voters' postal addresses as PO Boxes belonging to his family, with the intention that the ballot papers for these voters would be sent to those PO Boxes and he, or someone else on his behalf, would complete and submit the ballot papers as postal votes.
- v. Ms Lilly Yong, Ms Angie Yong and Mr Yong made misleading statutory declarations in support of their applications to be silent electors to conceal or obscure the Yong family's connection to PO Box 6116, East Perth.
- vi. Mr Yong deliberately allowed Mr Takemori to be misled as to the effect of voter enrolment forms and had him sign those forms under a false pretence.
- vii. Mr Yong attempted to conceal his conduct by deliberately omitting the contact details of Mr Takemori and voters on enrolment forms.
- viii. Mr Yong arranged for companies to enrol voters that did not have the right to do that, and which he knew did not have, or were very unlikely to have, that right.

## Finding 2.2.1 – 1 (contd)

- ix. It was a common practice for candidates and council members to organise for companies owning or occupying property in the City to enrol people to vote who had no business or organisational connection with the company. This is inconsistent with the intent of the LG Act, which is to enable businesses with property interests in the City to have the opportunity to participate in the electoral process and be represented by their preferred council members.
- x. There also existed a practice for candidates and council members to create sham leases or to lease premises that they did not use, or hardly used, to be eligible to nominate as a candidate and hold office. Again, that undermines the intent of the LG Act that only people with a sufficient interest in the City may serve as council members.
- xi. Furthermore, the City's reliance on the accuracy of declarations made in enrolment forms, on the basis that it was an offence for a candidate or a person applying to enrol voters to provide a false declaration, was misplaced. The existence of that offence did not deter candidates or council members from falsely claiming they were eligible to nominate as a candidate or hold office, or from enrolling people ineligible to vote, to increase the number of votes they may receive at an election.
- xii. The Inquiry notes that the small size of the electorate and low voter turnout in the City's ordinary elections may provide an incentive for candidates or people acting on their behalf to engage in improper or unlawful conduct, and may increase the risk that such conduct may have a material impact on the result of elections. Mr Yong was elected in 2013 by a margin of 54 votes. By May 2016, he had arranged for 45 ballot papers to be posted to PO Boxes he had access to and was expecting to increase that number prior to the October 2017 election had the City not intervened.

## Endnotes

- 1 Report, 2013, 2015 and 2017 Local Government Ordinary Elections Report, Western Australian Electoral Commission Website – Local Government Elections.
- 2 Website, Western Australian Electoral Commission – Local Government Elections, Ordinary Election Perth Results for elections in 2011, 2013, 2015, 2017.
- 3 *Local Government Act 1995*, s 4.29, 4.40.
- 4 *Local Government Act 1995*, s 4.30, 4.32, 4.34, 4.35, 4.41.
- 5 *Local Government Act 1995*, s 4.31(1C), 4.32(3).
- 6 *Local Government Act 1995*, s 4.31(1G).
- 7 *Local Government Act 1995*, s 2.19(2), 4.30(1)(a), 4.31(1G).
- 8 *Local Government Act 1995*, s 2.27.
- 9 *Local Government Act 1995*, s 4.20(4), 4.22, 4.96.
- 10 Transcript, K Yong, public hearing, 6 August 2019, p 66, 68.
- 11 Transcript, K Yong, public hearing, 6 August 2019, p 80-82.
- 12 Transcript, A Yong, private hearing, 5 March 2019, p 143.
- 13 Transcript, A Yong, public hearing, 12 August 2019, p 20-29.
- 14 Transcript, L Yong, public hearing, 12 August 2019, p 5-13.
- 15 *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786, 802; cited by *ICT Pty Ltd v Sea Containers Ltd* (1995) 39 NSWLR 640, 656; *Equuscorp Pty Ltd v Glengallan Investments Pty Ltd* [2004] HCA 55; (2004) 218 CLR 471 [46].
- 16 City of Perth, Form, Application to register a nominee, L Yong and Lex Legal, 22 March 2012.
- 17 Email, C Clayton to K Yong, 19 September 2012.
- 18 Email, K Yong to C Clayton, 20 September 2012.
- 19 Email, C Clayton to K Yong, 21 September 2012.
- 20 Email, Secretary for Lex Legal to Dr Evans and C Clayton, 24 August 2013.
- 21 Email, C Clayton to info@lexlegal, 26 August 2013.
- 22 Transcript, K Yong, public hearing, 6 August 2019, p 15-17.
- 23 Transcript, Lilly Yong, private hearing, 5 March 2019, p 99-101.
- 24 Email, M Ridgwell to K Yong, 3.42 pm 25 November 2016.
- 25 Form, City of Perth, Form 2 (modified) enrolment eligibility claim for corporate nominees, East Perth Investments Pty Ltd, 26 August 2017.
- 26 Lease, Front office space of 8 Henry Lawson Walk, East Perth, Jimmy Adamos and Helen Adamos & East Perth Investments Pty Ltd, 1 July 2016.
- 27 Transcript, J Adamos, public hearing, 8 August 2019, p 67-69.
- 28 *Local Government (Elections) Regulations 1997*, reg 11(3).
- 29 Transcript, J Adamos, public hearing, 8 August 2019, p 72-74.
- 30 Transcript, R Butler, private hearing, 12 July 2019, p 45, 48-49; Lease, Office space at 84-86 Beaufort Street, Perth, Trayn Andonovski and Robert Butler, 1 August 2012.
- 31 Lease, Part 84 Beaufort Street, Perth, Tomania, Andonovski, Philip Nicola Andonovski and Trayn Nicola Andonovski and Robert Butler, 30 October 2012.
- 32 Letter, G Dunne to R Butler, 2 October 2012.
- 33 Transcript, M Ridgwell, public hearing, 15 August 2019, p 69-70.
- 34 Transcript, M Ridgwell, private hearing, 24 July 2019, p 32-33, 37; Transcript, Mr Ridgwell, public hearing, 15 August 2019, p 69-70.
- 35 Transcript, M Ridgwell, public hearing, 15 August 2019, p 69-70.
- 36 Transcript, M Ridgwell, private hearing, 24 July 2019, p 36.
- 37 Transcript, M Ridgwell, public hearing, 15 August 2019, p 70; Transcript, M Ridgwell, public hearing, 24 July 2019, p 32.
- 38 Transcript, C Clayton, private hearing, 26 February 2019, p 36, 39.
- 39 Transcript, M Ridgwell, private hearing, 24 July 2019, p 43-51.
- 40 Transcript, R Butler, private hearing, 12 July 2019, p 40-42.
- 41 Transcript, J Adamos, public hearing, 8 August 2019, p 69-72.
- 42 Lease, Suite 9 (Part), Level 3, 231 Adelaide Terrace, Perth, Lex Legal Management and Yit-Kee Yong, 1 January 2012.
- 43 Transcript, M Ridgwell, public hearing, 15 August 2019, p 70.
- 44 Transcript, K Yong, public hearing, 6 August 2019, p 27.
- 45 Transcript, K Yong, public hearing, 6 August 2019, p 28-30; Form, City of Perth, Application to register a corporate nominee, Maxiwest, 12 August 2011.
- 46 Transcript, K Yong, public hearing, 6 August 2019, p 31-36; Form, City of Perth, Application to register a corporate nominee, Beau Geste, 15, 25 August 2011.
- 47 Transcript, K Yong, public hearing, 6 August 2019, p 34-36; Form, City of Perth, Application to register a corporate nominee, Bellvista, 15, 21 August 2011.

- 48 Form, City of Perth, Nomination for election by candidate, K Yong, 5 September 2013.
- 49 Transcript, K Yong, public hearing, 6 August 2019 p 36.
- 50 Email, L Yong and C Clayton, 1.21 pm 23 September 2013.
- 51 Transcript, K Yong, public hearing, 6 August 2019, p 42, 50.
- 52 Transcript, L Yong, private hearing. 5 March 2019, p 52-54, 56, 57-59.
- 53 Transcript, C Clayton, private hearing, 26 February 2019, p 44.
- 54 Transcript, L Cavanagh, private hearing, 17 April 2019, p 24.
- 55 Email, K Yong to L Cavanagh, 2.39 pm 24 September 2013, p 13-14.
- 56 Transcript, L Yong, private hearing. 5 March 2019, p 41, 71-72; Transcript, K Yong, public hearing, 6 August 2019, p 51-52, 58.
- 57 Letter, K Yong to L Cavanagh, 24 September 2013.
- 58 Transcript, K Yong, public hearing, 6 August 2019, p 58.
- 59 Transcript, K Yong, public hearing, 6 August 2019, p 47-48.
- 60 Transcript, L Yong, private hearing, 5 March 2019, p 64-65.
- 61 Transcript, K Yong, public hearing, 6 August 2019, p 44-46.
- 62 Transcript, K Yong, public hearing, 6 August 2019, p 49-51.
- 63 Transcript, K Yong, public hearing, 6 August 2019, p 63-66, 77.
- 64 Transcript, K Yong, public hearing, 6 August 2019, p 66-68.
- 65 Transcript, K Yong, public hearing, 6 August 2019, p 80-82.
- 66 Email, C Avent to G Stevenson, 25 September 2013; Email, “Feedback External Email Address” to W Smith, 26 September 2013; *Local Government Act 1995*, s 4.35.
- 67 Report, K Evans, Report on meeting with complainants regarding alleged fraudulent enrolment on the City of Perth non-resident owners and occupiers roll, 4 October 2013; Letter, L Cavanagh to K Yong, 4 October 2013.
- 68 Transcript, L Cavanagh, private hearing, 17 April 2019, p 26-29, 33; Letter, L Cavanagh to K Yong, 4 October 2013.
- 69 Report, K Evans, Report on meeting with complainants regarding alleged fraudulent enrolment on the City of Perth non-resident owners and occupiers roll, 4 October 2013; Letter, L Cavanagh to K Yong, 4 October 2013.
- 70 Transcript, L Cavanagh, private hearing, 17 April 2019, p 31; Transcript, K Evans, private hearing, 26 February 2019, p 105-107.
- 71 Transcript, K Evans, private hearing, 26 February 2019, p 104, 106.
- 72 Report, K Evans, Report on meeting with complainants regarding alleged fraudulent enrolment on the City of Perth non-residents owners and occupiers roll, 4 October 2013.
- 73 Transcript, K Evans, private hearing, 26 February 2019, p 97.
- 74 Transcript, L Cavanagh, private hearing, 17 April 2019, p 27.
- 75 Transcript, L Cavanagh, private hearing, 17 April 2019, p 30.
- 76 Transcript, K Evans, private hearing, 26 February 2019, p 97.
- 77 Transcript, K Evans, private hearing, 26 February 2019, p 105; Transcript, L Cavanagh, private hearing, 17 April 2019, p 25, 27.
- 78 Transcript, K Evans, private hearing, 26 February 2019, p 105.
- 79 *Local Government Act 1995*, s 4.90, 4.96.
- 80 Extract, City of Perth, Pathways system: owners and occupiers electoral roll, PO Box 6116, East Perth postal address; Extract, City of Perth, Pathways system: owners and occupiers electoral roll, PO Box 862, Victoria Park postal address; Transcript, C Clayton, private hearing, 26 February 2019, p 65; Transcript, M Ridgwell, public hearing, 15 August 2019, p 80.
- 81 Transcript, K Yong, public hearing, 6 August 2019, p 21-22.
- 82 Transcript, K Yong, public hearing, 6 August 2019, p 18-19.
- 83 Transcript, K Yong, public hearing, 6 August 2019, p 88, 101.
- 84 Transcript, C Clayton, private hearing, 26 February 2019, p 65-66.
- 85 Transcript, K Yong, public hearing, 6 August 2019, p 23, 88.
- 86 Transcript, K Yong, public hearing, 6 August 2019, p 21-22.
- 87 Transcript, K Yong, public hearing, 6 August 2019, p 99-101.
- 88 Transcript, K Yong, public hearing, 6 August 2019, p 22.
- 89 Transcript, K Yong, public hearing, 6 August 2019, p 25-26.
- 90 Transcript, K Yong, public hearing, 6 August 2019, p 25-26.
- 91 Transcript, K Yong, public hearing, 6 August 2019, p 25.
- 92 Transcript, M Ridgwell, public hearing, 15 August 2019, p 75.
- 93 Transcript, K Yong, public hearing, 6 August 2019, p 91.
- 94 Email, M Ridgwell to Lord Mayor and Councillors, 28 January 2015.
- 95 Email, K Yong to M Ridgwell, 2 February 2015.
- 96 Email, M Ridgwell to K Yong, 2 February 2015.
- 97 Statutory declaration, Yit-Kee Yong, 3 February 2015; Statutory declaration, Lilly Yong, 3 February 2015; Statutory declaration, Yit-Joon Yong, 3 February 2015.
- 98 Statutory declaration, Angie Yit-Choo Yong, 5 February 2015.

- 99 Transcript, M Ridgwell, public hearing, 15 August 2019, p 81.
- 100 Letter, M Ridgwell to A Yong, 19 February 2015; Letter, M Ridgwell to L Yong, 19 February 2015; Letter, M Ridgwell to Y J Yong, 19 February 2015; Letter, M Ridgwell to Y K Yong, 19 February 2015.
- 101 Transcript, M Ridgwell, public hearing, 15 August 2019, p 82.
- 102 Transcript, L Yong, private hearing, 5 March 2019, p 75; Transcript, A Yong, private hearing, 6 March 2019, p 35-36.
- 103 Transcript, K Yong, public hearing, 7 August 2019, p 40-41; Statutory declaration, Yit-Kee Yong, 3 February 2015; Letter, M Ridgwell to K Yong, 19 February 2015.
- 104 Transcript, K Yong, public hearing, 7 August 2019, p 42-43.
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- 107 Transcript, K Takemori, private hearing, 26 June 2019, p 52-54.
- 108 Transcript, K Yong, public hearing, 6 August 2019, p 105.
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- 110 Transcript, K Yong, public hearing, 6 August 2019, p 105; Transcript, K Yong, public hearing, 7 August 2019, p 34; Transcript, K Takemori, private hearing, 26 June 2019, p 59, 62-63; Transcript, K Takemori, private hearing, 27 June 2019, p 3, 6, 7, 13-14, 16.
- 111 Transcript, K Takemori, private hearing, 26 June 2019, p 58, 64-65, 66; Transcript, K Takemori, private hearing, 27 June 2019, p 17; Transcript, K Yong, public hearing, 6 August 2019, p 105-106.
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- 113 Transcript, K Takemori, private hearing, 26 June 2019, p 58, 66-67.
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- 116 Transcript, K Yong, public hearing, 6 August 2019, p 108-110, 111; Transcript, K Yong, public hearing, 7 August 2019, p 3-5.
- 117 Transcript, K Yong, public hearing, 6 August 2019, p 112.
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- 119 Transcript, K Yong, public hearing, 6 August 2019, p 109.
- 120 Transcript, K Takemori, private hearing, 27 June 2019, p 35; Transcript, K Yong, public hearing, 6 August 2019, p 104.
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## 2.2.2 Decision-making

The City of Perth (City) has a long-established position as a prominent local government in Western Australia. The *City of Perth Act 2016* (CoP Act), enacted on 3 March 2016, formally recognised this status. It gave specific emphasis to the City's social, economic, cultural, environmental and civic roles.

Section 8(1)(b) of the CoP Act provides that City of Perth Council (Council) is:

*“to represent the community and encourage community participation in decision-making”.*

In addition, the Council is to provide for the *“good government of persons in the City”*, which includes ratepayers, residents and visitors.<sup>1</sup>

Local governments have legislative and discretionary functions. Matters commonly determined by the Council relate to both functions, including planning matters, heritage matters and grants and sponsorships.

Councils are democratically elected governments. They should make representative, informed, accountable and transparent decisions in the interests of their local communities.

The Lord Mayor and councillors at the City have this role succinctly articulated in the CoP Act. Each is required:

*“(a) to represent the interests of electors, ratepayers and residents of the City of Perth;  
(b) to serve the current and future interests of the community in the City of Perth;  
(c) to provide leadership and guidance to the community in the City of Perth;  
(d) to facilitate communication between the community and the City of Perth Council;  
(e) to participate in the City of Perth Council’s decision-making processes at council and committee meetings ...”.*<sup>2</sup>

In many respects, local governments are the closest tier of government to the people they serve. For many in the community, participation in the democratic process goes beyond voting in elections.

The views, needs and perspectives of members of the community can be diverse. The ability for them to voice their different points of view, and have them taken seriously, is fundamental to local government and the community's participation in it. There are many ways the community and interested parties can participate in local government decision-making.<sup>a</sup>

<sup>a</sup> *Local Government Act 1995*, s 1.3(2) – This Act is intended to result in: “(a) better decision-making by local governments; and (b) greater community participation in the decisions and affairs of local governments; and (c) greater accountability of local governments to their communities; and (d) more efficient and effective local government”.

At the City, this is sometimes done through the *City of Perth Standing Orders Local Law 2009*. This local law is intended to result in:

- “(a) better decision-making at meetings;*
- (b) the orderly and efficient conduct of meetings; and*
- (c) greater community understanding of the business of the Council.”<sup>3</sup>*

Council meetings allow members of the community to participate in decisions on matters which affect them directly. They can do so by asking questions, making statements and seeking representation through council members.

Better engagement in and greater transparency of decision-making helps build community understanding and buy-in.<sup>4</sup> Participation in the process has benefits for the community generally, as well as for the individuals involved. Outcomes can be better, governance improved and, importantly, relationships strengthened and preserved. However, when participation is not handled appropriately by Council and its members, it can be harmful – financially, physically or psychologically, to those involved or those affected by decisions.

Council members have a responsibility to balance the interests of the whole community when making their decisions. Greater transparency around council decision-making enables the community to understand how council members reach decisions on the matters they are required to consider. Sometimes the process leading to a Council decision involves compromises, mediation or trade-offs between different points of view.

Good government is achieved when council members represent, and balance, the interests of the whole community, and not just a segment of it. Decisions should ultimately be based on the information before Council and the legislative framework and involve a consideration of risks related to any decision being made. Decision-making should be transparent and the reasons for decisions appropriate and documented.

This Chapter examines some examples of decision-making by the Council and how community interests were balanced. The matters examined include:



Consideration of a planning application for a local shop at The Adagio building, 90 Terrace Road, East Perth.



Inclusion of the Grand Central Hotel, 379 Wellington Street, Perth, on the City Heritage List.



Decision-making on a sponsorship proposal to rejuvenate the Piccadilly Theatre in the City.



Photo: anastas\_styles/Shutterstock.com

## The Adagio, 90 Terrace Road, East Perth

### Introduction

#### Role of council members in relation to development applications

1. Council members are sometimes required to make decisions about development applications, including applications to use land for a particular purpose.
2. The process of determining a development application is a two-step one that requires decision-makers to determine, first, whether an application is permitted to be granted, and secondly, whether the application should be granted. The second step of the decision-making process may permit some discretion, but this discretion is not unlimited. As a public decision-making body, the power of a council is largely defined and limited by the legislation and the instruments that give the council its decision-making power. In the case of planning decisions, a planning framework guides and limits how council members can exercise their discretion in planning decisions.
3. The planning framework includes, at the State level, the *Planning and Development Act 2005* (PD Act) and its regulations. The PD Act gives power to local governments to prepare local planning schemes.<sup>5</sup> These local planning schemes establish a planning regime for the local government area, in conjunction with the PD Act and other applicable legislation. The City of Perth (City) has a planning strategy and planning scheme, as well as separate planning policies and precinct plans for different areas in the City.
4. If an applicant is dissatisfied with the decision of a council on a planning matter, there is a right to lodge an application for review to the State Administrative Tribunal (SAT). The SAT makes decisions based on, among other things, the planning framework.



5. Under the planning framework, areas are zoned to regulate the types of activities which may occur and to ensure that compatible activities are located in appropriate places. For example, industrial areas may be kept separate from residential areas.
6. Often a planning framework will permit certain commercial activities in residential areas, such as childcare centres and schools, medical centres, cafés and shops. Sometimes this is not to the liking of certain residents who live close by, because they feel, rightly or wrongly, that they will be affected by extra traffic, or parked cars, or the noise of children, or rubbish on the street, or more people in the area, or anti-social behaviour. While these residents may be happy to have these facilities within easy reach, they may not want them right next door.
7. People may have a range of interests and concerns about a particular development application. It is often reasonable for interested parties, including members of the local community, to have their say on development applications which affect the amenity of their locality. In contentious cases, this may result in significant pressure being applied to council members. Many of these interests and concerns may seem reasonable to the parties themselves or to an outside observer. However, not all interests or concerns are valid planning considerations, which should be considered under the planning framework. This is not always well understood.
8. Council members do not have the luxury or flexibility to make decisions on legitimate applications just to appease or benefit an interested party, whether it is the developer or a group of objectors. Decisions should be based on the relevant planning framework and sound planning principles. Council members should not make planning decisions to further their personal interests, such as rejecting a development application to avoid negative media comment, or to gain votes and support in a forthcoming election. Doing so could cause financial harm to people who have legitimately invested in a project. It could also cause applicants and the City to spend considerable time and money going through the application for a review process in the SAT.
9. As noted in a State Government publication on *“Making Good Planning Decisions”*:

*“Decision-makers have an obligation to exercise their statutory responsibilities properly. Making a decision based upon irrelevant considerations undermines confidence in the planning system, and exposes a decision-maker to an order for costs, if the applicant is successful upon a review of that decision at the SAT. Therefore, it is important that reasons [for a decision] be seen as based on sound planning principles, and not be seen as catering to the views of an individual or select group of individuals”.<sup>b</sup>*

<sup>b</sup> Guideline, Department of Planning, Lands and Heritage, Development Assessment Panel Practice Notes: Making Good Planning Decisions, July 2018, p 52. This publication is not specifically targeted at decision-making by local governments.

### Unit 8 in The Adagio apartment complex

10. The Adagio is an apartment complex at 90 Terrace Road, East Perth. It comprises a 23-storey residential tower and two 4-storey mixed use buildings fronting the road. It overlooks Langley Park and the Swan River. It was opened by the Lord Mayor, Ms Lisa Scaffidi, in April 2013. At that time, the building was advertised as containing 113 apartments and “two ground floor commercial lots”.<sup>6</sup>
11. Unit 8 is one of those commercial lots. It is on the ground floor in one of the 4-storey mixed use buildings. It faces Terrace Road and Langley Park. Unit 8 had food related facilities such as gas, a grease trap and exhaust fans fitted during construction. It was sold for \$1.7 million to Mr Levant Altintas and Ms Sebahat Altintas as commercial premises.<sup>7</sup>
12. Documents provided by the City to the SAT included the following statement:
 

*“The Adelaide Precinct Plan identifies the Terrace Road Residential Area as remaining as an area for high-density residential uses. The Precinct Plan further provides that non-residential uses such as local shops are appropriate, provided they are small scale and serve the residents and visitors and are part of a residential or special residential development.*

*The north side of Terrace Road is predominantly residential (multiple dwellings) with some short-stay accommodation, small lunch bars, café/restaurants and offices.*

*... Langley Park is intended to be maintained as an area of expansive public open space and will continue to develop as a major focus for sporting and leisure events, activities and will be promoted as one of the City’s principal visitor attractions.*

*The proposed convenience store will be visible from Langley Park and by passing pedestrians and motorists.*

*The City’s Policy 6.4 ‘Terrace Road Design Policy’ applies to the proposed local shop”.<sup>8</sup>*
13. One of the objectives of the Terrace Road Design Policy (Design Policy) was:
 

*“To encourage a range of incidental and complimentary [sic] commercial uses adjacent to street frontages in order to increase the level of activity along both Terrace Road and the existing north/south streets”.*
14. Section 2.1 of the Design Policy provided the following objective for “Land Use”:
 

*“To actively encourage a wide variety of high density residential development supported by a range of complimentary [sic] commercial uses along the Terrace Road frontage”.<sup>9</sup>*
15. A local shop was a contemplated use for the area, and the Design Policy identified local shops as a use which could complement and support the residential uses of the area.



## Development application

16. On 1 December 2014, Mr and Mrs Altintas leased the premises at Unit 8, 90 Terrace Road, to a company, ABQ Investment Group Pty Ltd (ABQ) with a commencement date of 1 April 2015.<sup>10</sup> The directors of ABQ were Mr Jordan Qaraleh and Mr Imad Bkooor. Mr Qaraleh and Mr Bkooor (Applicants, which term will be used to refer to Mr Qaraleh, Mr Bkooor and ABQ, as the context demands) intended to operate a convenience store. They had established ABQ for that purpose, along with their fellow shareholder Mr Kayis Abuzayan. Mr Altintas also owned a property in West Perth, which was leased by Mr Bkooor and successfully operated as a convenience store. There had been no difficulty in obtaining development approval from the City for that shop.<sup>11</sup>
17. Unit 8 was leased at an annual rent of \$80,000.00 plus GST and outgoings.<sup>12</sup> The rental was personally guaranteed by the Applicants.<sup>13</sup>
18. The Applicants engaged a project manager. On 26 November 2014, they lodged a development application with the City to use Unit 8 as a convenience store.<sup>14, (c)</sup>
19. Based on Mr Bkooor's previous experience with obtaining development approval for shops,<sup>d</sup> Mr Bkooor expected to get an indication that his application was appropriate, which would enable the Applicants to proceed with the work required to establish the business, until final approval was received. With the advantage of hindsight, it might be said the Applicants should have waited for their development application to be approved before commencing the lease.
20. Initially, the Applicants intended to operate as an Independent Grocers of Australia supermarket (IGA), but this changed to an independent store after they met with some of The Adagio residents and before the City of Perth Council (Council) had made a decision on their application.<sup>15</sup>
21. According to Mr Bkooor, the residents objected to the idea of an IGA, because:
 

*"They said IGA will attract lots of public and also to attract homeless people ... and they were not happy about that because it's meant to be a luxury place".*<sup>16</sup>
22. Ms Margaret Smith, the Manager, Development Approvals for the City, confirmed that some residents considered that an IGA would devalue their property.<sup>17</sup>
23. Mr Dennis Martin, who was then the Senior Development Compliance Officer for the City, said *"there are a number of IGA outlets on ground floor commercial tenancies below apartment buildings throughout the City of Perth"*. However, the residents of The Adagio objected to the proposed IGA signage. Mr Martin recalled that one resident, Ms Michelle Noble, said things to the effect that it would be embarrassing to residents to have visitors to such an exclusive apartment complex be greeted by an IGA on the ground floor.<sup>18</sup>

c Note: Although the Applicants used the term "convenience store" throughout hearings, their intended use fell within the definition of a local shop under the planning framework and so the application proceeded on that basis.

d Mr Bkooor had a convenience store in West Perth and another retail shop in Fremantle where he had to apply for local government approvals: Transcript, I Bkooor, private hearing, 18 December 2018, p 45-47.

24. Accordingly, the Applicants decided to operate as an independent store and had their project manager design it to better fit the image of the building and the views of certain residents.<sup>19</sup>
25. However, several apartment residents in The Adagio appear to have objected to having a convenience store of any type in the building. Ms Noble, in particular, became very active in her opposition and frequently lobbied council members and City officers with reasons to refuse the application.<sup>20</sup>
26. In order to understand the basis for the residents' objections to the shop, it is helpful to quote from Ms Noble's statement, dated 1 July 2015, for a SAT hearing on the application. She provided this background to her specific concerns about the proposed shop:

*"I decided to purchase an apartment in the Adagio Apartments as it is a high end and luxurious development. When the Adagio Apartments were advertised, every element was described as being 'prestigious'. Attached to this statement and marked MN2 are copies of advertising material describing the Adagio Apartments as 'an exclusive luxury lifestyle', 'one of the last and most prestigious of Perth's riverside development locations'.*

*The Adagio Apartments are located in a very prestigious area, being the area of Terrace Road from Hill Street to Bennett Street, which has a beautiful streetscape, with other similar high end apartment buildings nearby. It is a very attractive and desirable place to live. I have often seen people walking past on Terrace Road stopping to admire the Adagio Apartments".<sup>21</sup>*

27. In relation to two of her specific objections to the shop, signage and shelving, Ms Noble wrote:
- "If the proposed local shop is approved, I am concerned that the visual pollution caused by the proposed signage will significantly detract from the appearance of the Adagio Apartments and the surrounding area. I am also concerned that the shelving racks on which the merchandise is displayed will be visible through the windows of the proposed local shop and will further detract from the appearance of the Adagio Apartments and surrounding streetscape".<sup>22</sup>*
28. Ms Noble and the other objectors raised concerns about the visual appearance of the proposed store, whether the store was a suitable use of the "prime foreshore location",<sup>23</sup> and other issues relating to waste management, parking, deliveries, and the potential for noise or anti-social behaviour.
29. When the application came before Council, the council members at first deferred and then rejected the application. As a result, an application which would typically have been dealt with in the statutory time of 90 days,<sup>24</sup> took considerably longer and required an application for review to the SAT to resolve it. In addition, once the shop was operating it was subject to a number of restrictive conditions, including for trading hours and signage.

The Applicants made a further application to the City in relation to these conditions and then brought a further application for review to the SAT. As a result of ongoing complaints by residents, the shop also received regular visits from a City Development Compliance officer.

30. While waiting for approval for the shop, the Applicants incurred a liability for rent, lost potential income and had stock expire and become unsaleable. In addition, the legal fees incurred before and during the multiple SAT proceedings, as well as the delays, meant that when the shop did open for business, the Applicants were unable to stock or re-stock the store in the manner hoped. The limit on trading hours also meant that the Applicants did not have access to the market they had wished to target outside of supermarket hours.
31. The shop closed in September 2017.
32. The Inquiry has received, and accepts, evidence that the protracted approval process the Applicants went through cost them dearly, financially and emotionally, and caused serious adverse effects for them, their families and their health.

## Timeline

2013	12 April	The Adagio apartment complex at 90 Terrace Road, Perth opened by the Lord Mayor, Ms Lisa Scaffidi.
	2 May	Mr Levant Altintas and Ms Sebahat Altintas became the registered owners of Unit 8.
2014	26 November	Development application lodged with the City to use Unit 8 as a convenience store.
	1 December	Unit 8 leased to Mr Jordan Qaraleh and Mr Imad Bkoor (the Applicants), with a commencement date of 1 April 2015.
2015	27 January	Application considered by the Council's Planning Committee, which accepted the recommendation by planning officers for approval by Council.
	3 February	Application considered by the Council, which also received a petition objecting to the shop. Council referred it back to the Planning Committee.
	17 February	Application considered by the Planning Committee, with an officer recommendation to approve. The Planning Committee voted two-to-one against the recommendation.
	24 February	Application again considered by Council, which declined it due to amenity concerns.
	20 March	The Applicants applied to the State Administrative Tribunal (SAT) for a review of the Council decision.
	8 April	SAT directions hearing listed the matter for mediation.
	10 April	Mr Jim Adamos hosted a dinner at Council House for The Adagio residents.
	1 May	SAT mediation failed to settle the matter.
	15 May	SAT directions hearing instructed both parties to provide "a statement of issues, facts and contentions".
	14 July	SAT directions hearing made an order to list the matter for mediation in September 2015.
	22 September	Council Meeting authorised the "Chief Executive Officer to negotiate and execute a Consent Order ...".
	26 October	Consent Order was executed, with nine conditions for the shop. The shop commenced trading three months later.

2016	8 August	The Applicants lodged another development application with the City to extend trading hours and signage and add an alfresco area.
	25 October	Additional application considered by the Planning Committee.
	1 November	Additional application considered by Council, which voted to approve the alfresco area and increased signage, but not an extension to trading hours.
	29 November	The Applicants applied for a review by SAT in relation to trading hours. Through mediation a six-month trial of extra trading hours was granted.
2017	10 April	Trial of extended trading hours commenced.
	Mid-September	By this date the shop had ceased trading.

## Issues considered by the Inquiry

33. The Inquiry identified the following issues:

- Whether the decisions of council members on the Planning Committee and Council, resulting in the deferral and then refusal of the application, were justified on planning grounds.
- Whether some council members followed an improper decision-making process in deciding to refuse the application.
- Whether some council members voted against the application, knowing that if an application for review were to be made to the SAT, it would be successful.
- If so, whether the decision to refuse the application was made by some to appease some residents of The Adagio in the hope of gaining support for the forthcoming Council election.
- Whether some council members decided to defend the SAT proceedings, despite expecting that their decision would be overturned.
- The consequences of the decisions and the process for the City and for the Applicants.

## Investigation by the Inquiry

### Applicable Terms of Reference

34. The Inquiry is to inquire into and report on, among other things, the adequacy and competency of Council decision-making.<sup>25</sup> Broadly speaking, the Inquiry must inquire into and report on those matters which bear on good government by the City.<sup>26</sup>
35. The Terms of Reference for this Inquiry refer to the period 1 October 2015 to 1 March 2018. Following the review process in the SAT, the ultimate decision to approve the development application was made in October 2015.

36. Part A.2 of the Terms of Reference states that *“The Inquiry Panel may inquire into and report on a period, or periods, before 1 October 2015 if it considers that to be necessary for the purpose of properly discharging its function ... and placing the matters inquired into within a relevant context in the circumstances”*.<sup>27</sup>
37. The Inquiry considers it appropriate to consider Council’s full decision-making process in relation to this application, including events that occurred before 1 October 2015. Those events are relevant to the adequacy and competency of Council’s decision-making on this issue, as well as the issue of *“whether there has been a failure to provide for the good government of persons in the City of Perth’s district”* in terms of Part A.1(i) of the Terms of Reference.

### Witnesses

38. The Inquiry held private and public hearings with a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section:

- Council members, Ms Lisa Scaffidi, Mr Adamos, Mr Rob Butler, Ms Lily Chen, Ms Janet Davidson, Ms Judy McEvoy, Dr Jemma Green, Mr Reece Harley, Mr James Limnios and Mr Keith Yong;<sup>e</sup>
- Mr Gary Stevenson, Chief Executive Officer (CEO);
- Mr Martin Mileham, Director, Planning and Development. Mr Mileham was also a CEO of the City, but during the period under consideration he was a Director;
- Ms Smith, Manager, Approval Services for the City to July 2015 and Manager, Development Approvals after July 2015;
- Mr Martin, Senior Development Compliance Officer;
- the owner of Unit 8, Mr Altintas; and
- the Applicants, Mr Qaraleh and Mr Bkoor.

39. The Inquiry notes that Ms Smith was present at all relevant stages of the process and the Inquiry is satisfied that she was and is a very experienced local government planning officer and a truthful and reliable witness.
40. Ms Noble did not give evidence to the Inquiry. In accordance with its Terms of Reference, the Inquiry was concerned with the adequacy of Council decision-making on this matter. The involvement of objectors during Council’s decision-making process provides essential factual context, but those objectors did not make the relevant decisions. The Inquiry makes no criticism of, and makes no findings in relation to, Ms Noble or any other residents of The Adagio or neighbouring properties. The conduct of those objectors is not in issue for the purposes of this Report.

<sup>e</sup> These were all council members for at least some of the period that applications were before the City of Perth or the State Administrative Tribunal.

## Evidence obtained by the Inquiry

### Council consideration of the development application

41. On 26 November 2014, the Applicants lodged a development application with the City for a convenience store in Unit 8.<sup>28</sup> Under the planning framework, the Applicants' intended use fitted the definition of a local shop.<sup>f</sup>
42. The applicable planning framework included the PD Act and its regulations, the City Planning Scheme No. 2 (Planning Scheme), and Precinct Plan No. 13 (Adelaide) (Precinct Plan).
43. Under the Planning Scheme, the City was required to advertise the contemplated use of the premises before granting the application.<sup>29</sup> Accordingly, the application was advertised to the owners of apartments in The Adagio building and the owners of properties on either side. In response, the City received 15 submissions, 14 of which opposed the development application.<sup>9</sup>
44. City planning officers considered the objectors' concerns and communicated with the Applicants to determine how the Applicants would address the planning concerns raised against the application.<sup>30</sup> In some cases, the Applicants modified their proposal to meet the objectors' concerns.<sup>31</sup>
45. City planning officers decided that, according to the Planning Scheme and applicable policies, *"a convenience type store was appropriate within that residential zoned area"* and that the application met the City's planning requirements.<sup>32</sup>
46. Senior Planning Officer, Ms Kathy Lees, prepared a report for Council's Planning Committee, under the supervision of Ms Smith. The report set out the concerns and potential issues with the application and addressed each issue by reference to the planning framework.<sup>33</sup> Notably, the report stated that some of the objectors' specific concerns were not valid planning considerations.<sup>h</sup> The planning officers also provided a table setting out the Applicants' responses to each of the planning concerns,<sup>34</sup> and proposed four conditions to address the objectors' valid planning concerns. The report stated that *"subject to appropriate conditions the local shop is unlikely to have a significant impact on the amenity of the Residential Use Area and can therefore be supported"*.<sup>35</sup>
47. During the Inquiry's examination of Ms Smith, Counsel Assisting asked her whether the recommendations of planning officers were normally accepted. She said that during the period covered by the Inquiry, she was only aware of two occasions on which Council had not accepted the recommendation of City planning officers.

<sup>f</sup> Note: The initial application was made for a "convenience store" however the City's planning officers and the Applicants confirmed in writing that "local shop" was the appropriate category for the Applicants' intended use under the planning framework: Email, K Lees to M Al Shanti, 12.06 pm 17 December 2014.

<sup>g</sup> Note: The specific concerns raised related, broadly, to "Access, Traffic and Parking Issues", "Noise and Safety", "Waste Disposal", "Signage", "Trading Hours", "Structural", and "General" concerns which related mostly to the perceived risk to the luxury, aesthetic disposition and value of The Adagio complex: Document, City Planning Officers, "Summary of Issues – Advertising for 90 Terrace Road", undated.

<sup>h</sup> For example, "While submissions did indicate that there are already sufficient local shops in Adelaide Terrace to serve the residents, this is a matter that is determined by the market and is not a valid planning consideration. Similarly, the suggestion that a use which makes a better use of the foreshore location would be preferable is also not a valid planning consideration. Council is required to determine the application before it ...": Minutes, Planning Committee Meeting, 27 January 2015.



Both of them were situations in which planning officers had recommended that an advertising sign included in an application be refused, but Council had decided to approve it. She recalled no other cases in which Council had refused an application recommended by planning officers.<sup>36</sup>

48. In their examinations on this matter, each council member who was asked about Ms Smith's capabilities agreed she was a very capable planning officer.<sup>i</sup>

### Planning Committee and Council meetings

49. On 27 January 2015, the development application was considered at a Council Planning Committee Meeting. The Planning Committee had an advisory role to Council. It was not a decision-making body. The Planning Committee comprised three council members during this period: Mr Butler (presiding member), Mr Harley, and Ms McEvoy.<sup>37</sup> The Planning Committee received the report from the planning officers with a recommendation that the application be approved. Ms Noble, as a resident of The Adagio, was present at the meeting and made a deputation. The Planning Committee unanimously recommended that Council approve the application, subject to the conditions recommended by planning officers and with an additional condition relating to window signage.<sup>38</sup>
50. On 3 February 2015, the matter came before Council. Ms Scaffidi was not present.<sup>39</sup> Before and at the meeting, council members were lobbied by objecting residents. Ms Noble had presented a petition with 205 signatures objecting to the application.<sup>j</sup> Council received the planning officers' report and the Planning Committee's recommendation for approval. However, Council decided to refer the matter back to the Planning Committee. The reason given by Council was *"In light of the petition received in relation to this report"*. The motion for referral back to the Planning Committee was moved by Ms Davidson and seconded by Ms McEvoy.<sup>40</sup>
51. It appears some council members assumed that, because some residents were not happy with the application, their concerns must not have been sufficiently addressed by the conditions proposed by the planning officers and the Planning Committee. For example, Mr Yong said:

*"If the five items have been addressed, the residents would not have been putting a petition if they had been addressed. They must have some issues that has not been addressed and that's the reason why we have such a large number of residents bringing a petition against this item".<sup>41</sup>*

i Mr Adamos said Ms Smith was *"highly skilled"*: Transcript, J Adamos, public hearing, 8 August 2019, p 95; When asked his opinion of Ms Smith's capabilities, Mr Butler said *"she was excellent"*: Transcript, R Butler, private hearing, 11 July 2019, p 35; Ms Chen said Ms Smith *"seems to [her] very capable lady"*: Transcript, L Chen, private hearing, 1 July 2019, p 72; Ms Davidson said Ms Smith worked *"very professionally, very thoroughly"*: Transcript, J Davidson, private hearing, 4 July 2019, p 53; Ms McEvoy said she *"thought [Ms Smith] was always very capable"*: Transcript, public hearing, J McEvoy, 7 August 2019, p 56; Mr Yong said *"I believe she [Ms Smith] has the experience in planning ... My personal opinion, yes, she is capable"*: Transcript, K Yong, private hearing, 3 July 2019, p 15-16.

j Memorandum, CEO to All Elected Members, *"Petition – Council Meeting to be Held 3 February 2015"*, 3 February 2015. Ms Noble said the signatures were from *"residents of 90 Terrace Road ... residents of surrounding developments in Terrace Road and ... people living and/or working in close proximity to 90 Terrace Road or those who visit the Langley Park area for recreation"*.

52. However, not all the concerns raised by the objectors were valid planning considerations. For example, in the letter accompanying the petition, Ms Noble wrote:  
*"... The fact that the original development application [for The Adagio building] did not nominate the specific uses of the two commercial tenancies gives Council the opportunity to determine what would now suit and enhance the development and the surrounding area ... . There is an opportunity cost to approving the application before Council. It is the opportunity for the subject premises to have a commercial use that would enhance Terrace Road far more than yet another local shop ...".*<sup>42</sup>
53. Many of the objectors' concerns throughout the process were based on a similar false assumption, namely, that it was appropriate for Council to reject the application in favour of another hypothetical application that would, in the objectors' view, better match the "open" design, "luxury" and perceived "prestige" of The Adagio apartment block.<sup>43</sup>
54. The objectors need not be criticised. It is not their responsibility to understand the proper application of the planning framework. It was, however, the council members' responsibility to understand their own decision-making powers in relation to planning matters and to make transparent decisions based on valid planning considerations.
55. The role of the planning officers was to provide expert advice to guide the council members in this task. The role of the Planning Committee in this situation was to carefully consider that advice and make appropriate recommendations to Council. While council members were not required to follow the planning officer's recommendation, it was important that they exercise their discretion properly and make their decision for proper planning reasons.
56. The planning officer's report clearly advised the Planning Committee and Council that the existence of other local shops in the vicinity and the possibility that there could be a more favourable use for the prime foreshore location were not valid planning considerations.<sup>44</sup> These matters are the subject of two of the five issues listed in the objectors' petition.<sup>k</sup>
57. Similarly, the section of the report entitled "Parking and Deliveries" explained the application of the Perth Parking Policy and advised that "As a consequence no customer car parking is required on site for the shop and the application cannot reasonably be opposed on the basis of insufficient parking".<sup>45</sup> This section of the report also addressed deliveries and likely traffic sources and suggested the City undertake a review of parking at the site, "notwithstanding" that insufficient parking was not a reasonable basis for opposing the application. This relates to one of the remaining three issues raised by the objectors' petition.<sup>l</sup>

<sup>k</sup> Memorandum, City of Perth, Chief Executive Officer to Lord Mayor and Councillors, Schedule – 3 February 2015. Issue 2 reads "The lack of demonstrated need or support for a local shop at this site, noting that 93% of respondents raised concerns and opposed the proposed use of a local shop, with there being at least 5 other local shops within 500 metres of the subject site" and Issue 5 reads "Planning approval for this site as a local shop being a poor use of a prime, high-end, heritage listed, river-view location, particularly when there is no evidence of demand or support for this use within the area".

<sup>l</sup> Memorandum, City of Perth, Chief Executive Officer to Lord Mayor and Councillors, Schedule, 3 February 2015. Issue 4 reads "Inadequate provision to effectively monitor and manage the additional delivery, traffic and resultant parking issues at and around the subject site, due to the high volume of short stay traffic expected from the use of this site as a local shop".

58. These sections of the report were reproduced each time the matter came before the Planning Committee and Council before the application was rejected, both before and after the objectors' petition was received.
59. Ms McEvoy was asked about this in a public hearing of the Inquiry and, although she agreed that the points made in the petition appeared to have been dealt with by the conditions proposed in the recommendation, she said that it was hard to *"flesh things out in a Council meeting"* and it was better to go back to the committee room where it could be discussed.<sup>46</sup> Mr Harley made similar comments, stating that *"... if there's a significant concern about an issue and a whole bunch of people rock up and they are concerned, and there's a petition, we will refer a matter back to the committee so that there can be a full and frank discussion and so that issues can be thrashed out"*.<sup>47</sup>
60. However, Mr Harley was also of the view that some of the information had not been in the Council documentation in the form it appeared in the petition. He gave an example of not recalling that *"93 per cent of respondents raised concerns ... being in the Council documentation"*.<sup>48</sup> This figure appears to be Ms Noble's reformulation of information that appeared on the first page of the planning officers' report, which was that 13 out of 14 submissions received through the advertising period opposed the application.
61. Applications under the planning framework should generally be resolved in 90 days.<sup>49</sup> By way of comment, the Inquiry notes that had Council accepted the recommendation of the Planning Committee to approve the application at this stage, rather than referring it back to the Planning Committee, the application would have been approved within the statutory time of 90 days. The Applicants could have continued with their fit out,<sup>50</sup> and then commenced trading, and neither the City nor the Applicants would have spent the time, and incurred the costs, associated with the application for review to the SAT. There would also have been less delay in opening the shop.
62. The City wrote to the Applicants asking for an agreement to an extension of the 90-day standard determination period.<sup>51</sup>
63. On 17 February 2015, the matter was considered again by the Planning Committee. Mr Harley declared an impartiality interest, in that he knew one of the residents at Adagio who had written to Council.<sup>52</sup> However, in accordance with the *Local Government (Rules of Conduct) Regulations 2007*, an impartiality interest did not prevent Mr Harley from remaining in the meeting and voting.
64. In their updated report to the Planning Committee, the planning officers stated that *"additional information addressing the matters raised in the petition has been provided by Officers at the end of this report"*.
65. That additional information set out each of the concerns raised in the objectors' petition and stated that *"the issues raised in the petition are generally reflected in the submissions received during the advertising period"*, which had been previously *"addressed"* in the report when it was first provided to the Planning Committee on 27 January 2015 and to Council on 3 February 2015.

66. The planning officers did note, however, that the petition raised one concern which had not been previously addressed, which related to the “clutter” of racks and merchandise that might be visible through the shop windows. The planning officers added one more condition to address this additional concern. The Inquiry is of the view that this relatively minor matter did not warrant a delay beyond the statutory time of 90 days to determine the development application.
67. The conclusion in the report was that the establishment of the local shop was “consistent with the intent” of the Planning Scheme and Design Policy. The report stated “it is considered that appropriate conditions can be imposed to address other valid planning considerations raised by submitters” and that “subject to those conditions the local shop is unlikely to have a significant impact on the amenity of the Residential Use Area and can therefore be supported”.<sup>53</sup>
68. At the meeting, deputations were presented by Ms Noble on behalf of the objectors, and by a legal representative on behalf of the Applicants.<sup>54</sup>
69. The Officer Recommendation in the report was that Council approve the application subject to the (now six) conditions.
70. However, the Planning Committee voted two-to-one to recommend that Council decline the application. The minutes state:

*“Moved by Cr Harley, seconded by Cr McEvoy*

*That Council declines the application for the use of Unit 8/90 (Lot 8 on SP 58159) Terrace Road, East Perth as a ‘local shop’ with associated signage as detailed on the Metropolitan Region Scheme Form One dated 25 November 2014 and as shown on the plans received on 1 December 2014 and 19 January 2015, due to amenity concerns which would have adverse impacts on the affected adjoining owners of the proposed tenancy use.*

*The motion was put and carried*

*The votes were recorded as follows:*

*For:               Crs Harley and McEvoy*

*Against:       Cr Butler*

*Reason:       The Planning Committee agreed that there are amenity concerns in relation to the proposed tenancy use which would have adverse impacts on the affected adjoining property owners”.*<sup>55</sup>
71. Ms Smith said that nothing had materially changed from when the Planning Committee had previously considered, and recommended approval of, the application, and in her opinion the conditions that were now imposed were “certainly more stringent than we would have imposed had there not been the objections”.<sup>56</sup>

72. Ms McEvoy said that the objection of the residents was a main reason for the Committee decision: *“When you’ve got 250 people objecting to something going into their apartments, you’ve got to look at it”*. Ms McEvoy said that her decision *“was on the amenity of the area”*. She therefore changed her mind. She said, *“It was a popular decision in the end”*.<sup>57</sup>
73. The Inquiry accepts that this development application had caused, in the words of Mr Harley, *“significant concern”* to *“a whole bunch of people”*.<sup>58</sup> Nevertheless, if all those concerns that were valid planning considerations had already been sufficiently addressed by proposed conditions, as it appears was the case here, then there should have been no proper reason for the Planning Committee to not recommend that Council approve the application.
74. Indeed, Mr Butler said he was prepared to recommend at this Planning Committee Meeting that the application be approved, because *“it complied with everything”* and he agreed the conditions imposed had satisfied any legitimate objections that had been taken.<sup>59</sup>
75. The day before the matter came before Council again, the solicitors for the Applicants wrote to council member Mr Limnios, and provided reasons why the objections were unfounded or had already been addressed.<sup>60</sup> Mr Limnios forwarded this email to Mr Mileham, then Director, Planning and Development, and asked for Mr Mileham’s thoughts.<sup>61</sup> Mr Mileham responded, stating, among other things:
- “It is also worth noting that some matters concerning the management of issues coming under the Strata Titles Act as were raised by opponents of the application were not considered germane to the Planning matters under consideration in this case”;*
- and
- “While I cannot guarantee or predict an outcome, it is my opinion (on advice from the APS) that if the [Development Application] before Council is rejected as it stands an appeal to SAT may, if mounted, be successful potentially with conditions retained, omitted or altered”*.<sup>62</sup>
76. Later that day, on 24 February 2015, the application came back before Council. All council members were present.<sup>63</sup>
77. At her hearing, Ms Scaffidi was asked whether she discussed how she would vote with any of her fellow council members before the meeting, and which council members she would have spoken to. She responded, *“Quite likely all of them”*.<sup>64</sup>

78. The Applicants' solicitors provided the City with a petition in support of the application. This contained 290 signatures, although none of the addresses given identify the signer as being from The Adagio apartments or the immediate surrounding area.<sup>65</sup> This petition was provided to council members at the Council Meeting on 24 February 2015.<sup>66</sup> Ms Noble and the solicitor for the Applicants each made statements to Council. Council received the Planning Committee's report from 17 February 2015, which included the updated planning officers' report that had been provided to the Planning Committee and the Planning Committee's recommendation to refuse the application.

79. The following motion was carried unanimously:

*"Moved by Cr Butler, seconded by Cr Harley*

*That Council declines the application for the use of Unit 8/90 (Lot 8 on SP 58159) Terrace Road, East Perth as a 'local shop' with associated signage as detailed on the Metropolitan Region Scheme Form One dated 25 November 2014 and as shown on the plans received on 1 December 2014 and 19 January 2015, due to amenity concerns which would have adverse impacts on the affected adjoining owners of the proposed tenancy use.*

*The motion was put and carried".<sup>67</sup>*

80. The motion was in identical terms to the Planning Committee's recommendation. Neither the Planning Committee nor Council listed in their reasons which amenity concerns had not been, or could not be, sufficiently addressed by conditions.

81. Ms McEvoy said of the decision:

*"... at the end of the day, the reason was the amenity for these people in these units. It wasn't the amenity of what they were wanting around Langley Park, around their units, over towards the river".<sup>m</sup>*

82. Fellow council member Mr Adamos said:

*"... my decision was based on, that there was a large number of residents who were directly in the vicinity of it that were affected by it and didn't want the shop there".<sup>68</sup>*

83. Ms Scaffidi gave evidence that one reason she ultimately voted against the application was her personal *"abhorrence of convenience stores, of which there is a plethora in Perth"* and the fact she had *"an issue with there being too many convenience stores in the City of Perth"*. Ms Scaffidi acknowledged that *"It's a personal view and it's not based on planning recommendations ...".<sup>69</sup>*

84. Ms Scaffidi also noted, on examination, in relation to the condition relating to signage at the proposed shop, that *"Personally, I'm of the view that 1.5 addresses all that the planning legislation allows but it doesn't actually, because it's not able to, address all of the things that were of concern and I believe, legitimate concern to the residents".<sup>70</sup>*

<sup>m</sup> Transcript, J McEvoy, public hearing, 7 August 2019, p 79. The Applicants were advised in writing on 26 February 2015 that their application had been refused *"for the following reason: 1. amenity concerns which would have adverse impacts on the adjoining owners of the proposed tenancy use"*. Document, Notice of Decision on Application for Planning Approval, City of Perth to L and S Altintas, 26 February 2015.



85. Mr Limnios also acknowledged that he “... voted because [he] took other matters other than planning into consideration”. He said: “I think we can, the policy allows us to do that”.<sup>71</sup>
86. The Inquiry notes that Mr Limnios had been specifically advised by Mr Mileham, on the morning of the Council Meeting, that an “appeal”<sup>72</sup> to the SAT could well be successful. Despite this, Mr Limnios gave the following evidence:
- “But then the review by SAT would overturn the decision?---For sure, but there’s a right of appeal as well.*
- What’s the point of doing it then?---I take into consideration many factors, sir.*
- What was the point in doing it?---I wanted to be seen as being – doing the right thing. At that time, to the best of my ability---*
- Doing the right thing to who, for who?---For all those concerned, all stakeholders.*
- Not all stakeholders though?---To the best of my ability, sir.*
- Not the 290 who signed the petition, not the proprietors, not the owner of the premises, but certainly you were doing it for the stakeholders who objected, weren’t you?---It can be seen like that, for sure”.<sup>73</sup>*
87. Mr Yong gave the following evidence:
- “If you cast your vote other than on the merits of this application, how can that be a proper exercise of your voting power, Mr Yong?---I think a person being elected should have the discretion to represent the ratepayer, so in this case I believe I have acted in their best interests”.<sup>74</sup>*
88. Mr Butler said he was unable to recall why he did “a complete about-face from one week earlier” when he had recommended that Council approve the application. He maintained that he did not know the reason he had changed his mind. Nevertheless, he was of the view “the process needed to be continued further down the line”, meaning that the shop owners had the option of applying to have the SAT review Council’s decision.<sup>75</sup>
89. When asked for her view on why Council had made this decision, Ms Smith said:
- “... there was a well organised vocal group that opposed it within the development and they were all there in the gallery and they were all lobbying the Councillors hard and the Councillors wanted to demonstrate that they had heard their concerns and were voting to represent them”.<sup>76</sup>*
90. Ms Smith was asked whether she considered it to be the right or wrong decision. She said “Well, as a planner I’d have to say it’s the wrong decision”.
91. Ms Smith was asked if council members had expressed a view to her about their decision-making. She said, “Not to me directly”, although she had overheard comments made in discussion between the council members along the lines of “Well if this goes to SAT we know it is going to get approved. But at least they [the objectors] seen us make that decision”. Ms Smith said Ms McEvoy made this comment to Mr Adamos and another council member who Ms Smith could not recall.

92. When asked if she had a view about why Ms McEvoy might have made that comment, Ms Smith said:
- “It was Local Government politics, it was swinging into a Local Government election year ... Election years are always – tend to be a little bit more volatile when it comes to decision making. They’re a little bit more responsive, perhaps to, to objections and rate payer views than they might otherwise be”.*<sup>77</sup>
93. Ms McEvoy said that she “*may well have*” had a conversation with Mr Adamos about the issue on the date of the second Council Meeting, and “*may well have*” made the statement to which Ms Smith referred, although she did not remember having done so.<sup>78</sup> Mr Adamos also said he did not remember Ms McEvoy saying words to that effect.<sup>79</sup>

### Events following the Council

94. Ms Smith said the City’s planning officers were disappointed with Council’s decision, because they felt there was no planning reason why the application should have been refused. They were also concerned for the Applicants who, Ms Smith said, had committed themselves financially and “*should have expected to be able to get an approval*”.<sup>80</sup>
95. Following the meeting, Ms McEvoy emailed Ms Noble congratulating her.<sup>81</sup> Ms McEvoy wrote:
- “Hi Michelle*
- I trust you were as pleased as I was with the outcome tonight.*
- I want to compliment you on the effort you put in to your submission and petition and such wonderful backup you had at the meeting, as Lisa said and I believe it is the largest support group I have seen in 17 years on council.*
- Will be interesting to see if they go to SAT?”*<sup>82</sup>
96. The following day, Ms Noble emailed Ms McEvoy at her City email address to express how “*thrilled*” the Terrace Road residents were with the Council’s decision.<sup>83</sup> Ms McEvoy forwarded this email from her own private email address to Mr Adamos’s private email address, stating:
- “Thought you may like this – you will be in like Flyn in October!*
- From this building. JM”.*<sup>84</sup>
97. The Inquiry takes this to refer to the then forthcoming October 2015 elections, at which Mr Adamos would be up for re-election. It appears from the email, and Mr Adamos’s evidence, that Ms McEvoy made a typographical error in the email address and he said that he did not receive that initial email.<sup>85</sup> However, an identical email was successfully delivered to Mr Adamos’s City email address 30 minutes later.<sup>86</sup>
98. Three hours later, Mr Adamos also emailed Ms Noble congratulating her, stating “*I was so pleased that you and your team achieved the win that you had and it only happened because of people power!*”. Mr Adamos invited Ms Noble and other residents from The Adagio to dinner at Council House (at the City’s expense).<sup>87</sup> The dinner took place on 10 April 2015.<sup>88</sup>

99. Ms McEvoy agreed, at her public examination, that by the time this matter came to Council for a vote, the fact that five council members in her “*alignment*” were coming up for re-election (although Ms McEvoy herself was not) was a factor.<sup>89</sup> Mr Adamos maintained he did not consider his election prospects when making a decision on this application.<sup>90</sup>

### State Administrative Tribunal hearings

100. On 20 March 2015, the Applicants applied to the SAT to have the Council decision reviewed. They employed a firm of solicitors to represent them.<sup>91</sup>
101. The City engaged an independent planning expert, Mr Joe Algeri, who provided a report to the SAT on behalf of the City.<sup>92</sup> Mr Algeri’s report was comprehensive and concluded that the application to SAT should be refused in the interests of orderly and proper planning. However, Ms Smith gave evidence that Mr Algeri told her, informally, that he considered “*it was going to be very challenging to present a defensible position on that Council decision*”. She said his approach was going to be to manage the expectations of the objecting residents and discuss appropriate conditions in mediation.<sup>93</sup>
102. The first SAT directions hearing took place on 8 April 2015. After this hearing, Ms Smith sent the CEO of the City an email which included the following paragraph:
- “In this case, SAT is aware that the Council has made a recommendation contrary to the City’s Planning officers and that the reasons given for the refusal are a bit ‘light on’. Reading between the lines, SAT wants to involve the Councillors to make them accountable for their decision and to determine whether there are any valid planning grounds behind their decision that were not clearly articulated in the minutes. If the SAT mediator comes to the opinion that this was just a ‘popular’ decision without a firm planning basis, the Council will be requested to reconsider their decision under sec 31 of the SAT Act. Mediation is set for 1 May 2015, on-site.”*<sup>94</sup>
103. The CEO emailed all council members on 12 April 2015 and explained that SAT “*has taken the unusual step of requiring that some elected members participate in the mediation exercise ...*”. He asked them to advise of any contact with the Applicants or objectors.<sup>95</sup>
104. Mr Adamos then emailed the CEO and advised him that he had dinner at Council House with some of the “*members of the council of owners and objectors of Adagio Apartments*”. He stated he would like to attend the mediation at the SAT and had “*advised the owners that [he] would*”.<sup>96</sup>
105. The CEO advised Mr Adamos by email that it was “*clearly not appropriate for you to attend as a nominee of the objectors*”. He stated the only option for him to attend was if the Lord Mayor added him as an additional delegate.<sup>97</sup> During his examination, Mr Adamos agreed with Counsel Assisting that his attendance at the mediation would have presented a conflict of interest, “*given the fact that [he] had wine and dined with eight of the objectors*”, although he said that he did not think about the conflict until the CEO brought it to his attention.<sup>98</sup>

106. The CEO also emailed Ms Scaffidi, copying Mr Butler. He wrote:

*"It is important as you will be aware, that SAT looks only at the planning merits of the application and can consider only relevant planning matters. Any Councillor attending the mediation must be prepared to explain what the specific planning issues were that led to the refusal decision and would be expected to be able to explain why the officers recommendation could not be supported and to elaborate on what is meant by amenity concerns and adverse impacts on the affected adjoining owners. The explanation must be confined to the facts of the application (in other words, what was actually applied for, not what the applicant might do)";*

and

*"In essence it appears to me that SAT intends to hold Councillors accountable to their decision in asking for their attendance".<sup>99</sup>*

107. Ms Scaffidi nominated Mr Butler and Ms McEvoy to attend on behalf of Council.<sup>100</sup> She advised Mr Adamos, by email, that it was too late as nominations had been made and that she *"simply went with Chair of Planning [Mr Butler] & a Cr who is on Planning [Ms McEvoy] (but also not up for reelection in Oct.)"*.<sup>101</sup>
108. Mr Adamos replied, *"I'll advise Ms Noble that I won't be in attendance"*.<sup>102</sup>
109. Ms Smith felt that Mr Adamos was conflicted, because *"he understood the planning framework but felt he should be representing the residents who appeared to be this majority view of what should happen on the site"*.<sup>103</sup>
110. An initial SAT mediation on 1 May 2015 did not settle the matter and a directions hearing was then held on 15 May 2015, at which the Applicants and the City were instructed to undertake some legal work. Accordingly, the City employed a legal firm to represent it.
111. The City provided to the SAT a statement from the independent planning expert it had employed and a witness statement from Ms Noble.<sup>104</sup> This also appears to be an unusual step. Ms Smith said that in other matters before the SAT in which she has been involved, she has not known the City to call an interested party as a witness.<sup>105</sup>
112. By this stage, July 2015, it was more than seven months since the Applicants had lodged their application. They had not been able to trade for this period and had incurred the expense of employing consultants and lawyers, as well as the costs of lodging an application for review to the SAT. They had also committed to making major purchases as a part of their fit out. They were suffering financially.<sup>106</sup> That said, it is clear that some of the delay in the SAT proceedings can be attributed to the Applicants' failure to submit their witness statements on time, which led to a one day SAT hearing of the application scheduled for 14 July 2015 to be vacated at a SAT directions hearing on 10 July 2015.<sup>107</sup>

113. Another SAT directions hearing was held on 14 July 2015. On that day, Ms Smith emailed the council members and copied in the CEO, Mr Stevenson, and relevant City officers. She stated that at the SAT directions hearing that morning the SAT member Mr McNab made an order to list the matter for mediation in September on a date to be confirmed. Ms Smith also wrote that Mr McNab found it “*surprising*” that none of the SAT’s proposed dates for a hearing in August 2015 were suitable to the Applicant’s solicitors. Ms Smith’s email then continued:

*“His preliminary view that the Application is clearly capable of being approved (with conditions) has been further confirmed by reading the City planning officer’s report which in his view was the correct assessment and recommendation, and it is likely for the applicant to succeed.*

...

*The City should be aware of cost implications (ie the City being ordered to pay the applicant’s costs) if this matter proceeds to hearing on whether the use can be approved. The amount of costs may be tempered by the delays caused to the process by the applicant’s actions. Alternatively, if mediation is unsuccessful, the parties can agree to proceed to a hearing on the conditions only.”<sup>108</sup>*

114. Mr Harley responded to this email (and to all council members and senior officers) by stating:

*“Thanks for the update.*

*It’s proceeding as expected. I hope that an outcome can be negotiated prior to September.”<sup>109</sup>*

115. Ms Smith interpreted Mr Harley’s comment “*It’s proceeding as expected*” as meaning that he expected the Council’s decision would not be upheld by the SAT.<sup>110</sup>
116. Ms Smith was asked whether there had been a concern by senior officers of the City that council members might act improperly in their decision-making on this matter because of the impending election. Ms Smith agreed that there had been such a concern.<sup>111</sup> The Inquiry notes that the contents of Ms McEvoy’s email to Mr Adamos the day after the Council Meeting on 24 February 2015 lends some support to this notion.<sup>112</sup>
117. Ms Smith also agreed, when it was put to her, that the residents of The Adagio could have represented about 200 potential votes. She said, “*Seats can be won or lost over a handful of votes*”.<sup>113</sup>
118. A Planning Committee Meeting on 15 September 2015 considered an officer report on the progress of the matter before the SAT.<sup>114</sup>
119. The officer report pointed out that SAT member Mr McNab had ordered that the matter be listed for another mediation which had not yet taken place. Mr McNab had confirmed his view that the application was “*capable of being approved*” and “*The City should be aware of cost implications if this matter proceeds to a hearing*”.

120. The report also noted that the City had spent \$26,782.00 to date on fees for its representatives before the SAT, with the prospect of further expenses to come. This did not include the costs of the involvement of City officers over the previous 10 months.
121. The report stated, *“It is a matter for the City to decide which approach it would prefer, that is, for Council to deal with the proposed consent orders, or for Council to reconsider the application”*.<sup>115</sup>
122. Nine proposed conditions for the shop were attached to the report.
123. The Planning Committee noted the information and *“requested that a report be presented to the Ordinary Council Meeting of 22 September 2015 for further determination of the matter”*.<sup>116</sup>
124. Before the Council Meeting, Ms Noble emailed Ms Scaffidi setting out her concerns about what the decision of Council might be and stated:

*“... At tonight’s Council meeting, please again consider the views of the residents. It continues to astonish residents that the Elected Members of the City of Perth do not have the ability to lead and direct planning for the City of Perth – it instead appears that the people who own this business have more entitlement to determine what happens within the City of Perth than the people who were voted in by the ratepayers”*.<sup>117</sup>
125. Ms Scaffidi forwarded this to other council members, stating it was *“Very hard to vote against as clearly our fave CEO has been handling this another way ...”*. She also said:

*“This puts us in a VERY difficult position tonight”*.

and

*“We don’t need this right now”*.<sup>118</sup>
126. Ms McEvoy replied, and her email began:

*“My comment – very inappropriate that it’s coming up election time!!!”*.<sup>119</sup>
127. Mr Butler also replied, and his email began:

*“The timing is not good ?? Discussion at the briefing should happen”*.<sup>120</sup>
128. These comments suggest that the implications for the local government elections being held the following month were in the thoughts of some council members. They suggest that they appear to have been concerned about the votes of the residents from The Adagio.
129. By way of comment, the Inquiry also notes that Ms Noble’s response reflects a potential disparity between the general public’s understanding of planning matters, and what can actually occur under the planning framework. The PD Act and its subsidiary frameworks constrain and direct council discretions in a way that may not reflect the council’s usual range of discretionary powers in decision-making. The fact that ratepayers or residents may misunderstand, and be upset by this, is not a valid reason to depart from the constraints imposed by that framework, even if, in Ms Scaffidi’s words, *“This puts us in a VERY difficult position tonight”*.



130. This email thread was put to Mr Adamos at his public hearing and he agreed that these comments made by other council members were (in his view) referring to the ramifications for the upcoming election, and that these were also his thoughts at the time. He agreed that this was *“a totally inappropriate consideration to take into account”*.<sup>121</sup> He said that the way he voted on Council was because he was trying to support the residents, but the elections were not a significant factor for him. However, he accepted that the *“decision by Council on 24 February 2015 in rejecting this application was the wrong decision”*.<sup>122</sup>
131. At the Council Meeting on 22 September 2015, all council members except Ms Davidson were present. The Council considered *“Options for resolution”* of the application before the SAT. Five options were provided in the officer report. Option 1 was: *“Agreeing to a Consent Order to allow conditional approval of the proposed use and revised signage by the SAT”*.
132. The Council decision was:
- “Moved by Cr Adamos, seconded by Cr Chen*
- That given the State Administrative Tribunal’s apparent disposition to inevitably grant approval for a local shop at 8/90 Terrace Road, East Perth, Council authorises the Chief Executive Officer to negotiate and execute a Consent Order in relation to SAT DR96/2015 Altintas & Anor and City of Perth.*
- The motion was put and carried”*.<sup>123</sup>
133. A SAT Consent Order was signed by the solicitors for the two parties on 26 October 2015. It included a schedule of nine conditions with which the shop had to comply (Consent Order).<sup>124</sup>
134. The conditions related to waste management, signage, limits on hours of trading, restrictions on hours and parking for deliveries, location of shelving, access routes to the shop and use of parking bays.
135. Ms Smith was confident that the Consent Order, with conditions, was a better outcome for the objecting residents than they would have received if the matter had gone to a hearing before the SAT. She also felt that the shop had ended up with a far more stringent set of conditions than most other local shops in the City would get.
136. In relation to the process followed by Council in dealing with the application, and the effect on the business, Ms Smith said:
- “it’s evident from where we started with four conditions, I think, and we’ve ended up with nine. So that in itself shows that more controls have been imposed on the applicant than would ordinarily have been considered. And you combine that with the length of time and the costs that the applicants had to endure, it’s a far less desirable or appropriate outcome than had it been able to be dealt with under delegation or if the Council had accepted the original recommendation”*.<sup>125</sup>

## Aftermath

137. More than 10 months had passed between the application being lodged and the Consent Order being signed. Once it was signed, the Applicants continued the fit-out of the shop and three months after that they began to trade.<sup>126</sup>
138. In the meantime, the Applicants' financial viability had been damaged. Stock in which they had invested had expired. They incurred significant legal fees and a liability for rent. They were unable to re-stock, or stock to the extent they had planned, because of the delays and the money spent elsewhere.<sup>127</sup>
139. The conditions in the final settlement confined the shop to trading during the same hours as some supermarkets, which limited the market the Applicants wished to access.
140. Mr Qaraleh also felt that the restrictions on signage significantly affected the store's profits, because potential customers did not know that there was a convenience store there.<sup>128</sup>
141. The conditions that had been imposed may also have opened the business up to greater scrutiny by residents who objected to it being there. Ms Smith commented that the City received very regular complaints from some Adagio residents about the shop breaching conditions; things like using balloons or flashing lights as advertising, having a shelf against a window, opening half an hour later than permitted hours, or having Christmas lights.<sup>129</sup>
142. When complaints were made, Mr Martin, then the City's Senior Development Compliance Officer, would visit the shop and speak to the operators. Mr Martin advised the Inquiry that he had no concerns about the presentation of the shop and said, *"If anything it might have been better than some of the others around town"*. He considered the complaints to be petty, but it was his job to go and talk to the operators of the shop about them. He said he did not think they had been treated fairly and justly by the City, because he believed the amount of complaints became vexatious and should have been dismissed, yet they were not. Mr Martin said:  
*"I can't think of any other small shop development that I've dealt with in the City that had the same amount of scrutiny as this place"*.<sup>130</sup>
143. Ms Smith commented that at around this time some council members became less sympathetic to the objecting residents.<sup>131</sup>
144. In May 2016, Ms Smith sent Mr Adamos a series of emails containing Ms Noble's complaints and Ms Smith's responses.<sup>132</sup> This seems to have been preceded by a conversation between Ms Smith and Mr Adamos about the issue.

145. In her response to Ms Noble, Ms Smith had acknowledged the information Ms Noble had provided and advised Ms Noble about the procedures the City would follow to ensure compliance by the operators of the shop. Ms Smith advised Ms Noble that the City was currently taking “*all reasonable measures*” to achieve compliance, which is something the City would need to demonstrate prior to taking any legal action. Although she did acknowledge that with respect to the “*current non-compliance issues*” the operators of the shop had “*not shown any evidence of taking heed of the City’s requests to date and so we share your frustration*”.<sup>133</sup>
146. Ms Smith wrote to Mr Adamos that “*While matters raised by [Ms Noble] are all technically breaches of the planning conditions, they are really are quite minor ...*”.<sup>134</sup> Mr Adamos responded to Ms Smith, and commented on her response to Ms Noble, stating: “*That’s a perfect and fair email. She should be happy with the efforts and the process that you have applied to date. There is a plan in place*”.<sup>135</sup>
147. The change in attitude that Ms Smith observed by some council members towards the objecting residents appears to also have been noted by Ms Noble, who wrote in an email to Mr Adamos:
- “I received a previous response from the Mayor, which I will paraphrase as ‘don’t call us, we’ll call you’. Funny how things change when it isn’t an election year”.*<sup>136</sup>
148. The Applicants’ business was experiencing financial difficulty. They made an additional development application to extend trading hours and signage and to have an alfresco area. The application was received by the City on 8 August 2016.<sup>137</sup> It went before the Planning Committee on 25 October 2016 and Council on 1 November 2016. The Applicants presented a petition in support, which included signatures from residents of The Adagio and neighbouring properties. Once again, they faced opposition from some objecting residents. Council accepted the recommendation made by the City’s planning officers and voted unanimously to approve the application for an alfresco area and increased signage (with the exception of an A-frame sign). However, Council did not approve the requested extension to trading hours.
149. The Applicants again sought a SAT review of the trading hours. Through the mediation process, they were granted a six-month trial of extended trading hours, but before the end of that period, by September 2017, the shop had closed.
150. Mr Bkoor, who is an experienced shop owner and who had researched the area before taking on the lease, told the Inquiry that in his opinion the shop should have been very successful. He considered that it failed because it took too long to get approval, the conditions relating to signage and opening hours were too rigid and the monitoring by City officers was excessive.<sup>138</sup> The Inquiry considers that these factors contributed to the failure of the shop.

151. Mr Altintas, the owner, advised the Inquiry that he had been attempting to sell or lease the unit since the shop closed, without success. He believed that the negative experience the Applicants had in trying to obtain approval and run a business from The Adagio has affected his ability to lease the unit. He said he still had to pay about \$2,000.00 per quarter in rates.<sup>139</sup>
152. The evidence provided to the Inquiry was that the process of trying to get the application approved by Council, and the failure of the business, had a profound and lasting financial, medical and emotional impact on each of Mr Bkoo, Mr Qaraleh and Mr Altintas and their families. Mr Qaraleh and Mr Bkoo each have young children, and as a result of the extended application process and the failure of the business, they had on-going debts.
153. Mr Qaraleh had a heart attack in early 2015, during the initial application process.
154. Mr Bkoo said:

*“So after the project was stopped, I acquired loss as a result of – from the failure of the business. I had debts and the debts attracted interest and I was in financial hardship. And as a result of that experience I had to see a psychologist for six months because I had to deal with high level of stress. Okay. And I even dealing with a financial counsellor from the City to help me with the debts. And I had to sell my share from the West Perth store last month to be able to negotiate with the debt collectors and to be able to pay off the debts I have because it’s causing me lots of stress and I can’t cope or deal with the stress any more. And I can’t cope with the amount of phone calls I keep receiving all the time. And this has actually impacted and affected my relationship with my family, my relationship with my wife, and I’m even having memory issues because of all this stress I’ve been dealing with.”*<sup>140</sup>
155. Mr Bkoo was asked if he had expected the process of obtaining approval from the City to be straightforward. He said:

*“From my experience from my own business and from the experience of my friends who own other businesses as well, the procedure should be very easy.”*<sup>141</sup>
156. Mr Altintas said:

*“... I’ll [sic] come to this country here almost – almost with nothing, just 20 years old go here, I come here, I love this country”.*
157. And in relation to the way the application process was dealt with by Council:

*“But I always believed Australia is a very transparent country ... When I saw this I – that’s why I was questioning myself, I said it can’t be. This cannot – this cannot exist in Australia.”*<sup>142</sup>

158. These events also had a professional and personal impact on some officers at the City. Mr Martin commented:

*“It wasn’t a nice thing to witness, it wasn’t a nice thing to be involved with. I had a lot of empathy even sympathy for the proprietor of the business. So, as I said, I thought it was very sad and disappointing when I saw that the building – that the business had gone”.*

159. He said that others in his team at the City *“shared the disappointment and overall we were probably somewhat angry”*.<sup>143</sup>

## Analysis

160. On the evidence available, the Inquiry is satisfied to the appropriate standard, that approval of an application for a local shop at Unit 8, 90 Terrace Road, should have been fairly routine. The premises were designed and built for a commercial purpose and planning officers concluded the application was consistent with the operation and intent of the relevant planning framework. In addition, the Applicants demonstrated a desire to work with the residents of The Adagio by abandoning their plans to trade as an IGA and developing signage in a way they hoped was sympathetic to the apartments. Instead, their application became a lengthy, expensive, unnecessarily difficult and destructive process, which caused considerable work for City officers, expense for the City, and financial and personal harm to the Applicants and the owner of the premises.
161. In the Inquiry’s view, based on the evidence it heard from the City’s officers, the application was consistent with the relevant precinct plan and design policy. The decision by the Planning Committee, and then Council, to refuse the application was not based on proper planning principles. The decision was to decline the application because of *“amenity concerns”*. The Inquiry accepts the evidence of City officers that there were no valid planning concerns, which had not been addressed by the conditions they had proposed, and that the Applicants had agreed to conditions that went further than ordinary planning concerns would require.
162. Council members who were asked about their reasons for refusing the application all gave evidence to the effect that they had been influenced by the objecting residents and therefore voted against the application on *“amenity”* grounds.
163. Ms Scaffidi said:
- “Whilst the convenience store complied on planning grounds, there was, I feel, justifiable concern as expressed by the 30 or 40 that came to the meeting about the potential of odour.*
- ...
- I believe their main decision influencer was probably the dissatisfaction by people who had invested significant amounts into, as you described them, premier river view apartments, to have to deal with a convenience store and wrongly or rightly, all convenience stores are not equal”*.<sup>144</sup>

164. It was clear other council members were also affected by the intensity of opposition expressed by some residents.<sup>145</sup> Many council members gave evidence to the effect that they considered matters other than valid planning considerations in making their decision.<sup>146</sup>
165. Some council members agreed that electoral prospects were, in the words of Mr Adamos, “*a consideration for some candidates*”, including himself.<sup>147</sup> However, none agreed that this was the reason they rejected the application.
166. The minutes recording the reason given for the decision to refuse the application were brief and non-specific, namely: “*due to amenity concerns which would have adverse impacts on the affected adjoining owners of the proposed tenancy use*”.<sup>148</sup>
167. The City’s planning officers are employed to provide specialist advice to Council on planning matters. It is rare that council members would vote against the planning officers’ recommendations. However, the Planning Committee and Council are not required to follow the recommendations of their planning officers. They are not required to grant a planning application simply because it is not prohibited by the planning framework. However, the council members should, as elected public officials, make decisions which are fair, transparent, and based on proper grounds as defined by the applicable statutory framework.
168. The *Local Government (Administration) Regulations 1996* provide that the content of minutes of a meeting of a council or a committee is to include written reasons for a decision that “*is significantly different from the relevant written recommendation of a committee or an employee ...*”.<sup>149</sup> The Inquiry notes that Council was on one view therefore not required to provide written reasons for its decision, as it did not depart from the recommendation of the committee. On the other hand, the provision arguably required the Committee to provide written reasons for its decision to make its recommendation to Council, as that recommendation was significantly different from the written recommendation of an employee as contained in the planning officers’ report. In any event, both the Committee and the Council did each provide a brief written reason for their decision.
169. However, the Inquiry is required to consider the adequacy of Council decision-making<sup>150</sup> and it is the Inquiry’s view that the reason given was inadequate given its context. The regulations require reasons for a decision only where the decision is significantly different from a relevant recommendation on the matter. It is the Inquiry’s view that the reason given should therefore clearly address those differences and seek to account for the disparity between the recommendation and the ultimate decision.
170. In this case, the application was contentious with many interested parties, as evidenced by the number of submissions and deputations received. The decision was also made outside of the usual timeframe for decisions of this nature and there was a reasonable prospect the decision would be examined by the SAT if the Applicants applied to have it reviewed.



171. In the Inquiry's view, if the council members were each of the opinion that there were valid planning considerations that had not been addressed by the planning officers, that is, they each disagreed with the planning officers' statements that *"The issues raised in the petition ... have been addressed"* and that *"appropriate conditions can be imposed to address other valid planning considerations raised by submitters"*, it would have been better practice to set out which valid amenity concerns were not properly addressed by the planning officers and why such concerns could not be addressed by appropriate conditions.
172. This is particularly the case for the Planning Committee, whose reasons Council ultimately adopted in rejecting the application. Both Mr Harley and Ms McEvoy gave evidence that the purpose of referring the application back to the Planning Committee was to enable a full discussion of the matter in light of the petition and vocal opposition at the Council Meeting. Mr Harley and Ms McEvoy were the two members of the Planning Committee who moved and seconded the motion that Council reject the application once it was referred back to them. Mr Butler voted against the motion.
173. There is no evidence before the Inquiry, that the Planning Committee turned its mind to identifying or considering what were valid amenity concerns or appropriate conditions during its second meeting on 17 February 2015. In any case, that kind of analysis is not evident in the reason given for the recommendation. The reason for the decision does not specify the amenity concerns or adverse impacts which form the basis of the recommendation. It does not set out why the proposed conditions did not address those issues or make any reference to whether those impacts could be managed by additional conditions. This is despite it being open to the Planning Committee to formulate and recommend its own additional conditions, which it did when it initially considered the application on 27 January 2015.
174. It was pointed out to most of the council members that the shop was intending to serve a much wider clientele than the residents, including visitors to events at Langley Park. It was also pointed out that the shop had a number of supporters, both visitors and local. However, it is clear to the Inquiry that the focus of the council members was primarily on the vocal opposition expressed by some residents at The Adagio.
175. When asked why Council changed its decision at the Council Meeting on 22 September 2015, most council members suggested it was inevitable given the comments made by the SAT and that the conditions imposed were appropriate. For example, Ms Scaffidi said:
- "Then at this later meeting post SAT with the conditions and an understanding that the SAT process had been fairly exhaustive from a mediation perspective, there was an acceptance that it was necessary to approve it".<sup>151</sup>*

176. Ms Smith commented on the overall process:

*“So what ... should have been a pretty straightforward, minor application escalated into something far more complex and with the same outcome ultimately, in terms of a decision. But the whole process was quite unprecedented, in terms of the support that the Council gave to the objectors, when their grounds for objecting weren’t strong, from a planning point of view. It certainly seemed to be the weight of objections that swayed the Council, as opposed to the nature of the objections”.*<sup>152</sup>

177. Ms Smith confirmed that her view was that if Council had initially acted on proper planning grounds there would have been no need for the considerable time and money spent by all parties on this matter.<sup>153</sup>

178. The impacts of this decision were severe, for the City in terms of resources unnecessarily squandered, and for the Applicants in terms of the effects on their lives and livelihoods.

179. Mr Qaraleh said, during his evidence to the Inquiry, that his wife said that he should not have chosen the supermarket to be in that area. He said:

*“And I told her, this is a really good area and this country has law and the law should serve everyone”.*<sup>154</sup>

180. In the opinion of the Inquiry, Council made a decision contrary to the advice of its expert planning officers and its own policy, without a valid planning basis. Council members based their decision on matters that were not valid planning considerations. The Inquiry considers that, on the evidence, it is reasonable to conclude that at least some council members appear to have had the upcoming elections in their minds when making their decisions. At least some of the council members knew, at the time of making the decision, that if the decision was reviewed by the SAT it was likely to be overturned, at significant cost to both the City and Applicants. They appear to have done this to appease some residents of The Adagio apartments who opposed the shop.

181. Mr Butler said, about the planning process, in his private hearing before the Inquiry:

*“Honestly, I can say out of all of the buildings that we have put up in the City of Perth, and there’s been a hell of a lot and a hell of a lot of applications, this would have to be the worst.*

*Worst why?---For the drawing out from go to whoa, from January right through to after October, after the election”.*<sup>155</sup>

182. It is the Inquiry’s view that the decision-making process followed by some council members on this matter was inadequate. The decision-making on this matter did not demonstrate an appropriate exercise of Council’s discretion. In the Inquiry’s view, as at the Council Meeting on 24 February 2015, the arguments in favour of approving the application with the conditions that were imposed far outweighed the arguments against an approval.

## Findings

### Finding 2.2.2 – 1

The Inquiry makes the following findings:

- i. At the Council Meeting on 3 February 2015, council members based their decision to refer the application back to the Planning Committee on matters which were not valid planning considerations. The application was capable of being approved at that Council Meeting and the decision to refer the application back to the Planning Committee caused the application to be determined later than the standard determination period of 90 days.
- ii. The Planning Committee, at its meeting on 17 February 2015, based its recommendation to reject the application on matters that were not valid planning considerations.
- iii. Council, at its meeting on 24 February 2015, based its decision to reject the application on matters that were not valid planning considerations.
- iv. Some council members may have had the impending October 2015 elections in their minds when making their decision to reject the application.
- v. The Planning Committee, at its meeting on 17 February 2015, did not provide adequate reasons in the meeting's minutes for its recommendation to reject the application. Council, at its meeting on 24 February 2015, did not provide adequate reasons in the meeting's minutes for its decision to reject the application.<sup>n</sup> The decision to reject the application was not transparent.
- vi. The decision to reject the application had no proper planning basis. If Council had determined the application based only on proper planning principles, the application could and should have been granted with appropriate conditions no later than 24 February 2015. Instead, Council voted to grant the application on the basis of consent orders on 22 September 2015, following a lengthy and unnecessary SAT process.
- vii. At least some council members knew, at the time of making the decision to refuse the application, that if the decision were to be reviewed by the SAT, it was likely to be overturned. They voted to reject the application anyway.
- viii. The refusal of the application, and the contentious defence of the decision by the City before the SAT, cost the Applicants, the owner of the premises, the City and its ratepayers moneys which would not otherwise have been spent.

<sup>n</sup> This finding is maintained notwithstanding there was no legislative requirement that the reasons for the Council's decision to reject the application be recorded in the meeting's minutes: *Local Government (Administration) Regulations 1996*, reg 11. As the Council in this instance elected to record its reasons in the meeting's minutes, it was required to provide reasons that were proper.

### Finding 2.2.2 – 1 (contd)

- ix. The conditions that were ultimately accepted by the Applicants to appease the residents went beyond what would ordinarily be expected and put the business in a position where it potentially could be subject to further unnecessary scrutiny and vulnerable to complaints by objectors.
- x. The delays and the costs incurred by the Applicants, caused in part by the rejection of the application by Council, contributed to the failure of the Applicants' business.
- xi. The delay in approving the application contributed in part to serious financial and personal difficulties and distress to Mr Qaraleh, Mr Bkoor and Mr Altintas.
- xii. The decision-making process followed by the Planning Committee and by Council did not demonstrate an appropriate exercise of the Council's discretion. The way in which Council dealt with this development application was not good government.



Photo: Adwo / Shutterstock.com

## Inclusion of the Grand Central Hotel, 379 Wellington Street, Perth on the City of Perth Heritage List

### Introduction

1. The purpose of this Chapter is to examine the circumstances surrounding the heritage listing of the Grand Central Hotel at 379 Wellington Street, Perth.
2. The Grand Central Hotel<sup>o</sup> is a building in Wellington Street, near the corner with Barrack Street in the Perth Central Business District. It dates from 1903. It is now called the Akara Hotel.<sup>156</sup>
3. The Grand Central Hotel, has been owned by Central City Pty Ltd (Central City) since 11 October 2007.<sup>157</sup>
4. During the period covered by the Inquiry's Terms of Reference, Ms Lisa Scaffidi and her husband, Mr Giuseppe (Joe) Scaffidi, owned a 75 per cent interest in the Grand Central Hotel. This was made up of shareholdings in Central City and shares in two other companies, which held shares in Central City.<sup>158</sup>
5. In 2009, the City of Perth Council (Council) placed a number of buildings in a precinct around Barrack Street on the City of Perth (City) Heritage register. In the original proposal the Grand Central Hotel was to be included in the precinct. After considering a submission from Mr Scaffidi, the Grand Central Hotel was not included. There is no indication Ms Scaffidi was directly involved in this process in her role as a council member.

<sup>o</sup> The property at 379 Wellington Street, Perth is named by the Heritage Council as the "Grand Central Hotel". Over time, this property has also been known as the Grand Central Coffee Palace, the Grand Central YWCA, the Grand Hotel, the Grand Central Backpackers and the Akara Hotel; Document, Historical Business Name Extract, Grand Central Backpackers, 14 August 2019.

6. On 10 March 2015, in a schedule to the minutes of a Planning Committee Meeting, the Grand Central Hotel was included in a list of 14 potential heritage properties identified for further investigation.<sup>159</sup>
7. Between that date and 29 May 2018, when it was included on the City Heritage register, the potential heritage listing of the Grand Central Hotel was considered a number of times by the Planning Committee, the Council and by staff of the City.
8. In a letter to the City on 6 July 2015, Mr Scaffidi disagreed with the proposal to place the property on the City Heritage register and wrote “*we will be lodging a Development Application for the total redevelopment of the property in the very short term*”.<sup>160</sup>
9. In 1992, Mr Scaffidi had demolished two-thirds of the façade of another nearby property, the Railway Hotel, in contravention of a conservation order by the Heritage Council. He was successfully prosecuted and rebuilt the façade.
10. Several witnesses have expressed concern to the Inquiry, and to other bodies, about the length of time taken to register the Grand Central Hotel on the City Heritage register, and it has been suggested that Ms Scaffidi, using her position as Lord Mayor, may have taken action to delay the listing. Consequently, the Inquiry has investigated the circumstances surrounding this listing.

### Heritage listing

11. There are Federal, State and Local Government processes for managing buildings and places with heritage significance.
12. At the Federal level, this is governed by the *Environment Protection and Biodiversity Conservation Act 1999*. At the State level, it is governed by the *Heritage Act 2018*, and before that by the *Heritage of Western Australia Act 1990*.
13. The Heritage Council of Western Australia is responsible for managing the State Register of Heritage Places (State Heritage list), protection orders, and heritage agreements.
14. Under the State *Planning and Development Act 2005* and the City of Perth City Planning Scheme No 2 (CPS2), the City is responsible for registering properties on its own Heritage list.<sup>161</sup>
15. Places which are on the City Heritage register require special attention in matters of planning approval for demolition, additions and other works.



### Declarations of interest

16. Section 5.65 of the *Local Government Act 1995* (LG Act) requires that council members who have an interest in any matter to be discussed during a Council or committee meeting which will be attended by that member must disclose the nature of the interest in a written notice given to the Chief Executive Officer (CEO) before the meeting, or at the meeting immediately before the matter is discussed.
17. Section 5.60 of the LG Act provides that a person has an interest in a matter if the person has a direct or indirect financial interest, or a proximity interest, in the matter.
18. Section 5.67 of the LG Act provides that a council member who makes a disclosure under section 5.65 of the LG Act must not participate in any discussion or decision-making procedure relating to the matter, unless they are allowed to do so under section 5.68 or section 5.69. A penalty of \$10,000.00 or imprisonment for two years applies to a breach.
19. Section 5.68 of the LG Act empowers those council members present at a meeting of council to allow a disclosing member to be present during any discussion. That decision is to be recorded in the minutes.
20. Read together, the effect of sections 5.67, 5.68 and 5.69 of the LG Act is to prohibit council members from participating in discussions at a Council Meeting about matters in which they have an interest. They do not apply to discussions outside the meeting.
21. Part 3 of the City's Council Policy "*CP10.1 – Code of Conduct*" (Code of Conduct) deals with conflicts of interest and disclosure of interests. At the relevant time, clause 3.1 dealt specifically with conflicts of interest and provided that "*Members and employees must ensure there is no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their public duties and functions*".<sup>162</sup>
22. At the relevant time, while the Grand Central Hotel was under consideration by the Council for potential heritage listing, Ms Scaffidi had a financial interest. At all Council meetings which Ms Scaffidi attended where the Grand Central Hotel was discussed, she declared her interest in the matter, left the Council Chamber and did not return until the item was concluded.
23. Ms Scaffidi was not a member of the Planning Committee. The terms of reference for that Committee include overseeing and making recommendations to the Council on matters related to heritage.

## Timeline

2015	10 March	The Council's Planning Committee included the Grand Central Hotel (Hotel) in a list of 14 potential heritage properties for further investigation.
	16 March	The day before the next Council Meeting, Ms Scaffidi sent WhatsApp messages to Mr James Limnios about the potential inclusion of the Hotel on the City Heritage register.
	17 March	At the Council Meeting, the recommendation by the Planning Committee that the Hotel be included in a list of potential heritage properties was not endorsed. Council referred the matter back to the Planning Committee.
	6 July	In a letter to the City, Mr Giuseppe (Joe) Scaffidi wrote to the City advising that he disagreed with the proposal to place the Hotel on the City Heritage register.
	19 October	Changes to the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> took effect, allowing Council to require that a heritage assessment be carried out before the approval of any development proposal in a heritage area.
2016	12 January	The City's environment and public health officers visited the Hotel. Ms Scaffidi emailed the manager about the visits.
	29 March	The Planning Committee put the Hotel in a group of three properties for further assessment.
	5 April	Council supported the Planning Committee recommendation.
	12 July	The Planning Committee recommended the other two properties be progressed, but Hotel be the subject of a separate future report.
	19 July	Council endorsed the Planning Committee recommendation.
	31 July	An independent architect provided a report to the City in relation to Hotel advising that it " <i>is worthy of inclusion</i> " on the Heritage register.
	13 September	The Planning Committee deferred a decision for further investigation and discussions between City officers and the property owner.
	25 October	The Planning Committee recommended to Council that it " <i>propose to include</i> " the Hotel on the Heritage register with an opportunity for the owners to respond.
	1 November	Council endorsed the Planning Committee recommendation.
2017	20 January	Mr Scaffidi was notified of the Council decision and invited to make a submission – no submission was provided.
2018	29 May	City Commissioners (following suspension of Council) decided to enter the Hotel on the City Heritage register.

## Issues considered by the Inquiry

24. Issues which arise for the Inquiry in relation to the Grand Central Hotel include:

- Did Ms Scaffidi delay, or attempt to delay the progress of the Grand Central Hotel through the City's heritage listing process?
- Did Ms Scaffidi have a conflict of interest when she communicated with council member Mr James Limnios about the potential heritage listing in WhatsApp messages on 16 March 2015?
- Did Ms Scaffidi interfere with the City's Administration in emails dated 12 January 2016 to Mr Eugene Lee, the City's Manager, Environment and Public Health, about visits by City officers to the Grand Central Hotel?
- Did Mr Martin Mileham, Acting CEO, take action on 17 August 2016 to delay the consideration by the Planning Committee of heritage listing for the Grand Central Hotel, in order to improve his chances of being appointed to the CEO position?

## Investigation by the Inquiry

### Inquiry's Terms of Reference

25. Among other things, Part A.3 of the Terms of Reference for the Inquiry direct it to inquire into:

- whether there was improper or undue influence by any member of the Council in administrative tasks, such as recruitment, employee management and grants administration;
- whether any member engaged in improper or unlawful conduct in relation to the performance by the Council or the members of any of their functions and obligations;
- governance practices; and
- the adequacy and competency of Council decision-making.

26. The jurisdiction of the Inquiry is for the period 1 October 2015 to 1 March 2018. However, the Inquiry may inquire and report on a period before 1 October 2015 for the purpose of placing the matters inquired into in a relevant context.

## Witnesses

27. The Inquiry held private and public hearings with a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section:

- Council members, Ms Scaffidi, Mr Jim Adamos, Mr Rob Butler, Ms Lily Chen, Ms Janet Davidson, Dr Jemma Green, Mr Reece Harley, Mr Limnios, Ms Judy McEvoy, and Mr Keith Yong;
- CEOs, Mr Gary Stevenson (until 20 January 2016) and Mr Mileham (from 20 January 2016);
- Mr Robert Mianich, Director, Corporate Services; and
- Mr Mark Ridgwell, Manager, Governance.

## Evidence obtained by the Inquiry

### Grand Central Hotel is placed on a list for future assessment

28. On 10 March 2015, at a meeting of the Planning Committee attended by Mr Butler, Ms McEvoy and Mr Harley, proposed new planning policies were discussed. In particular, the City officer's recommendation was that the finalisation of a draft *"Heritage Assessment and Registration Policy"* be delayed until some proposed regulatory changes were resolved and, in the interim, the City progress heritage assessment and registrations where:

*"A development application involving demolition is received for a potential heritage place. Potential heritage places in this context includes those places included in the database of potential heritage places and any other places that have a construction date that indicates possible heritage significance".<sup>163</sup>*

29. A list of heritage places identified for further assessment was attached as a confidential schedule. The Grand Central Hotel was listed, together with 13 other properties. Three photographs of the Grand Central Hotel from different times were included.

30. The Planning Committee recommended that Council:

*"Approves further assessment, and consultation with affected landowners, of those properties detailed in the attached Confidential Schedule 11 for the purposes of possible inclusions [sic] in the City Planning Scheme No.2 Register of Places of Cultural Heritage Significance".<sup>164</sup>*

### Ms Lisa Scaffidi and Mr James Limnios communicate by WhatsApp

31. On 16 March 2015, the day before the next Council Meeting, Ms Scaffidi and Mr Limnios exchanged WhatsApp messages.<sup>165</sup>

32. Mr Limnios wrote (at 9.47 pm):

**Mr Limnios**



*"Lisa I can't see the list of proposed properties for consideration in heritage list schedule? Should we return this to Planning Committee for further discussion?"*

33. Ms Scaffidi replied (at 9.49 pm):

**Ms Scaffidi**



*"It's in confidential schedule not attached to the other public schedules  
Lily & Rob away tmw  
Best thing is deferral to Cte for discussion after property owners have been contacted and not before as they are suggesting!!!  
It's a weird approach  
Talk to Janet ahead of mtg tmw night.  
Also a Chair will be needed for that time so probably best to nominate her".*

34. The messages continue:

(9.51pm)

**Mr Limnios**

*"Ok I didn't have that list in my pigeon hole ... I am concerned at the cost to owners and red tape this will create ..."*

**Ms Scaffidi**

*"Thx agree"*

(9.53 pm)

**Ms Scaffidi**

*"It's not saying they'll be listed – it reads like someone creating work for the admin. Whole thing is weird. The properties listed include Rosie O'Gradys (Chris Brockwell) John Kannis property, Plaza Arcade and others".*

35. In public hearings, Ms Scaffidi agreed she should not have entered into communication with Mr Limnios concerning what the Council should do with the agenda matter involving the Grand Central Hotel. Ms Scaffidi also agreed it would be inappropriate for a council member with a financial interest to become involved in the Council's considerations. Ms Scaffidi agreed she should have said to Mr Limnios *"Look, I can't discuss this with you"* or *"please, I can't enter into these discussions"*.<sup>166</sup>
36. The Inquiry finds Ms Scaffidi contravened clause 3.1 of the City's Code of Conduct. It was improper for Ms Scaffidi to communicate with Mr Limnios on how Council should deal with this agenda item. There was an actual conflict between her personal interest in the potential heritage listing of the Grand Central Hotel and the impartial fulfilment of her duties as Lord Mayor, which included providing leadership and guidance to the Council.<sup>167</sup> It makes no difference whether Ms Scaffidi ultimately influenced Mr Limnios in his consideration of the matter.
37. Furthermore, Ms Scaffidi's conduct in sending her 16 March 2015 WhatsApp messages to Mr Limnios undermined the clear intent of the LG Act to prevent a council member who has a financial interest in a matter before Council from influencing Council's decision-making. There is little achieved by a council member being absent from Council's discussion of a matter in which they have a financial interest<sup>168</sup> if that council member discusses that matter with other council members ahead and outside of the Council Meeting.

#### **Council Meeting, 17 March 2015**

38. A Council Meeting was held the following day, 17 March 2015. Mr Butler, Ms Chen and Mr Adamos were absent.
39. At 6.13 pm, Ms Scaffidi left the meeting, having previously disclosed a financial interest in an item concerning the City Heritage register.<sup>169</sup> Mr Limnios nominated Ms Janet Davidson to preside over the meeting in Ms Scaffidi's absence. This was as Ms Scaffidi had suggested to Mr Limnios in her WhatsApp message.
40. An officer report was presented to Council. It was in the same terms as the report presented to the Planning Committee on 10 March 2015.
41. The Council did not endorse the officer recommendation. Instead, a motion was moved by Mr Limnios to refer the matter back to the Planning Committee. The motion was seconded by Ms McEvoy and was put in the following terms:  
*"That Council refer consideration of the report titled 'Proposed Principles of New City Planning Scheme No. 2 Planning Provisions and Policy – Heritage Assessments and Registrations' back to the Planning Committee"*.<sup>170</sup>
42. Mr Limnios, Ms Davidson, Ms McEvoy and Mr Yong voted in favour of the motion. Mr Harley voted against it.



43. Reasons for the decision were recorded in the minutes:  
*“Council were concerned that consultation with the people affected or potentially affected had not taken place and therefore agreed that the Item should be referred back to the Planning Committee for further consideration”.*<sup>171</sup>
44. Mr Limnios was asked during his examination before the Inquiry whether he moved to defer the matter for discussion, because Ms Scaffidi asked him to do so. He said *“No, I agreed with her ... I agreed with the sentiment of the pushing it back”.*<sup>172</sup>
45. At Planning Committee meetings on 31 March 2015, 12 May 2015 and 23 June 2015, there was no mention of the matter.
46. On 6 July 2015, Mr Scaffidi, on behalf of Central City, wrote to the City expressing disagreement with the proposal to place the property on the City Heritage register, citing the State Heritage Council reasons for it being *“below threshold”*. In the letter, Mr Scaffidi stated the building had been significantly altered since it was constructed and bore little resemblance to the original building. He also noted the building was not a landmark building when viewed from the northern side and it retained a low degree of authenticity.
47. Mr Scaffidi said, *“we will be lodging a Development Application for the total redevelopment of the property in the very short term”.*<sup>173</sup>
48. At the Planning Committee meetings held on 14 July 2015 and 4 August 2015, there was no mention of the matter.

#### **Regulatory change takes effect**

49. On 19 October 2015, changes to the *Planning and Development (Local Planning Schemes) Regulations 2015* took effect.
50. The new regulations required the City Heritage register to set out a description of each place and the reason for its entry on the list, and the term *“Heritage area”* was created. Certain other provisions allowed for Council to require a heritage assessment to be carried out before the approval of any development proposal in a heritage area or in respect of a heritage place.
51. City Heritage register matters were not mentioned at Planning Committee meetings on 17 November 2015 or 8 December 2015.

### Ms Lisa Scaffidi contacts Mr Eugene Lee

52. On 12 January 2016, three City officers from the Environment and Public Health Unit visited the Grand Central Hotel.
53. At 3.45 pm on that date, Ms Scaffidi emailed Mr Lee at the City, and asked about the visit. She wrote:

*"Its been brought to my attention that you visited 379 Wellington Street today. Can I ask why and if the visit was instigated by yourselves? If so why?"*<sup>174</sup>
54. Ms Scaffidi used her Lord Mayor signature block on the email and sent it from her City email address. She did not send it in her private capacity.
55. Mr Lee replied to Ms Scaffidi, addressing her as "Lord Mayor" and explained that City employees "attended the premises to inspect works that are being conducted at 379 Wellington Street, Perth" because of concerns raised by the Department of Fire and Emergency Services (DFES). Mr Lee told Ms Scaffidi "The Manager of the premises had applied for a Café to be established in the Hostel" and the manager had been advised to seek planning approval for a "change of use" before works could be undertaken. Mr Lee also said that DFES had "raised concerns that works were being undertaken on the emergency systems without proper reference to DFES" and the City Building Surveyor wanted to ensure that the new detectors complied with Australian Standards and "As the building is still being occupied by lodgers, the City wants to confirm that the emergency systems will still be operational whilst works are being undertaken".<sup>175</sup>
56. Mr Lee forwarded his reply to Mr Mileham, then Director, Planning and Development.
57. Shortly afterwards, at 4.31 pm, Ms Scaffidi sent Mr Lee another email and copied in Mr Stevenson as CEO, Mr Mileham, and two employees of Mr Scaffidi, Mr Gary Sugget and Ms Kay Collinson. She wrote:

*"There was already a café there in the beginning. If the CoP checks their records it was already there. Can you do that? Please update me. I don't believe a change of use is therefore warranted".*<sup>176</sup>
58. Again, Ms Scaffidi used her Lord Mayor signature block and her City email address. She did not send it in her private capacity.
59. Mr Lee replied to Ms Scaffidi, again addressing her as "Lord Mayor", stating that he would need to check with another officer and said he would advise Ms Scaffidi after he had done so.<sup>177</sup> He then forwarded Ms Scaffidi's email to Ms Smith, the City's Manager, Development Approvals.

60. In her evidence before the Inquiry, Ms Scaffidi said that she should not have contacted Mr Lee and this was a breach of regulation 10(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations). Ms Scaffidi accepted that she knew at the time that she was not allowed to contact Mr Lee and that the law required her not to do that. However, Ms Scaffidi said that she did it because she was upset, and she denied that she deliberately breached the law.<sup>178</sup>
61. Ms Scaffidi accepted that she should not have sent the emails from her City of Perth email address, rather than her personal email address. Ms Scaffidi could not recall why she did this. She denied that she sent an email from her City of Perth address rather than her personal address, because she was sending that email in her capacity as Lord Mayor. Ms Scaffidi did not agree that she contacted the City herself, rather than asking one of her husband's employees to do it, because as Lord Mayor she had more gravitas within the City.<sup>179</sup>
62. Ms Scaffidi had a personal email account. She did not use it to correspond with Mr Lee on this occasion. She used her City email account. Ms Scaffidi had a financial interest in the property. Ms Scaffidi was the Lord Mayor and there was a power imbalance between her and Mr Lee.<sup>180</sup> In the absence of a satisfactory explanation, the Inquiry is satisfied that Ms Scaffidi intentionally corresponded with Mr Lee in her capacity as Lord Mayor.
63. It was improper for Ms Scaffidi to correspond with Mr Lee about the City's activities in relation to the property. In her capacity as Lord Mayor, she should not have corresponded with Mr Lee about any work the City may be doing on the property. In doing so, Ms Scaffidi put her own personal interests above those of the City. This gave rise to a conflict of interest, contrary to clause 3.1 of the City's Code of Conduct, and the Inquiry so finds.
64. Furthermore, the Inquiry finds that Ms Scaffidi directed Mr Lee in his work as a City employee. That may have been in breach of regulation 10(1)(a) of the Conduct Regulations which states:

*“(1) A person who is a council member must not —*

*(a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; ...”*

### Planning Committee Meeting, 29 March 2016

65. On 29 March 2016, the Planning Committee met to consider a new heritage assessment planning policy, with specific reference to the CPS2 heritage provisions.<sup>181</sup>
66. Thirteen potential heritage properties were described in a confidential schedule, including the Grand Central Hotel.<sup>182</sup> The Grand Central Hotel (Property I), a property in Milligan Street (Property H) and another in Hay Street (Property J) were grouped together. The minutes record:

*“1. In relation to the results of landowner consultation on heritage assessments –*  
*...*  
*1.3 notes that further assessment is required to determine if properties H, I and J are of cultural heritage significance and worthy of built heritage conservations, and requests that Officers undertake internal site inspections of the properties to determine their internal condition and authenticity”.*<sup>183</sup>
67. The Council was asked to consider the matter at a meeting on 5 April 2016. The motion moved in the Planning Committee was put before the Council and carried unanimously.
68. Ms Scaffidi left the Council Meeting at 6.02 pm and returned at 6.05 pm.<sup>184</sup>
69. From this point, the Grand Central Hotel was included with properties H and J for the purpose of conducting internal site inspections to determine their internal condition and authenticity.

### Mr Joe Scaffidi is advised of progress

70. On 11 April 2016, Ms Tabitha McMullan, Manager, Arts Culture and Heritage at the City, wrote to Mr Scaffidi at Central City stating:

*“Whilst the heritage assessment for the property demonstrated that it may have some heritage significance, its heritage significance remains unproven until further assessment is undertaken;*  
*An inspection of the property is required to determine its internal condition and authenticity, and that the results of the inspections and the further consultation will be reported back to Council for a final decision; and*  
*The owner is not supportive of the above property being heritage listed”.*<sup>185</sup>
71. A site inspection was to be arranged.

### Central City requests further consultation

72. By email dated 29 June 2016, Mr Peter Simpson, Director, PTS Town Planning Pty Ltd, wrote to the City on behalf of Central City, referring to a previous conversation and seeking the results of any heritage assessment. Mr Simpson added:

*“We therefore request that the report not be presented to a Planning Committee or the Council until you’ve undertaken the further consultation as the Council has advised you and as you indicated in the Council report”.*<sup>186</sup>

73. By email dated 4 July 2016, Ms Annaliese Battista, Acting Director, Economic Development and Activation, replied to Mr Simpson noting the City had undertaken a thorough review of his concerns and the consultation process was deemed to be robust and in adherence with Council decisions. Ms Battista went on to state:

*“Given the property ... has been the subject of significant publicity ... it has been deemed appropriate to procure an independent review of the City’s determinations in relation to the property’s heritage attributes. It is therefore necessary to delay the report proceeding to Committee until such time as this assessment has been completed. The Heritage Team commenced this process today ... assessment by the end of the week ... It is intended the resultant report will be submitted to Planning Committee on 2 August 2016, then to Council on 9 August 2016 to determine if the property is worthy of inclusion in the City Planning Scheme Heritage List ...”.*<sup>187</sup>

### Planning Committee Meeting, 12 July 2016

74. At a Planning Committee Meeting on 12 July 2016, the Committee voted to recommend that Council progress properties H and J. It was proposed that Property H would be included on the heritage list, and Property J would not. Once notified of the decision, the owners of Property H were given 21 days in which to make a submission.<sup>188</sup>
75. Property I, the Grand Central Hotel, was noted as being the subject of a separate and future report.

### Council Meeting, 19 July 2016

76. On 19 July 2016, Council endorsed the Planning Committee’s recommendation. Ms Scaffidi was present and voted in favour of the motion.<sup>189</sup>
77. With respect to the Grand Central Hotel, the officer report again noted that Property I, *“will be reported to Council as a separate future report”.*<sup>190</sup> No reason was given.
78. From this point onwards, the Grand Central Hotel was the only remaining property in the group requiring heritage assessment.

### An independent heritage assessment is completed

79. By letter dated 31 July 2016, Mr Philip Griffiths of Griffiths Architects Pty Ltd provided a detailed report to the City, addressing the question of whether or not the Grand Central Hotel had “sufficient heritage value to meet threshold for entry in to City Planning Scheme 2 Heritage List”.
80. In his report, Mr Griffiths tested the assessed values of the building against the assessment criteria. To be considered for entry it only needed to meet one of the criteria.
81. Mr Griffiths concluded:
- “... that the place has at least some significance. It is possible for the front section of the building to represent the values and the degree of significance. In other words, the front portion of the building has the highest significance and the remaining sections much less significance.*
- In our view the place is worthy of inclusion in the CPS2 Heritage List. There is the capacity for a fairly high degree of intervention, as the degree of significance suggests, notably the rear portion of the building. However, the first order issue is for the City to determine whether or not the place is to be included in the list.”<sup>191</sup>*

### Did Mr Martin Mileham deliberately delay the heritage listing?

82. On 16 August 2016, Mr Mileham was interviewed for the position of CEO. It was a first-round interview. Mr Mileham had been Acting CEO since 20 January 2016.
83. On 17 August 2016, the Executive Leadership Group held an agenda settlement meeting in which there were discussions concerning whether the officer report on the Grand Central Hotel should go to the Planning Committee. Mr Mileham considered certain amendments were required.<sup>192</sup> Ms Battista supported the matter going forward.
84. Ms Battista told the Inquiry that in support of her view she attempted to explain why the officer report should go before the committee. She said she heard Mr Mileham express his frustration by saying “Really”, and saw him throw down his paperwork, or pen or glasses and say something along the lines of “Why would you do this to me now?”<sup>193</sup>
85. Mr Mileham could not recall saying these words and he did not accept Ms Battista’s account.<sup>194</sup>
86. Mr Mileham requested a number of minor amendments to the report, which included the addition of a timeline regarding the decision-making about properties H and J, compared to Property I.<sup>195</sup> The addition of this timeline to the officer report allowed a reader of the report to trace the movement of the Grand Central Hotel through the heritage process, making the process more transparent.
87. Ms Battista was concerned that Mr Mileham had withdrawn the report due to concerns he had about his application to be the CEO of the City. At her hearing before the Inquiry this was put to her and she said “Yes. He had in fact articulated that”.



88. She was asked *“But those were concerns that you held in August 2016?---Yes, I was quite sure that was the reason why that report was deferred at that point in time”*.<sup>196</sup>
89. Shortly after that meeting, Ms Battista spoke to Mr Mileham on the telephone. Ms Battista told the Inquiry that her best recollection of what he said, in her words not his, was:
- “Martin had reconfirmed to me that the timing was terrible for him because he was in the middle of a recruitment process for being the CEO and he felt that that would undermine his chances of getting the gig”*.
90. She was asked if she had addressed her concerns directly with him. She said:
- “I don’t recall directly challenging him on that point because it would have been – I think he would have responded quite angrily to that, and I would probably add to that that his dialogue with the Executive around that recruitment process and his chances of getting it and what he would like us to do to help him get that, it wasn’t a secret”*.<sup>197</sup>
91. Ms Battista raised her concerns with Mr Ridgwell shortly after the agenda settlement meeting. According to Ms Battista, she had a short meeting with Mr Ridgwell, who did not agree that there should be a concern about the CEO recruitment process or the listing of the Grand Central Hotel on the City Heritage register.<sup>198</sup>
92. Mr Ridgwell had no recollection of any investigation taking place into the delay of the heritage listing of the Grand Central Hotel. Although he remembered the meeting and Ms Battista being frustrated that the Grand Central Hotel report was withdrawn, he said:
- “I recall stating that whilst I could understand the frustration it was the CEO’s call on presenting reports to Council meetings. I do not recall Ms Battista linking withdrawal of the Grand Central Hotel Agenda item to the CEO recruitment process that was taking place in or around that time. I believe that had such a conversation taken place that I would remember”*.<sup>199</sup>
93. In relation to Mr Mileham requesting more information or amendments, Mr Ridgwell told the Inquiry:
- “It was consistent with Mr Mileham in the context of, when anything had a political reputational concern, that he wanted to make sure that it was very thorough and meticulous in respect to the report and its recommendations. So it was not uncommon, but it also wasn’t common, to have items that would be deferred to provide additional information”*.<sup>200</sup>
94. Mr Mileham told the Inquiry that, given there was negative media towards Mr and Ms Scaffidi:
- “So I’m assuming, and again I can’t recall the detail, that we would need to be certain that we were unassailable in our decision to list it, or recommend listing; an abundance of caution perhaps”*.<sup>201</sup>

95. Ms Battista reported the matter to the Corruption and Crime Commission on 25 August 2016.<sup>202</sup>
96. On 29 August 2016, Ms Battista emailed Mr Mileham about the amendments he had requested at the agenda settlement meeting. Ms Battista also remarked that there had been several attempts to refer the report to Council. She wrote:

*“Over 17 months, the Officer’s Recommendation has not changed and the continual referral back to Administration for additional work, most recently at Agenda Settlement on 17 August 2016, perpetuates the speculation that this property is being afforded special attention”.*<sup>203</sup>
97. Ms Battista also wrote, *“I note your concerns over the timing of the most recent report coinciding with the CEO recruitment process”.*<sup>204</sup>
98. On the same day, Mr Mileham participated in a second-round interview for the position of the City’s CEO.
99. On 30 August 2016, there was a Council Meeting. The Grand Central Hotel was not on the agenda.
100. On 1 September 2016, Mr Mileham was appointed CEO.
101. The Inquiry accepts Ms Battista’s evidence about what happened at the agenda settlement meeting on 17 August 2016, and what she and Mr Mileham said and did in relation to whether the Grand Central Hotel should progress towards heritage listing. Ms Battista was clear in her evidence about this, had a detailed recollection of what was said and was so concerned about it that she took it further. Although Mr Mileham refuted her account, he had no recollection of the meeting. He recalled discussions around heritage matters in several agenda settlement meetings, but he could not specify the *“whens and wheres”*.<sup>205</sup>
102. Apart from Ms Battista’s account, there is no evidence before the Inquiry connecting Mr Mileham’s interview for the substantive CEO position to what occurred at the agenda settlement meeting. Both Ms Scaffidi and Mr Mileham were asked and both denied a connection.<sup>206</sup>
103. The Inquiry also notes that one of the amendments Mr Mileham requested, the inclusion of a timeline reflecting the decision-making, could have aided Planning Committee members in their deliberations and enhanced the transparency of the heritage listing process.
104. There is no other evidence before the Inquiry to connect what occurred in the agenda settlement meeting to the interests of the owners or occupiers of the Grand Central Hotel.
105. On balance, although the Inquiry accepts Ms Battista’s account of what occurred at the agenda settlement meeting on 17 August 2016, the Inquiry does not consider that there is sufficient evidence before it to justify a finding that Mr Mileham caused consideration of the heritage listing of the Grand Central Hotel to be deferred, because he was concerned about damaging his prospects in the CEO selection process.

### Council members support the heritage listing

106. In the lead up to a Planning Committee Meeting on 13 September 2016, Mr Harley attempted to garner support from Dr Green and Mr Limnios for heritage listing the Grand Central Hotel.

107. On 11 September 2016, at 12.54 pm, Mr Harley sent an Instant Message to Dr Green:

**Mr Harley**



*"You, me, James, Lily could block it as there wouldn't be a majority (Lisa has to declare)".*

108. In an exchange of messages at 3.13 pm:

**Dr Green**



*"We just need lily – James will be presiding over the item and so if we have Lily, James will have the casting vote".*

**Mr Harley**

*"Haha. Hilarious. James will do anything to fuck Lisa up".*

**Dr Green**

*"We can save the building if we get Lily!!!"<sup>207</sup>*

109. At 3.25 pm, Mr Harley wrote:

**Mr Harley**

*"It's Keith and Jim first on planning [t]hat will determine it".*

110. Dr Green responded to Mr Harley:

**Dr Green**

*"Yes exactly  
If they oppose the admin We need to make a big noise about this that they are in her faction and always vote consistent with her".*

111. On 12 September 2016, Dr Green messaged Mr Harley and said:

**Dr Green**

*"Lisa is trying to give Lily Nanjing trip and bypass Limnios to win her favours to knock down the hotel".<sup>208</sup>*

112. Dr Green also messaged Mr Limnios:

Dr Green



*"Lily being offered trip to China to support knocking down of heritage building".<sup>209</sup>*

113. Mr Limnios replied:

Mr Limnios



*"It could be confirmed if you wrote to Lily and expressed your dismay at the fact that you heard the LM is trying to bypass me and at same time disrespect our sister city by sending a councillor rather than the DLM to a mayors conference. Loss of face".<sup>210</sup>*

114. Dr Green and Mr Limnios continued messaging:

Dr Green

*"Loss of face for DLM?"*

Mr Limnios

*"For Nanjing as they are very big on titles etc.*

*No not about me".*

Mr Limnios

*"JUST SENT*

*Lily there is a big game being played re Nanjing. Lisa is trying to stop me from going to a mayors conference she can't attend. Had she offered it to you to try and cause a rift between us?"*

Dr Green

*"Let's see what she says".*

Mr Limnios

*"LILY*

*No she has not. I do not want to go anyway".*

Dr Green

*"Ok no story then".<sup>211</sup>*

115. On 13 September 2016 Dr Green ended her chat with Mr Harley with a message which read:

**Dr Green**



*“Only trouble is Lily doesn’t want to go on the trip. But the offer may do its work in any case”.<sup>212</sup>*

116. In relation to this comment, Ms Chen told the Inquiry she went to Nanjing with a group of councillors including Mr Limnios, Ms Davidson and Ms Scaffidi. Although she was not clear as to when she took the trip, she denied that Ms Scaffidi had offered it to her so she would vote against the Grand Central Hotel being heritage listed.<sup>213</sup> On this point the Inquiry notes that Ms Chen did not vote against the property’s heritage listing. The evidence does not support a finding connecting Ms Chen’s trip to Nanjing with the Grand Central Hotel’s heritage listing.
117. These text conversations between Mr Harley and Dr Green, and Dr Green and Mr Limnios provide examples of the context in which these council members were working at the time; in a faction, suspicious of the other faction’s motives and actions.

#### Deputation request is received

118. On 13 September 2016, Ms Yvonne Honmon, Governance Officer at the City, emailed Ms McEvoy attaching a request from Mr Simpson of PTS Town Planning Pty Ltd, acting for Central City, to make a deputation to a Planning Committee Meeting scheduled for that evening.<sup>214</sup>

119. Later that morning, Mr Simpson sent an email directly to Ms McEvoy, thanking her for accepting the request and providing an outline to her of a:

*“... request to defer the item to enable the City’s officers and my client to discuss the extent of the building that may be required to be retained under any heritage listing”.*

120. Mr Simpson went on to say:

*“... my client may entertain the possible inclusion of the site on the heritage list if the scope of any retention is agreed between the City and my client. My client may investigate retaining the front portion of the building, which has been identified in the heritage documentation as the [sic] having some heritage significance (the rear portion does not have any real heritage significance). However, the extent of any retention will have a significant impact on the redevelopment of the site and therefore this needs to be established with the City prior to any consideration of the listing.*

*Therefore we respectfully request that the item be deferred to enable the extent of building retention to be determined between the City and my client, before the Planning Committee and Council consider initiating the heritage listing process ...”.<sup>215</sup>*

### Planning Committee Meeting, 13 September 2016

121. On the evening of 13 September 2016, a Planning Committee Meeting was held. It was attended by Ms McEvoy, Mr Yong and Mr Adamos. Mr Harley attended as an observer. The heritage listing of the Grand Central Hotel was on the agenda.
122. The officer report recommended *“the inclusion of the Grand Central Hotel on the Heritage List based on the findings of three heritage assessments”*. One of these was an independent heritage assessment from Griffiths Architects.
123. The officer report noted:

*“The independent heritage report referred to above was not undertaken for [Property H] and [Property J] that, together with the Grand Central Hotel constituted the group of places Council requested Officers to assess more fully, including an internal site inspection, prior to reporting back to Council.*

*The extra heritage assessment was commissioned to ensure that an additional independent and full assessment of the place was obtained given the recent media attention that the possible heritage listing of this place had attracted.”<sup>216</sup>*
124. As requested by Mr Mileham, a timeline and summary of the heritage listing process for the three properties was provided in the report.
125. The officer report then stated:

*“Should Council resolve to propose that the Grand Central Hotel be included on the Heritage List, further consultation will be undertaken with each owner and occupier of the place. A copy of the Draft Heritage Place Assessment will be provided and the owner and occupier will have a period of 21 days to make a submission on the proposal.”<sup>217</sup>*
126. The officer report recommended:

*“that Council ... proposes to include Grand Central Hotel, 379 Wellington Street, Perth in the City Planning Scheme No. 2 Heritage List and gives the affected owner and occupier a description of the place, the reasons for the proposed entry and 21 days to make a submission on the proposal ...”*

### Mr Peter Simpson speaks to the meeting

127. Ms McEvoy approved Mr Simpson’s deputation and Mr Simpson is recorded as having spoken for two minutes.<sup>218</sup>
128. As the City did not record the audio of confidential items at Council or Committee meetings, in order to ascertain the details of what occurred at the meeting, the Inquiry has had to rely on evidence from those who attended. Only Mr Harley and Mr Adamos had any memory of this.

129. Mr Harley said the owners had someone attend and:

*“... speak on behalf of them and lobby for a delay in the property being Heritage Listed so that information could be obtained as to whether or not only a portion of the property could be included in the Municipal Heritage Inventory rather than the entire property, and that delay and request for further information was granted by the committee”.<sup>219</sup>*

130. Mr Harley noted the representative spoke about the idea of heritage listing the façade, but not the back of the property, as the owners wanted to proceed with the development.<sup>220</sup>

131. Mr Adamos recalled Mr Simpson addressing the Committee about proportional registration of certain parts of the building.<sup>221</sup>

### Recommendation of the Planning Committee, 13 September 2016

132. Notwithstanding the officer report, Ms McEvoy moved a motion to defer the matter:

*“That the item titled ‘Proposed Entry of Grand Central Hotel – 379 Wellington Street, Perth in the City Planning Scheme No., 2 Heritage List’ be deferred for further investigations and discussions to be carried out between City of Perth Officers and the property owner”.<sup>222</sup>*

133. The motion was seconded by Mr Yong and carried unanimously.

134. As a result, Council was not asked to consider the officer report and the matter was referred back to the Administration for further work.

### Fallout from the Planning Committee Meeting

#### Mr Reece Harley raises questions

135. At 5.50 pm on 13 September 2016, Mr Harley messaged Dr Green and Mr Limnios:<sup>223</sup>

Mr Harley



*“Item was deferred. There have already been three reports recommending listing. Now Jim, Judy and Keith have kicked the can along the road. The building remains not listed and unprotected”.*

136. In answer to Dr Green asking why, Mr Harley advised further consultation with the owner was required and said, in a message at 5.55 pm:

Mr Harley



*“Annaliese [Battista] said [to the Committee] the admin report would be the same next time round”.<sup>224</sup>*



### Mr Reece Harley raises further questions

137. In emails sent on the evening of 13 September 2016, Mr Harley asked Mr Mileham to explain the process applicable to proportional registration.

138. At 9.38 pm, Mr Harley wrote:

*“Dear CEO*

*Does our planning scheme allow part of a property to be on our municipal heritage inventory or is the whole property on the lot on the inventory.*

*My understanding is that the whole property gets listed and then a survey takes place which determines significant fabric from less significant fabric allowing development to take place.*

*I don’t understand why the owners of this property would seek a deferral on these grounds?*

*R”.*<sup>225</sup>

139. In reply Mr Mileham wrote:

*“Committee has asked us to ask that question I would suppose. I don’t believe ‘partial listing’ can easily be accommodated in the Scheme, however, I will be keen to hear the officers’ view on that and await the review”.*<sup>226</sup>

140. Mr Harley responded:

*“I think the committee tonight has asked you to go away and have yet another conversation with the Scaffidi’s about the heritage value of their property – which they contest. Annaliese stated that the administration’s view would not change as there have been multiple reports about the heritage value of the property by different independent assessors.*

*...*

*What you saw tonight was three councillors who are scared of retribution ...*

*I was also disappointed by your silence on the item. I believe if this property was owned by a different owner you may have been more likely to say something tonight and would have pushed the committee to give proper consideration to the recommendation. You said literally nothing.*

*You’re the CEO. It’s your recommendation, and yet you didn’t back it, speak to the item, or defend your officer’s work. I’m not sure why you held your tongue but it does concern me.*

*I expect this item to be back in front of council as soon as possible. I’ll be watching it closely”.*<sup>227</sup>

141. Mr Harley also raised a question about whether “the Nanjing Trip issue related to this item”. He added “I believe it’s very possible that the two are tied”.<sup>228</sup>
142. Mr Mileham was scheduled to be at a citizenship ceremony with Mr Harley in the evening and forwarded the item to Mr Ridgwell for advice.<sup>229</sup> He later replied to Mr Harley by letter dated 14 September 2016.
143. In his letter to Mr Harley, Mr Mileham addressed Mr Harley’s disappointment in the deferral of the item, and over the way in which he conducted himself. In particular, Mr Mileham wrote:
- “In regards to your observance of myself not speaking to the item I note that for most Committee meeting items I will defer to the relevant member of my Management Team who are the subject matter experts and who ultimately prepared the reports to respond ... Ms Battista responded professionally and factually to all matters raised ...*
- I have no reason to intervene if the Committee wish to make a fully informed decision ... should you have any concerns or questions you are well within your rights as an Observer Member to state your objects or seek clarification in such Committee deliberations ...*
- In respect of your assertions that the Planning Committee members fear retribution by the property owner I note I have not witnessed or seen such actions or evidence that would indicate such. However should this be the case I would encourage you to report the matter to the relevant State Government agency, such as the Department of Local Government & Communities.*
- I can confirm that the proposed entry heritage listing will be reconsidered by the Planning Committee at the earliest opportunity”.<sup>230</sup>*
144. In his evidence to the Inquiry, Mr Harley said he did not see or hear anything to give him the impression the Planning Committee were afraid of retribution. He said:
- “It was an assumption that I made based on the votes and the circumstances and the history of Scaffidis in relation to heritage matters”.<sup>231</sup>*
145. When Mr Harley was asked if he had any reason to think the Grand Central Hotel was not being dealt with on the merits at the time, he said:
- “The matters were very protracted, so other than the timeline, the fact that it had taken a very long time to get to this point and I had a view that the Administration were perhaps dragging their heels on the matter, I had not seen or witnessed anything, anything said, any particular behaviour that would suggest there had been any lobbying of Councillors or anything of the sort”.<sup>232</sup>*

### City of Perth officers raise concerns about the delay

146. At 2.15 pm on 16 September 2016, Ms McMullan, emailed Ms Battista asking for guidance about the workload arising from the deferral of the Grand Central Hotel report. She wrote:

*“... As you are aware, there has already been significant investigation and consultation behind this report, above and beyond what is standard practice. It is highly unlikely that any further investigation or consultation will change the officer’s recommendation. The officers are already stretched with embedding the restructure; an unprecedentedly high volume of DA’s 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 ...”*<sup>233</sup>

147. In reply, Ms Battista wrote:

*“Your points are very much valid. I share your unequivocal support for both our officers, their thorough work and yourself.*

*I have discussed this at length with the Chief Executive Officer and determined that the Report should be amended simply to say that what was proposed was feasible through the Development Application process, but that partial Heritage Listing is both unprecedented and not in line with the City’s Policy etc ...*

*I suggest also – if deemed appropriate by Governance given the recommendation was for further consultation with the owner – to contact Peter Simpson and explain this ...”*<sup>234</sup>

### Planning Committee Meeting, 25 October 2016

148. On 25 October 2016, the Planning Committee met. It was comprised of Ms McEvoy, Mr Adamos and Mr Yong.<sup>235</sup>

149. Both Mr Limnios and Dr Green were observers and present during discussion of the item concerning the Grand Central Hotel.

150. The officer report stated:

*“It should be noted that in accordance with the City of Perth’s standard procedures, further consultation between Officers and the landowner in relation to identifying specific zones of cultural heritage significance of a place that is being considered for heritage listing is not usually undertaken at this point in the heritage listing process. As far as Officers are aware, to date, all such consultation has occurred after a property is heritage listed”.*

151. The report referred to the *Planning and Development (Local Planning Scheme) Regulations 2015* and stated:

*“This report requests Council to initiate this process, following which, the City will formally consult with the owner, undertake any other consultation considered appropriate and consider any submissions received by the owner and occupier.*

*Should the place be entered on the Heritage list, any impacts of heritage listing on development will be determined and negotiated through the development application process”.*<sup>236</sup>

152. The report concluded:

*“The City of Perth Draft Heritage Place Assessment demonstrates that the Grand Central Hotel warrants entry in the Heritage List. Both the SHO Assessment and the independent heritage consultant’s advice reflect this position.*

*Further consultation will be undertaken with the owner and occupier prior to Council making its final decision on the proposed heritage listing”.*<sup>237</sup>

153. A motion recommending to Council that it “propose to include” the Grand Central Hotel on the City Heritage register was moved and carried. Like Property H, the recommendation to Council contained a mechanism by which the owners would have 21 days to respond to the proposal and Council officers would then report back to Council.

### **Council Meeting, 1 November 2016**

154. On 1 November 2016, a Council Meeting was held. Ms Scaffidi did not attend, and the meeting was presided over by Mr Limnios as Deputy Lord Mayor. All of the other councillors attended.

155. An agenda item concerning the potential heritage registration of the Grand Central Hotel was included, but not as a confidential item.<sup>238</sup>

156. After discussing the matter for five minutes,<sup>239</sup> the following motion was endorsed unanimously:

*“That Council:*

- 1. in accordance with Part 3 Clause 8 of the Planning and Development (Local Planning Scheme) Regulations 2015, proposes to include Grand Central Hotel, 379 Wellington Street, Perth in the City Planning Scheme No. 2 Heritage list and gives the affected owner and occupier a description of the place, the reasons for the proposed entry and 21 days to make a submission on the proposal; and*
- 2. notes that Officers will report back to Council with the results of the consultation with owners and occupiers proposed at part 1 above”.*<sup>240</sup>

### Delays

157. Council meetings were held on 15 November 2016, 22 November 2016, 6 December 2016 and 13 December 2016.
158. There was no mention of the Grand Central Hotel at any of these meetings.

### Mr Joe Scaffidi is notified of the Council decision of 1 November 2016

159. On 20 January 2017, Ms McMullan wrote to Mr Scaffidi at Central City and notified him of the Council's determination to include the Grand Central Hotel on the City Heritage register. A draft heritage assessment and a copy of the independent consultant's advice was enclosed.<sup>241</sup>
160. A submission was invited by 10 February 2017, and Mr Scaffidi was advised that:  
*"Any submissions received will be presented to the Council when it next considers the matter".*
161. There is no evidence before the Inquiry to explain why it took more than two months to write to Central City. However, the Inquiry notes that on 16 September 2016, Ms McMullan had advised Ms Battista that officers were stretched with an *"unprecedentedly high volume of development approvals and a SAT hearing"*.<sup>242</sup>
162. Central City did not make a submission.<sup>243</sup>

### Further delays

163. Eight Planning Committee meetings were convened between 4 April 2017 and 19 December 2017. The Grand Central Hotel was not mentioned in any of them.
164. Ten Council meetings were held between 11 April 2017 and 19 December 2017. The Grand Central Hotel was not on the agenda for any of them.

### Inquiries into the delay

165. In April 2018, Mr Mianich asked Ms McMullan for an explanation as to why the report had not yet been submitted to Council. In reply, Ms Battista said:  
*"As confirmed with you this morning, the draft Report is largely complete and due to me for review and approval by next Monday, 7 May 2018. It will therefore be submitted to Council on 29 May 2018.*  
*It is both Tabitha's [Ms McMullan's] and my view that the Report should have been submitted to Council several months ago. The delay is inexcusable. I am enquiring into the matter further as this delay appears anomalous. I will also refer the matter to Governance if appropriate"*.<sup>244</sup>

166. Ms Battista told Mr Mianich that the officer who had originally authored the report was on maternity leave and another employee had been tasked with completing it, but had not done so.
167. Ms Battista told the Inquiry that she had been “*quite surprised and frankly embarrassed*” that this matter had not been actioned. She said she “*had assumed it had taken place in a fairly routine manner*”. She had a meeting with the responsible officer, who undertook to expedite the process.<sup>245</sup>
168. Several delaying factors were identified, one of which was that the matter was deprioritised during a period of scarce resources in the unit. She emailed Mr Mianich on 30 April 2018 stating:
- “As you are aware, the Unit is currently operating at 57% of its approved headcount and has been for quite some time. While I accept the challenging operating environment as a possible factor, I do not accept such an extended delay and have advised Tabitha of this.”*<sup>246</sup>
169. The proposed heritage listing for the Grand Central Hotel was considered at an Ordinary Council Meeting on 29 May 2018 following suspension of the Council.<sup>247</sup> At this time decisions were made by Commissioners as the council members had been stood down.
170. The following motion was carried:
- “That Council, in accordance with Part 3 Clause 8 of the Planning and Development (Local Planning Scheme) Regulations 2015:*
- 1. NOTES that no submissions have been received in response to the Council’s proposal to include Grand Central Hotel, 379 Wellington Street, Perth, in the City Planning Scheme No. 2 Heritage List;*
  - 2. ENTERS Grand Central Hotel, 379 Wellington Street, Perth, in the City Planning Scheme No. 2 Heritage List;*
  - 3. ADOPTS the Heritage Assessment as detailed in Attachment 13.8B; and*
  - 4. GIVES NOTICE of recommendation point 2 above to the Heritage Council of Western Australia and the owner and occupier of the place”.*

## Findings

### Finding 2.2.2 – 2

The Inquiry makes the following findings:

- i. On 16 March 2015, Ms Scaffidi breached clause 3.1 of the City’s Code of Conduct when she sent WhatsApp messages to Mr Limnios relating to consideration at the next day’s Council Meeting of the potential heritage listing for the Grand Central Hotel.
- ii. On 12 January 2016, Ms Scaffidi breached clause 3.1 of the City’s Code of Conduct, and regulation 10(1)(a) of the Conduct Regulations, when she emailed a City employee, Mr Lee, Manager, Environment and Public Health:
  - using her Lord Mayor signature block and email address and in her capacity as Lord Mayor;
  - copying in the CEO and Mr Lee’s Director;
  - asking Mr Lee questions about inspections by City staff to the Grand Central Hotel; and
  - directing him to undertake some enquiries and report back to her.
- iii. The Inquiry finds that the delay in this matter coming before Council between 20 January 2017 and 29 May 2018 was caused by administrative shortcomings exacerbated by staff shortages and that this amounts to a failure by the City’s administration to provide good government. The evidence does not justify a finding that Mr Mileham or Ms Scaffidi caused or influenced the delay.





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## Sponsorship Proposal to rejuvenate the Piccadilly Theatre

### Introduction

1. This Section is about a decision made by the City of Perth Council (Council) to refuse a sponsorship proposal (Sponsorship Proposal) to rejuvenate the Piccadilly Theatre (Theatre). Specifically, this Section will examine the reasons for that decision.
2. The Theatre is a second-floor establishment inside the Piccadilly Arcade at 700 Hay Street, Perth. In broad terms, the Sponsorship Proposal contemplated the City providing funding of up to \$1.7 million staggered evenly over 10 years, subject to performance criteria, to a private operator called Mellen Promotions Pty Ltd (Mellen Events) to rejuvenate the Theatre and operate a live music and theatre business.
3. Although it represented significant expenditure by the City of Perth (City), the Sponsorship Proposal appeared, in all respects, a meritorious one. It:
  - was aligned with Council's strategic objective of activating the night-time economy of the City and rejuvenating under-utilised spaces;
  - represented the culmination of three years research and planning by a City Economic Development Officer;<sup>248, (p)</sup>
  - was the subject of extensive economic modelling, which suggested it would be a far more lucrative proposal than any previous sponsorship had been for the City; and
  - was linked to performance indicators, which ensured that if certain targets were not met by Mellen Events, sponsorship would not continue, thereby mitigating risk to the City.

p This was the equivalent of six to eight months full-time work.

4. The Sponsorship Proposal was initially presented to council members at a briefing session in October 2016, where it appears to have been, in general, favourably received.
5. A few months later, in late January 2017, council members Ms Janet Davidson, Ms Lily Chen and Lord Mayor Ms Lisa Scaffidi, received complaints from two prominent local business owners. Both complainants had positive and longstanding relationships with Ms Scaffidi.<sup>249</sup>
6. At about the same time as the complaints were made, the Sponsorship Proposal was considered by the Council's Marketing, Sponsorship and International Engagement Committee (Committee). The Committee ultimately recommended the refusal of the Sponsorship Proposal. The reason the Committee provided for its refusal was concern about the financial viability of the sponsorship recipient, Mellen Events, and the land developer. This reason did not make sense. It was not supported by the facts. Both the sponsorship recipient, Mellen Events, and the developer, were wealthy and experienced business owners. No effort was made to seek more information regarding their financial positions, which was particularly unusual as the Managing Director of Mellen Events was present at the Committee meetings.
7. The Sponsorship Proposal was then considered by Council at a meeting on 14 March 2017, where a majority of council members adopted the Committee's recommendation and refused the application.
8. On the face of the material presented to Council, the Sponsorship Proposal was a commendable one which aligned with the City's strategic aims and which stood to benefit the City as a whole, both economically and culturally. If there were legitimate grounds to refuse the Sponsorship Proposal, they were not articulated in the minutes of the meetings of the Committee or the Council.

## Timeline

2016	20 October	Piccadilly Theatre Sponsorship Proposal presented to members of Council during a briefing session attended by the proponent, Mr Bradley Mellen of Mellen Events.
2017	29 and 31 January	Complaints about the Sponsorship Proposal made to Ms Davidson, Ms Scaffidi and other council members by two local business owners.
	31 January	Sponsorship Proposal considered by the Marketing, Sponsorship and International Engagement Committee (Committee), and deferred for more information.
	28 February	A Committee Meeting considered the Sponsorship Proposal and refused it, despite a recommendation by City officers that it be supported.
	14 March	Council Meeting considered the Sponsorship Proposal. It was refused by a majority of Council members. No reasons were given.

## Issues considered by the Inquiry

9. The unusual circumstances of the Council's decision to refuse the Sponsorship Proposal and the prospect that the decision was influenced by external stakeholders whose business interests may have been affected by it, raise a number of issues within the Inquiry's Terms of Reference, particularly within clause A.3(ii) and A.3(vi).

10. Broadly, those issues are:

- Why some council members changed their attitude in relation to the Sponsorship Proposal between the briefing session in October 2016 and the final Council Meeting in March 2017.
- Whether the reason the Committee gave for rejecting the Sponsorship Proposal was genuine.

## Investigation by the Inquiry

### Witnesses

11. The Inquiry held private hearings with a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section.

- Council members involved in decisions about the Sponsorship Proposal, Ms Scaffidi, Mr Jim Adamos, Ms Chen, Ms Davidson, Mr Reece Harley, Mr James Limnios, Ms Judy McEvoy, Mr Keith Yong.
- City employees involved in the Sponsorship Proposal:
  - Mr Mark Close, Economic Development Officer, working on place activation. He reported to Mr Daniel High and was responsible for preparing the officer's report to the Committee and the Council for the Sponsorship Proposal.<sup>250</sup>
  - Mr Daniel High, Manager, Economic Development at the City.<sup>251</sup>

- Private businessmen who made complaints to certain council members about the Sponsorship Proposal:
  - Mr Adrian Fini, a director of FJM Property Pty Ltd with substantial and longstanding interests in the hospitality and property development sectors in Western Australia.<sup>252</sup> Among other ventures, Mr Fini was at the time co-proprietor of Rechabite Hall in William Street, Northbridge, which included a live performance area.
  - Mr Patrick Coward, founder and co-owner of the Margaret River Chocolate Factory, Margaret River Providore, Coward and Black Vineyards and the Sewing Room live performance space on Murray Street, Perth.<sup>253</sup>
- Proponents of the Sponsorship Proposal:
  - Mr Bradley Mellen, Managing Director of Mellen Events.
  - Mr Terry Posma, the holder of a power of attorney for the overseas owners of the Piccadilly Arcade.

## Evidence obtained by the Inquiry

### Sponsorship Proposal is formed

12. The idea of activating the Theatre was part of a broader concept of rejuvenation designed to draw more visitors to under-utilised spaces within the City, including the Hay Street Mall.
13. This broader rejuvenation project was developed over a number of years, in accordance with the City's Strategic Community Plan Vision 2029. That plan set Council's strategic priorities over 10 years, which included increasing the use of under-utilised spaces and collaborating with the private sector to enhance and develop a healthy night-time economy.<sup>254</sup>
14. Mr Close was central to the rejuvenation project and began working on it in October 2013.<sup>255</sup> He identified about 11 sites as potentially forming part of the activation. Most of these sites were situated in the Hay Street Mall, because he believed it was "*suffering*" from fewer visitors than other parts of the City.<sup>256</sup> Mr Close researched building audits, liaised with owners and property managers and viewed potential spaces for activation. He then formed a view of how feasible the spaces were for adaption as part of the rejuvenation project.<sup>257</sup>
15. In or around December 2015, a strategy session attended by council members "*sought immediate and on-going improvements in activating*" and revitalising the Hay Street Mall.<sup>258</sup>

16. On 18 December 2015, Mr Close sent a memorandum<sup>259</sup> to the Director, Planning and Development and the Director, Economic Development and Activation. The memorandum represented a “*set of key recommendations*” about the best ways to activate the Hay Street Mall.<sup>260</sup> Mr Close worked this memorandum up into a report, which was eventually provided to Council. He estimated this report was the product of six to eight months of full-time work, spread over three years.<sup>261</sup>
17. Due to difficulties with other landowners, the appropriateness of the space, co-operation of property managers and other factors, the Theatre was identified by Mr Close as “*really the only space that could be activated*” in the Hay Street Mall.<sup>262</sup>
18. Mr Close’s recommendation, considered by the Committee and Council, was that subject to noting certain returns to the City, compliance criteria for the proposed funding recipient and mechanisms to bring the arrangement to an end, Council “*approve [a] cash Events Sponsorship of \$170,000 annually, over a period of 10 years, commencing in the 2018/19 financial year, for Mellen Events, within the Piccadilly Theatre at 700–704 Hay Street Mall, Perth*”.<sup>263</sup>
19. Mellen Events is a concert promotion and entertainment company run by Mr Mellen, a prominent and experienced businessman within the Perth entertainment industry. In a report prepared by Mr Close for the consideration of Council, he wrote that Mr Mellen is “*acknowledged by [the entertainment] industry as a principal contact in Perth*”.<sup>264</sup> Mr Close told the Inquiry that Mellen Events was chosen, because it was the only serious candidate that had shown longevity.<sup>265</sup>
20. The Piccadilly Arcade, in which the Theatre is situated, is itself owned by wealthy Indonesian families.<sup>266</sup> By all accounts, these owners are experienced property developers and landlords. For example, Mr Fini told the Inquiry that they “*own hundreds of millions of dollars of property here in Perth*”.<sup>267</sup>
21. Mr Close gave evidence that one of the main aims of the Sponsorship Proposal was to provide an economic return to the City, either in employment, activation or visitation spend. He said the Sponsorship Proposal would yield significant economic return to the City.<sup>268</sup>

#### October 2016: Council is briefed on the Sponsorship Proposal

22. A Council briefing session is an informal information session in which the City Administration informs council members about upcoming events, policies and the like. Council members are invited to discuss the topics and have their questions answered. Council does not vote or make decisions and there are no official minutes taken. Instead, a City officer takes notes.<sup>269</sup>
23. On 20 October 2016, Mr High presented a PowerPoint presentation prepared by Mr Close to a Council briefing session. He then introduced Mr Mellen, who also presented on the Sponsorship Proposal.

24. The briefing session was attended by all council members, other than Dr Jemma Green and Mr Limnios. Notes of the session were taken. Based on the attendance list for the session, it is likely that those notes were recorded by Ms Ashlee Rutigliano, Acting Governance Administration Officer.<sup>270</sup>
25. The briefing session notes indicate there was some discussion about the Sponsorship Proposal and there were various, seemingly minor, concerns raised by some council members. For example:
  - Ms Scaffidi questioned why she had not been informed of this Sponsorship Proposal sooner, asked what shows would be hosted in the Theatre, raised concerns about the noise from the venue and indicated she would prefer to “*control the story*” with the media.
  - Ms McEvoy asked why there was one operator, questioned whether there had been a tender process and asked whether there would be a liquor licence.
  - Ms Davidson asked whether any other companies had expressed an interest in submitting a proposal.
26. Notably, no concerns were recorded as being raised about the financial viability of Mellen Events or the property developer.
27. The briefing session notes conclude with the summary “*Feedback is good recommendation and well done*”.<sup>271</sup>
28. The evidence of the council members who attended the briefing session, other than Ms Scaffidi, suggested that the council members’ response to the Sponsorship Proposal was positive overall.<sup>272</sup> Mr High<sup>273, (q)</sup> and Mr Close recalled a generally favourable, or at least not negative, reception to the presentation. Mr Close said that the Lord Mayor gave some “*push back*” and that she was “*not happy*” about it as it was “*a surprise to her, and it was too far advanced in absence of consultation*”, although when asked whether anyone else voiced any opposition Mr Close said “*everyone was fairly quiet other than the Lord Mayor*”.<sup>274</sup>
29. Consistently with Mr Close’s recollection that Ms Scaffidi at least expressed some negative views in relation to the Sponsorship Proposal, Ms Scaffidi quibbled with the statement in the briefing session notes. She gave evidence that the notes were not a correct and faithful recording of the feeling of the meeting. She said she would have praised the work done by City officers, but in her view a more accurate summary would be “*Varied feedback*”.<sup>275</sup>
30. Ms Scaffidi’s qualification of the summary in the briefing note is not an unreasonable one. However, the briefing session notes do not reflect any significant resistance to the Sponsorship Proposal. Given the consistency of the evidence of other attendees, the Inquiry finds that while Ms Scaffidi had some issues with the Sponsorship Proposal, Council’s attitude to the Sponsorship Proposal at this briefing session appears to have been broadly (although not entirely) positive and supportive, or at least not so obviously negative as to foreshadow its rejection by Council.

q In response to being questioned about how the council members received the presentation, Mr High said “*I left the room feeling pretty good ...*”.

### January 2017: Mr Patrick Coward and Mr Adrian Fini complain about the Sponsorship Proposal

31. On 29 January 2017, Mr Coward emailed Ms Davidson complaining that he had read in the newspaper that:
 

*“... the Council was considering donating \$1.7 million to the ‘Asia based’ owners of Piccadilly Arcade so that national promoter Brad Mellen can put his shows on there, meanwhile 200 metres down the road a couple of local lads are scraping every cent they have to fit-out and open a live performance space without getting one cent of assistance from the City ...”*<sup>276</sup>
32. He complained it was *“inconsistent, unfair and completely inappropriate”*.
33. He emailed Ms Chen and sent messages through Facebook to Mr Harley and Mr Adamos that same day in the same terms.<sup>277</sup>
34. Within hours, both Ms Davidson<sup>278</sup> and Ms Chen<sup>279</sup> had forwarded the emails they had received from Mr Coward to Ms Scaffidi. Mr Adamos said that he *“probably would have”* advised Ms Scaffidi of Mr Coward’s Facebook message.<sup>280</sup>
35. Ms Scaffidi’s subsequent email correspondence indicated she was sympathetic to Mr Coward’s point of view. She made inquiries as to whether Mr Coward had received any financial support for establishing his own live music venue, the Sewing Room, which was located near to the Theatre. She learned he had not.<sup>281</sup>
36. Mr Coward and Ms Scaffidi had a history. As at 2017, they had known each other for four to six years, with a relationship Mr Coward described as both *“friendly”* and *“very friendly”*, although one marked by *“infrequent contact”*.<sup>282</sup> Mr Coward sent an email to Ms Scaffidi on 30 January 2017 asking if he could take her out for lunch as he had not seen her for ages. Ms Scaffidi declined the invitation until after her *“SAT hearing”*.<sup>283</sup>
37. Around this time, Mr Fini also learned of the Sponsorship Proposal. He emailed Ms Scaffidi late in the morning of 31 January 2017, the date on which the Committee was to meet to consider the Sponsorship Proposal, complaining that *“to see Council handing over \$1,700,000 to a commercial venue seems to be unprecedented”* and asking whether it would be supported.<sup>284</sup> As Mr Fini said in his email and explained to the Inquiry, he was involved in many companies with interests in property in the City.<sup>285</sup>
38. Sixteen minutes after it was sent to her, Ms Scaffidi forwarded Mr Fini’s email to Ms Davidson and Mr Yong,<sup>286</sup> both of whom would, later that day, sit on the Committee that would decide whether to recommend Council approve or refuse the Sponsorship Proposal. They were the only council members who sat on the Committee that day.<sup>287</sup>
39. Mr Fini and Ms Scaffidi also had a history. Mr Fini gave evidence they had known each other since he was at university.<sup>288</sup>



### 31 January 2017: Marketing, Sponsorship and International Engagement Committee considers the Sponsorship Proposal for the first time

40. The Committee met in the afternoon of 31 January 2017 to consider, among other things, the Sponsorship Proposal. Mr Yong and Ms Davidson were the quorum for the meeting. Mr Limnios and Ms Chen had been granted a leave of absence. Ms Davidson, the Committee's first deputy, acted as the Presiding member in the absence of Ms Chen.
41. Mr Mellen sought, and was granted, deputation to attend and address "*Item 8.3: Commercial Events Sponsorship – Mellen Events, Piccadilly Theatre, Hay Street Mall, Perth*" at the Committee Meeting.<sup>289</sup>
42. The Committee Meeting was closed to the public for consideration of this item. In a motion moved by Ms Davidson and seconded by Mr Yong, the Committee agreed to defer consideration of the Sponsorship Proposal to allow for the provision of the following additional information:<sup>290, (r)</sup>
  - legal advice obtained by officers regarding the Sponsorship Proposal;
  - other potential proponents;
  - other potential venues/locations; and
  - financial information (budget).
43. The information requested by the Committee was then provided in annexures to a report, which was considered by the Committee at its next meeting on 28 February 2017.<sup>291</sup> This report was also provided to council members in anticipation of Council's meeting on 14 March 2017. The information comprises some 33 pages and appears to be fulsome. The financial and legal advice contained in the report generally supported the Sponsorship Proposal.

### 28 February 2017: Marketing, Sponsorship and International Engagement Committee meets to consider the Sponsorship Proposal for the second time

44. In the days before the second Committee Meeting, a series of email exchanges occurred.
45. On 21 February 2017, Ms Annaliese Battista, who was acting in the role of Director, Economic Development and Activation, sent an email to Mr High stating that she had "*quite a lot of feedback*" on the Sponsorship Proposal from council members and that she was "*intuiting that a number of high profile stakeholders are lobbying EMs in opposition to the proposal and I'm concerned it may not get through at this stage*".<sup>292</sup> Ms Battista's intuition appears to have been accurate. Messrs Coward and Fini (who both fitted the description of "*high profile stakeholders*")<sup>s</sup> had already voiced their opposition approximately three weeks earlier.
46. In evidence, Ms Battista explained that the "*EMs*" to which she referred in this email were those in the "*voting bloc*" that comprised Ms Scaffidi, Ms Davidson and Mr Adamos.<sup>293</sup>

r Mr Close was of the view that this information had already been addressed in his report to the Committee: Transcript, M Close, private hearing, 14 March 2019, p 21.

s Mr Fini had a number of companies which either owned or had interests in property within the City: Transcript, A Fini, private hearing, 13 March 2019, p 2-3. Mr Coward also had interests in property within the City, however he was best known for founding the Margaret River Chocolate Company: Transcript, P Coward, private hearing, 13 March 2019, p 17-18.

47. On 23 February 2017,<sup>294</sup> Mr Miles Hull, a resident of Melville (not the City) who was employed by Mr Fini and his business partner as the manager of the “*Rechabite’s Project*” and who had discussed the Sponsorship Proposal with Mr Fini,<sup>295</sup> sent emails to the City’s Governance unit and council members asking questions about the Sponsorship Proposal. The questions were generally critical of the proposal. Mr Hull did not disclose his involvement with Mr Fini or the Rechabite Hall in his correspondence with the council members. He used his private address to forward his questions.<sup>296, (t)</sup>
48. On 28 February 2017, the Committee met for a second time to consider the Sponsorship Proposal. Ms Davidson deputised for Ms Chen and again acted as the Presiding member. Mr Yong and Mr Limnios also attended.
49. Included with the minutes of that meeting, is a record of a number of questions posed to the Committee by Mr Hull, with responses from the City. As with Mr Hull’s emails to council members, the questions recorded in the minutes of the Committee Meeting reflected a generally negative attitude to the Sponsorship Proposal. The responses prepared by the City, on the other hand, reflected a positive attitude.
50. Mr Mellen again sought and was granted a deputation to the Committee Meeting and provided another overview of the Sponsorship Proposal and answered questions from the Committee about it.
51. Despite the officers’ recommendation for approval of the Sponsorship Proposal and despite the positive attitude conveyed by the responses to Mr Hull’s questions, an alternate motion, that the Committee refuse the application, was moved by Ms Davidson and seconded by Mr Yong. The reason given by the Committee for this decision was “*Due to insufficient information regarding the financial viability of both the developer and the operator*”.<sup>297</sup>
52. Each of the council members who attended the Committee Meeting, Ms Davidson, Mr Yong and Mr Limnios, were examined by the Inquiry about the reason the Committee gave for refusing the Sponsorship Proposal.
53. Ms Davidson’s evidence is concerning. For most of her evidence, Ms Davidson consistently explained that her main reservation with the Sponsorship Proposal was the amount of money that was going to be the subject of the sponsorship. That is a legitimate concern. However, she was unable to explain to the Inquiry why, given she purported to hold that view, the Committee’s reason for rejecting the Sponsorship Proposal was something different.<sup>298</sup>
54. Ms Davidson also could not explain why, if her reason for refusal was the cost of the Sponsorship Proposal, she did not propose an alternate motion for less money over fewer years. Instead, she simply (and insufficiently) explained “*that was my thinking at the time, that [the Sponsorship Proposal] needed to be refused*”.<sup>299</sup>

t Mr Hull had also used the same private email address to forward questions to the Committee just before its meeting on 31 January 2017.

55. Ms Davidson could not give a cogent reason why she believed so strongly that the Sponsorship Proposal needed to be refused. She also could not explain why she did not ask Mr Mellen what his financial position was, even though he was present at the meeting.
56. As she maintained it was not her reason, Ms Davidson was asked about where the reason given by the Committee came from. Ms Davidson consistently denied that the reason came from Ms Scaffidi. However, she could not suggest anyone else who could have offered this reason<sup>300</sup> and agreed that logically it would have been Ms Scaffidi.<sup>301</sup>
57. Although Ms Davidson said that she had done her “*own reasoning*” in her decision not to support the Sponsorship Proposal, after extensive questioning, Ms Davidson conceded that she decided on the refusal because “*that’s what the Lord Mayor wanted*”.<sup>302</sup>
58. Mr Yong was also asked about the Committee Meeting.<sup>303</sup> His evidence is also, from a good governance perspective, concerning.
59. Mr Yong was taken to a number of the responses prepared by the City to Mr Hull’s questions and confirmed that he agreed with those responses. He also agreed that the Sponsorship Proposal “*seemed like a very good proposal*”. He said he thought (wrongly) that at the second Committee Meeting the Sponsorship Proposal was approved.
60. When taken to Ms Davidson’s alternative motion and the reason given by the Committee for refusing the Sponsorship Proposal, Mr Yong agreed that the reason preferred “*must have been*” Ms Davidson’s. He agreed it was not a good reason. He agreed that it would not have been very hard for the Committee to satisfy itself about the financial viability of the entities who would have received City funding under the Sponsorship Proposal.
61. Mr Yong was then asked why he voted in support of Ms Davidson’s alternative motion to refuse the Sponsorship Proposal if he thought the Sponsorship Proposal was a good one and the reason for its refusal was not. He confirmed that he did so “*because [he] understood that the group that [he] belonged to would vote that same way at the Council meeting*”.<sup>304</sup>
62. Ms Scaffidi could not recall if she had any communications with Ms Davidson and Mr Yong prior to the Committee Meeting on 28 February 2017. Nonetheless, Ms Scaffidi denied that she had provided advice to Ms Davidson and Mr Yong about what she wanted them to do at the meeting on 28 February 2017 or that she told Ms Davidson that she wanted the Sponsorship Proposal defeated. Ms Scaffidi did not believe that she had discussed a reason for refusing the Sponsorship Proposal with Ms Davidson and Mr Yong prior to the meeting.<sup>305</sup>

63. Mr Limnios was also asked about the second Committee Meeting. He told the Inquiry that he voted against the alternative motion, because he believed in the activation of the Hay Street Mall. He agreed that the reason given by the Committee for refusing the Sponsorship Proposal was not a good reason, because:

*“... it’s very wishy-washy and I don’t understand what else they expect from this person. This person’s making a commitment to undertake – if the owner of the land is satisfied with the financial viability of his tenant and has the guarantees that he wants in place, I don’t understand. The developer themselves, you could see that they are long-term owners of the building”.*<sup>306</sup>

#### **Observations by City officers at Marketing, Sponsorship and International Engagement Committee meetings on 31 January 2017 and 28 February 2017**

64. Ms Davidson’s and Mr Yong’s evidence is consistent with the evidence of Mr Close, who had formed the view that Ms Davidson and Mr Yong voted to defer the item in the Committee Meeting on 31 January 2017, because *“it was obvious to all and sundry that they were taking carriage of a message that might have been coming from elsewhere”*. Mr Close reached that conclusion, because Ms Davidson and Mr Yong *“had prepared a few dot points but [they] weren’t particularly passionate about [the dot points]”*<sup>307</sup> and were *“Reading their notes somewhat uncomfortably”*, when *“Generally they can speak without referring to their notes”* and *“they usually speak from the heart on what they’re passionate about and what their thoughts are”*.<sup>308</sup> Ms Battista also had a recollection of Ms Davidson chairing a particular committee meeting (which may have been this one) when she was *“receiving direction via phone”*.<sup>309</sup>
65. Mr Yong denied that he had read from notes at the Committee Meeting on 31 January 2017.<sup>310</sup> Ms Davidson also disagreed that she was conveying a message on behalf of someone else at this Committee Meeting as she could not recall doing that, nor could she remember receiving messages from Ms Scaffidi on her mobile telephone during the meeting. She agreed she could not exclude the possibility that she might have been using her mobile telephone at the meeting.<sup>311</sup>
66. At the meeting on 28 February 2017, Mr Close observed that *“in particular Councillor Yong was pretty uncomfortable”* about rejecting the recommendation.<sup>312</sup>
67. The Inquiry prefers the evidence of Ms Davidson and Mr Yong, who both made concessions against their own interests, to that of Ms Scaffidi. Ms Davidson’s and Mr Yong’s evidence were consistent with Mr Close’s observations of their conduct at the first Committee Meeting and his observations of Mr Yong at the second Committee Meeting. In contrast, Ms Scaffidi could not recall what communications she had with Ms Davidson and Mr Yong.

The Inquiry also has regard to the following evidence from Mr Yong:

*“Yes, and you told me that you found out how the group was going to vote at the Council meeting through the WhatsApp message.<sup>u</sup> What I want to know from you now is who prompted the discussion that led to what I assume was an agreement in the group that you vote that way at the Council meeting, who started that discussion?---Usually it’s Lisa.*

*And on this occasion, who was it?---I can’t have a recollection of that message but my understanding is Lisa”.<sup>313</sup>*

68. On that basis, the Inquiry finds that Ms Davidson and Mr Yong voted to recommend refusing the Sponsorship Proposal because Ms Scaffidi did not want it approved and because they knew that council members aligned with Ms Scaffidi would be voting against the proposal when presented to Council.

#### 14 March 2017: Council refuses the Sponsorship Proposal

69. At the Ordinary Council Meeting on 14 March 2017, a majority of the members of Council, voted to refuse the Sponsorship Proposal. The motion was moved by Ms Davidson, who had moved the alternative motion at the second Committee Meeting and seconded by Ms McEvoy. The motion was identical to that passed at the Committee Meeting: *“That the Council refuses the application of Commercial Events Sponsorship – Mellen Events – Piccadilly Theatre, Hay Street Mall, Perth”.*

70. The moving and seconding of the motion happened very quickly. It occurred before the Lord Mayor could even complete the reading out of the item for consideration. The transcript of that meeting relevantly reads:

*“THE LORD MAYOR: .... Item 13.5, commercial event sponsorship Melon [sic] Events---*

*COUNCILLOR DAVIDSON: Move---*

*THE LORD MAYOR:---Picadilly [sic] Theatre.*

*COUNCILLOR DAVIDSON: Move---*

*THE LORD MAYOR: (Indistinct).*

*COUNCILLOR DAVIDSON:---Lord Mayor (indistinct).*

*THE LORD MAYOR: Item – sorry, that’s Councillor Davidson moving. Second.*

*COUNCILLOR McEVOY: I’ll second it, Lord Mayor.*

*THE LORD MAYOR: Councillor McEvoy seconding. Okay ...”.<sup>314</sup>*

71. In addition to Ms Davidson and Ms McEvoy, Ms Scaffidi, Mr Adamos, Mr Yong and Ms Chen all voted in favour of the refusal. Dr Green, Mr Harley and Mr Limnios voted against the refusal.

<sup>u</sup> The Inquiry did not have access to this WhatsApp message as it only had records of the “Team” communications from 22 October 2015 to 22 April 2016.

72. Mr Harley spoke against the refusal and then asked whether he could move an amendment to the motion to approve the Sponsorship Proposal. However, he was told by Ms Scaffidi that he could not do so because he had already spoken.
73. Dr Green then moved the amendment that Mr Harley had attempted to move, but the motion lapsed for want of a seconder. Ms Scaffidi said that the motion needed to be seconded by a council member who had not already spoken.<sup>315</sup> There is no basis for this claim in the City's *Standing Orders Local Law 2009*.
74. The minutes of the Council Meeting contained no record of the reason for the refusal of the Sponsorship Proposal. However, the minutes do set out the decision of the Committee, which was adopted by Council,<sup>316</sup> which may lead a reader to infer the reason for refusal was the reason given by the Committee, being concerns about the financial viability of the recipients of the proposed funding.
75. However, during the meeting none of the council members who voted for the refusal mentioned the financial viability of Mellen Events or the property owners as the reason for voting that way.
76. Ms McEvoy said that, generally, she was not in favour of sponsorship, that the sponsorship was a lot of money, and that the Sponsorship Proposal would be setting a precedent to other business owners who might want the same level of support.<sup>317</sup> In her speech during the Council Meeting, she expressly praised Mr Mellen as an experienced and accomplished operator, stating "*there is no problem with his credibility as an operator of this*".<sup>318</sup>
77. In evidence before the Inquiry, Ms McEvoy expressed those views in similar terms, although, she added that she did not think the City should be "*propping up*" private business.<sup>319</sup>
78. Ms McEvoy agreed that the reason given by the Committee for refusing the Sponsorship Proposal was a "*pathetic*" one and that Mellen Events was a very successful entertainment promoter.<sup>320</sup> Ms McEvoy accepted that it was "*quite possible*" that she knew "*her group*" would be voting against the Sponsorship Proposal. She also accepted that the reason she seconded Ms Davidson's motion very quickly was because she knew beforehand that it was going to be moved.<sup>321</sup> Ms McEvoy was not able to cogently explain why, if she thought the amount of the sponsorship was too great, she did not propose an alternative motion for a lower amount.
79. Ms Scaffidi said, during the Council Meeting, her reason for refusing the Sponsorship Proposal was, that in her view, it did not represent a sponsorship arrangement. Rather, Ms Scaffidi thought it was public money being used to underwrite private business between a private property owner and a private lessee.<sup>322</sup> The Inquiry observes that her purported reason for refusing the Sponsorship Proposal was not dissimilar to the complaints made a matter of weeks earlier by Messrs Fini and Coward.

80. Ms Scaffidi's evidence before the Inquiry was in similar terms. She also told the Inquiry she was sure that, before the Council Meeting, the group of council members which were aligned with her *"would have been in fierce agreement over our nonacceptance of the item"*. She agreed, while no record was made in the minutes of the Council Meeting of the reason for the refusal of the Sponsorship Proposal, it *"would not have been due to insufficient information regarding the financial viability of both the developer and the operator"*.<sup>323</sup> Ms Scaffidi agreed that would have been a *"woefully inadequate reason"*. Ms Scaffidi also told the Inquiry she agreed with the opinions expressed by Messrs Coward and Fini.<sup>324</sup>
81. Ms Davidson did not add anything substantive to the discussion at the Council Meeting.<sup>325</sup> In her evidence to the Inquiry, she said, as described above, her reason for refusing the Sponsorship Proposal was that the size and time period of the sponsorship was too much.<sup>326</sup> Her evidence is approached by the Inquiry with caution for reasons explained in the discussion above of her evidence relating to the Committee Meeting.
82. Mr Adamos and Ms Chen were asked by Counsel Assisting about their reasons for voting to refuse the Sponsorship Proposal:
  - a. Mr Adamos said that the Sponsorship Proposal was unprecedented in its size and time period;<sup>327</sup> and
  - b. Ms Chen said she voted in accordance with the recommendation of the Committee.<sup>328</sup>

**Process by which the decision to refuse the Sponsorship Proposal was arrived at lacked transparency**

83. It is apparent from the evidence of those council members who voted to refuse the Sponsorship Proposal that they did so, not because of the financial viability of the proposed recipients of the funding, but for a range of other reasons. Those reasons were not recorded in the formal record of the meeting.
84. The Inquiry has serious doubts about the transparency of the decision-making process in relation to the Sponsorship Proposal. The evidence supports the inference that the council members received the proposal, generally positively, in October 2016 when originally briefed about it. This positive view changed by the time of the first Committee Meeting on 31 January 2017. That Committee Meeting was held very shortly after complaints were made to certain council members by Mr Coward and Mr Fini, and questions were asked by Mr Hull.



85. The evidence of Ms Davidson and Mr Yong as to the reasons why they rejected the Sponsorship Proposal at the second Committee Meeting on 28 February 2018 was, as already described, concerning. It revealed that those council members voted along “party lines” and were not giving proper, independent consideration to Mr Close’s recommendation – a recommendation that on its face appeared thoroughly researched, consistent with the Council’s strategic priorities, backed by legal and financial advice and was many years in the making.
86. Had proper and independent consideration been given to the Sponsorship Proposal, it would either have been approved by the Committee, and later the Council, or it would have been refused and a proper reason given in the minutes for that refusal. However, the consideration given to the Sponsorship Proposal by those council members who recommended its refusal at the second Committee Meeting was not proper or independent. Rather, it appears to have been informed by the complaints made by Messrs Coward and Fini and in accordance with a voting bloc aligned with Ms Scaffidi.
87. Finally in this respect, Ms Scaffidi gave evidence that had she received an email from “an ordinary person from the suburbs expressing an opinion” on the Theatre, she would not have ignored it and would have forwarded it onto Ms Davidson and Mr Yong, particularly if it was a “well thought out statement of thought”.<sup>329</sup>
88. However, contrary to this evidence, on 22 March 2017, Ms Davidson received a lengthy and considered email from a resident of Tuart Hill expressing disappointment at the Council’s decision. Ms Davidson forwarded this email to Ms Scaffidi, saying “FYI. I am sure there will be others. I have just thanked him for his comments”. Ms Scaffidi responded to Ms Davidson stating only “Ignore – Tuart Hill”.<sup>330</sup>
89. In carrying out her role as Lord Mayor, Ms Scaffidi was required to have regard to the interests of the broader community, including visitors to the City, not only to the interests of residents or ratepayers of the City.<sup>331</sup> That is because of Perth’s unique role and status as the capital city of Western Australia.<sup>332</sup> It was not appropriate for Ms Scaffidi to suggest that Ms Davidson ignore that email because its sender was a person who lived outside the boundaries of the City. The Inquiry considers that the regard and attention that Ms Scaffidi paid to that email stands in stark contrast to the regard and attention that she paid to those of Mr Fini and Mr Coward, who, although they owned property in the City, did not reside in it.

## Findings

### Finding 2.2.2 – 3

The Inquiry makes the following findings:

- i. The attitude of council members changed from one which in October 2016 appeared generally (although not entirely) positive, to one which was generally (although not entirely) negative in March 2017.
- ii. The general attitude of Council appears to have changed at least in part as a result of lobbying from prominent stakeholders and allegiances to a voting bloc aligned with Ms Scaffidi.
- iii. Ms Davidson and Mr Yong voted at the second Committee Meeting on 28 February 2017 along “*party lines*”, rather than by the application of an independent consideration of the merits of the Sponsorship Proposal.
- iv. Council’s decision-making in relation to the Sponsorship Proposal lacked transparency. The reasons for its decision to refuse the application were not recorded in the minutes of the Council Meeting. In the Inquiry’s view, they should have been; if not for statutory compliance then for best practice.<sup>v</sup> The need for reasons is directed towards transparency in decision-making.

<sup>v</sup> *Local Government (Administration) Regulations 1996*, reg 11 states: “The content of minutes of a meeting of a council or a committee is to include – ... (da) written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee ...”.

## Endnotes

- 1 *City of Perth Act 2016*, s 8(1)(b).
- 2 *City of Perth Act 2016*, s 11(2).
- 3 *City of Perth Standing Orders Local Law 2009*, 1.3 – Purpose and effect, p 6.
- 4 Report, Productivity Commission New Zealand, Local government insights, February 2020.
- 5 *Planning and Development Act 2005*, s 72.
- 6 Document, Brief and Information Request Sheet for Adagio Grand Opening, City of Perth, 12 April 2013, p 8.
- 7 Transcript, L Altintas, private hearing, 18 December 2018, p 19-21.
- 8 Statement, City of Perth, Respondent's statement of issues, facts and contentions for the purposes of mediation, *Altintas & Anor and City of Perth*, SAT DR 96 of 2015, 24 April 2015.
- 9 Policy, City of Perth, Planning Policy Manual, City planning scheme no 2, s 6.4, Terrace Road Design Policy, 26 February 2013, p 3-5.
- 10 Lease, Altintas and ABQ Investment Group Pty Ltd, Unit 8, 90 Terrace Road, undated.
- 11 Transcript, L Altintas, private hearing, 18 December 2018, p 20-21; Transcript, I Bkoo, private hearing, 18 December 2018, p 44-45.
- 12 Lease, Altintas and ABQ Investment Group Pty Ltd, Unit 8, 90 Terrace Road, undated, p 7, 9-10, 38.
- 13 Lease, Altintas and ABQ Investment Group Pty Ltd, Unit 8, 90 Terrace Road, undated.
- 14 Transcript, J Qaraleh, private hearing, 18 December 2018, p 6-7; Transcript, I Bkoo, private hearing, 18 December 2018, p 46; Document, Application for Approval to Commence Development, L Altintas, 28 November 2014.
- 15 Transcript, J Qaraleh, private hearing, 18 December 2018, p 6-7; Transcript, I Bkoo, private hearing, 18 December 2018, p 49-50.
- 16 Transcript, I Bkoo, private hearing, 18 December 2018, p 49.
- 17 Transcript, M Smith, private hearing, 10 December 2018, p 31.
- 18 Transcript, D Martin, private hearing, 17 April 2019, p 9-10.
- 19 Transcript, J Qaraleh, private hearing, 18 December 2018 p 7; Transcript, I Bkoo, private hearing, 18 December 2018, p 49-50.
- 20 Transcript, D Martin, private hearing, 17 April 2019, p 7.
- 21 Witness statement, State Administrative Tribunal, M Noble, 1 July 2015, p 1.
- 22 Witness statement, State Administrative Tribunal, M Noble, 1 July 2015, p 2.
- 23 Email, K Lees to M Al Shanti, 4.58 pm 15 January 2015; Memorandum, Chief Executive Officer to All Elected Members, Petition – Council Meeting to be held 3 February 2015, 3 February 2015; Witness statement, State Administrative Tribunal, M Noble, 1 July 2015.
- 24 *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 2, Part 9, clause 75.
- 25 Terms of Reference, Part A.3(iv).
- 26 Terms of Reference, Part A.1.
- 27 Terms of Reference, Part A.2.
- 28 Document, Application for Approval to Commence Development, L Altintas, Received by City of Perth, 1 December 2014.
- 29 Document, Department of Planning, City Planning Scheme No 2, Schedule 3 – Use Group Tables, P13 Adelaide, S3-13, 18 July 2014.
- 30 Email, K Lees to M Al Shanti, 4.58 pm 15 January 2015.
- 31 Minutes, Planning Committee Meeting, 27 January 2015.
- 32 Transcript, M Smith, private hearing, 10 December 2018 p 30.
- 33 Minutes, Planning Committee Meeting, 27 January 2015, p 1-3, 14-24, Schedules 6, 7, 8.
- 34 Minutes, Planning Committee Meeting, 27 January 2015, Schedule 8.
- 35 Minutes, Planning Committee Meeting, 27 January 2015.
- 36 Transcript, M Smith, private hearing, 10 December 2018, p 13, 49-50.
- 37 Minutes, Planning Committee Meeting, 27 January 2015; Minutes, Planning Committee, 17 February 2015.
- 38 Minutes, Planning Committee Meeting, 27 January 2015.
- 39 Minutes, Ordinary Council Meeting, 3 February 2015.
- 40 Minutes, Ordinary Council Meeting, 3 February 2015.
- 41 Transcript, K Yong, private hearing, 3 July 2019, p 23.
- 42 Memorandum, City of Perth, CEO to Lord Mayor and Councillors, 3 February 2015.
- 43 Witness statement, State Administrative Tribunal, M Noble, 1 July 2015.
- 44 Minutes, Planning Committee Meeting, 27 January 2015.
- 45 Minutes, Planning Committee Meeting, 27 January 2015.
- 46 Transcript, J McEvoy, public hearing, 7 August 2019, p 67.
- 47 Transcript, R Harley, private hearing, 5 July 2019, p 79.
- 48 Transcript, R Harley, private hearing, 5 July 2019, p 79.
- 49 *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 2, Part 9, clause 75.
- 50 Transcript, M Smith, private hearing, 12 December 2018, p 18-19.
- 51 Email, K Lees to M Al Shanti, 6.06 pm 5 February 2015.

- 52 Minutes, Planning Committee Meeting, 17 February 2015.
- 53 Minutes, Planning Committee Meeting, 17 February 2015.
- 54 Minutes, Planning Committee Meeting, 17 February 2015; Document, Deputation to Planning Committee, I Borello and M Al Shanti, 17 February 2015.
- 55 Minutes, Planning Committee Meeting, 17 February 2015.
- 56 Transcript, M Smith, private hearing, 10 December 2018, p 55.
- 57 Transcript, J McEvoy, public hearing, 7 August 2019, p 71-73.
- 58 Transcript, R Harley, private hearing, 5 July 2019, p 79.
- 59 Transcript, R Butler, private hearing, 11 July 2019, p 45.
- 60 Email, I Roger to J Limnios, 23 February 2015.
- 61 Email, J Limnios to M Mileham, 5.44 pm 23 February 2015.
- 62 Email, M Mileham to J Limnios, 9.07 am 24 February 2015.
- 63 Minutes, Ordinary Council Meeting, 24 February 2015.
- 64 Transcript, L Scaffidi, private hearing, 9 July 2019, p 21.
- 65 Minutes, Ordinary Council Meeting, 24 February 2015, Schedule 18, Petition, Proposed proprietors of Glory Xpress Convenience Market.
- 66 Minutes, Ordinary Council Meeting, 24 February 2015.
- 67 Minutes, Ordinary Council Meeting, 24 February 2015.
- 68 Transcript, J Adamos, public hearing, 8 August 2019, p 91.
- 69 Transcript, L Scaffidi, private hearing, 9 July 2019, p 21-22.
- 70 Transcript, L Scaffidi, private hearing, 9 July 2019, p 22.
- 71 Transcript, J Limnios, private hearing, 2 August 2019, p 43.
- 72 The correct terminology is an *"application for review"*.
- 73 Transcript, J Limnios, private hearing, 2 August 2019, p 43.
- 74 Transcript, K Yong, private hearing, 3 July 2019, p 29.
- 75 Transcript, R Butler, private hearing, 11 July 2019, p 49-52.
- 76 Transcript, M Smith, private hearing, 10 December 2018, p 66.
- 77 Transcript, M Smith, private hearing, 10 December 2018, p 66-67.
- 78 Transcript, J McEvoy, public hearing, 7 August 2019, p 85-86.
- 79 Transcript, J Adamos, public hearing, 8 August 2019, p 104-105.
- 80 Transcript, M Smith, private hearing, 10 December 2018, p 67.
- 81 Email, J McEvoy to M Noble, 8.08 pm 24 February 2015.
- 82 Email, J McEvoy to M Noble, 8.08 pm 24 February 2015.
- 83 Email, M Noble to J McEvoy, 5.36 pm 25 February 2015.
- 84 Email, J McEvoy to J Adamos, 6:06 pm 25 February 2015.
- 85 Transcript, J Adamos, public hearing, 8 August 2019, p 104-105.
- 86 Email, J McEvoy to J Adamos, 6.36 pm 25 February 2015; Transcript, J Adamos, public hearing, 6 September 2019, p 79-80.
- 87 Email, J Adamos to M Noble, 9.01 pm 25 February 2015.
- 88 Email, J Adamos to M Noble, 11.21 pm 3 March 2015.
- 89 Transcript, J McEvoy, public hearing, 7 August 2019, p 9.
- 90 Transcript, J Adamos, public hearing, 8 August 2019, p 104-105; Transcript, J Adamos, public hearing, 6 September 2019, p 84-85.
- 91 Application, State Administrative Tribunal, M Al Shanti, 20 March 2015.
- 92 Notice, State Administrative Tribunal, Legal practitioner/agent notice of representation, 23 April 2015; Witness statement, State Administrative Tribunal, J Algeri, 1 July 2015.
- 93 Transcript, M Smith, private hearing, 10 December 2018, p 72-73.
- 94 Email, M Smith to G Stevenson, 10.24 am 13 April 2015.
- 95 Email, G Stevenson to council members, 10.59 am 12 April 2015.
- 96 Email, J Adamos to G Stevenson, 11.25 am 12 April 2015.
- 97 Email, G Stevenson to J Adamos, 9.40 am 30 April 2015.
- 98 Transcript, J Adamos, public hearing, 8 August 2019, p 113-114.
- 99 Email, G Stevenson to L Scaffidi, 8.04 pm 14 April 2015.
- 100 Email, L Scaffidi to M Noble, 2.09 pm 30 April 2015.
- 101 Email, L Scaffidi to J Adamos, 10.03 am 30 April 2015.
- 102 Email, J Adamos to L Scaffidi, 10.06 am 30 April 2015.
- 103 Transcript, M Smith, private hearing, 10 December 2018, p 87.
- 104 Witness statement, State Administrative Tribunal, J Algeri, 1 July 2015; Witness statement, State Administrative Tribunal, M Noble, 1 July 2015.

- 105 Transcript, M Smith, private hearing, 12 December 2018, p 12.
- 106 Transcript, J Qaraleh, private hearing, 18 December 2018, p 8.
- 107 Memorandum, G Stevenson to council members, Late Confidential Item and Schedules – Planning Committee Meeting – Tuesday, 15 September 2015, 14 September 2015.
- 108 Email, M Smith to Lord Mayor and councillors, 1.58 pm 14 July 2015.
- 109 Email, R Harley to M Smith, 2.20 pm 14 July 2015.
- 110 Transcript, M Smith, private hearing, 12 December 2018, p 28.
- 111 Transcript, M Smith, private hearing, 10 December 2018, p 67; Transcript, M Smith, private hearing, 12 December 2018, p 46.
- 112 Email, J McEvoy to J Adamos, 6.06 pm 25 February 2015.
- 113 Transcript, M Smith, private hearing, 12 December 2018, p 46.
- 114 Minutes, Planning Committee Meeting, 15 September 2015.
- 115 Memorandum, G Stevenson to council members, Late Confidential Item and Schedules – Planning Committee Meeting – Tuesday, 15 September 2015, 14 September 2015, p 4-5.
- 116 Minutes, Planning Committee Meeting, 15 September 2015.
- 117 Email, M Noble to L Scaffidi, 6.52 am 22 September 2015.
- 118 Email, L Scaffidi, 7.11 am 22 September 2015.
- 119 Email, J McEvoy, 10.02 am 22 September 2015.
- 120 Email, R Butler, 10.53 am 22 September 2015.
- 121 Transcript, J Adamos, public hearing, 8 August 2019, p 115, 117.
- 122 Transcript, J Adamos, public hearing, 8 August 2019, p 115, 117.
- 123 Minutes, Ordinary Council Meeting, 22 September 2015.
- 124 Consent Order, State Administrative Tribunal, Schedule of conditions, 26 October 2015.
- 125 Transcript, M Smith private hearing, 13 December 2018, p 14-15.
- 126 Transcript, J Qaraleh, private hearing, 18 December 2018, p 7.
- 127 Transcript, J Qaraleh, private hearing, 18 December 2018, p 8.
- 128 Transcript, J Qaraleh, private hearing, 18 December 2018, p 10-12.
- 129 Transcript, M Smith, private hearing, 13 December 2018, p 20, 21.
- 130 Transcript, D Martin, private hearing, 17 April 2019, p 11-13.
- 131 Transcript, M Smith, private hearing, 13 December 2018, p 24.
- 132 Email, M Smith to J Adamos, 3.54 pm 5 May 2016.
- 133 Email, M Smith to M Noble, 3.44 pm 5 May 2016.
- 134 Email, M Smith to J Adamos, 3.54 pm 5 May 2016.
- 135 Email, J Adamos to M Smith, 4.01 pm 5 May 2016.
- 136 Email, M Noble to J Adamos, 8.24 pm 4 May 2016.
- 137 Application for Development Approval, L Altintas and S Altintas, 18 July 2016.
- 138 Transcript, I Bkoor, private hearing, 18 December 2018, p 55, 58.
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- 273 Transcript, D High, private hearing, 14 March 2019, p 62.
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- 276 Email, P Coward to J Davidson, 3.22 pm 29 January 2017.
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## 2.2.3 Disclosures, personal interest and entitlements

The sections in this Chapter examine:

- Failure by some council members to disclose their financial or other interests.
- Misuse by some council members of entitlements, which were available to assist them in their official role. This included use of the Council dining room and reimbursement for costs associated with restaurants, clothes and dry cleaning.
- Misuse by a council member of her official title, office, business cards, email and the dining room for private business purposes.

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### Interests

In serving the electorate and representing the interests of the whole community, council members must act to avoid any conflict between their own interests and the interests of the community in general.

A council member's own interests may relate to their business interests or any other benefit they receive in their private capacity while they are a council member.

A fundamental principle is that council members must always consider the community's interest in any decisions or actions taken in their role as a council member. Each matter should be considered and decided on its own merits.

In the event of a conflict between the public and private interests of a council member, the former must prevail.

Interests should be disclosed by council members. There are a variety of mechanisms for this to occur under the *Local Government Act 1995* (LG Act) and regulations, including primary and annual returns, and interest declarations at council and committee meetings related to impartiality, financial interests (direct or indirect) and proximity interests.<sup>1</sup>

Disclosure of interests ensures transparency and integrity in decision-making and that the interests of the community are paramount. It also ensures that council members are accountable. Without disclosure, transparency and accountability are reduced and, if a council member is tempted to act to benefit himself or herself, the chances of this being identified are reduced.

This Chapter examines the quality of disclosures made by council members in relation to their financial interests. A situation involving the improper use by a council member of that member's position to obtain a private benefit is also examined.

### Council member allowances and entitlements

Council members are effectively the trustees of local government funds and property. A council member is considered a "*public officer*".<sup>2</sup> Funds of the City must be used appropriately. Funds must not be used for personal gain or benefit by a public officer.

The legislation and City of Perth Council (Council) policy contain the rules governing allowances and entitlements of council members at the City. The maximum amounts and categories of allowances are set by the Council. Claims for expenses and entitlements related to the council activities of a council member are certified as a legitimate expense and processed by the City's Administration. On some occasions, City officers have raised concerns about claims made by council members.

In their representative roles, council members are paid for their attendance at Council and committee meetings.<sup>3</sup> This amount is set annually by the Salaries and Allowances Tribunal. The allowance for the Lord Mayor and salary for the Chief Executive Officer is also provided for in that determination. The Salaries and Allowances Tribunal provide a minimum and a maximum for the fees and allowances across four "*Bands*". The City is considered a "*Band 1*" local government.

The Council determined the policy for the Lord Mayor's and Deputy Lord Mayor's allowances and council member meeting attendance fees in accordance with Part 5, Division 8 of the LG Act. Attendance fees for council members and the lord mayoral allowance were to be the maximum provided for in the Salaries and Allowances Tribunal determination.<sup>4</sup> Annual attendance fees were paid in lieu of the payments for individual council meetings, committee meetings and prescribed meeting attendances (Table 2.1). Committee members who were not council members or employees were not entitled to be paid for their attendance.<sup>5</sup> However, they could be reimbursed for expenses in accordance with Council policy.<sup>6</sup>

**Table 2.1: Lord Mayor and Councillor attendance fees and allowances during financial years 2015/2016 to 2017/2018.**

Category <sup>7</sup>	2015/2016	2016/2017	2017/2018
<b>Annual attendance fees</b>			
Councillor	\$30,900.00	\$31,364.00	\$31,364.00
<b>Local government allowance</b>			
Lord Mayor Allowance	\$133,900.00	\$135,909.00	\$135,909.00
Deputy Lord Mayor <sup>a</sup>	\$33,475.00	\$33,977.25	\$33,977.25

Council members were also entitled to be reimbursed for expenses and/or be paid an allowance for certain types of expenses (Table 2.2).<sup>8</sup> Council Policy provides for the categories of reimbursement. Council members were provided with appropriate facilities, equipment and access to information and training opportunities to enable them to perform their duties. In addition, Council members had the use of the Council dining room facilities, on Level 10 of Council House, to entertain guests for purposes connected to Council business. If the dining room was closed or unavailable, Council policy provided for the reimbursement of the cost of a restaurant meal incurred by a council member.

<sup>a</sup> This is calculated by taking the figure in the row titled 'Lord Mayor Allowance' and multiplying 0.25. The deputy lord mayoral allowance is 25 per cent of the Lord Mayor Allowance as contained in the Determination of the Salaries and Allowances Tribunal in 2015, 2016 and 2017.

**Table 2.2: Entitlements and allowances set by Council during financial years 2015/2016 to 2017/2018.**

Category	2015/2016	2016/2017	2017/2018
Reimbursement of Expenses	\$13,360.00	\$13,360.00	\$13,360.00 <sup>b</sup>
Dining Room allowance <sup>g</sup>	\$12,000.00	\$12,000.00	\$12,000.00

During the three financial years covered by the Inquiry's Terms of Reference, approximately half a million dollars annually was paid to council members in the form of fees, allowances and expenses (Table 2.3). Council members, during the Inquiry's Terms of Reference period of 1 October 2015 to 1 March 2018, incurred \$118,385.26 of costs at the Council's dining room (Table 2.4).

**Table 2.3: Total payments to City council members during financial years 2015/2016 to 2017/2018.**

Categories of financial expenditure	2015/2016 <sup>10</sup>	2016/2017 <sup>11</sup>	2017/2018 <sup>12, (c)</sup>
Annual attendance fees <sup>d</sup>	\$293,550.00	\$297,958.00	\$223,312.00
Local government allowance <sup>e</sup>	\$167,375.00	\$169,886.00	\$149,828.00
Reimbursement of expenses <sup>f</sup>	\$68,440.00	\$48,993.00	\$36,461.00
<b>Total</b>	<b>\$529,365.00</b>	<b>\$516,837.00</b>	<b>\$409,601.00</b>

**Table 2.4: Total cost of dining room expenses incurred by council members for the period 1 October 2015 to 1 March 2018 (allocated by financial year).**

Categories of financial expenditure	2015/2016 (from 1 October 2015)	2016/2017	2017/2018 (to 1 March 2018)
Dining room <sup>13</sup>	\$43,090.94	\$60,170.70	\$15,123.62

It should be noted that at the 24 April 2018 Ordinary Council Meeting, the City of Perth Commissioners amended Council Policy "CP10.5 – Council Member Allowance and Meeting Attendance Fees". It was amended to provide the following by way of attendance fees and allowances for the Council:

- the lord mayoral allowance is to be the minimum level set within the appointed band allocation of the City as set out by the Salaries and Allowances Tribunal;
- no deputy lord mayoral allowance is to be paid; and
- council member meeting attendance fees are to be per meeting and at the minimum level within the appointed band allocation of the City as set out by the Salaries and Allowances Tribunal.

This Chapter explores the misuse of council member entitlements at the City during the period of the Inquiry's Terms of Reference.

<sup>b</sup> On 21 November 2017, an annual limit for clothing, apparel and dry cleaning of \$3,000.00 was introduced.

<sup>c</sup> The Council was suspended from 2 March 2018.

<sup>d</sup> This relates to payments for "Meeting Attendance Fees" referred in CP10.5, Council Member Allowance and Meeting Attendance Fees.

<sup>e</sup> This relates to payments for the "Lord Mayor Allowance" and "Deputy Lord Mayor Allowance" referred in Council Policy CP10.5, Council Member Allowance and Meeting Attendance Fees.

<sup>f</sup> This relates to the reimbursement of expenses provided in CP10.6, Elected Members – Reimbursement of Expenses. The City advised the Inquiry that expenses related to council members use of the dining room may not be included in this amount. It is dependent upon the cost account the expense was attributed to at the time, as to whether it is captured in this data.

## Disclosure of financial interests

### Introduction

1. Council members and designated employees (Relevant Persons) of the City of Perth (City) are required to disclose certain financial interests in annual and primary returns. They must also disclose other financial interests, including certain gifts and contributions to travel,<sup>g</sup> on an ongoing basis. When a Relevant Person has a financial interest that could affect a decision to be made by the City, rules around conflicts of interests may require that person to disclose the interest and remove themselves from decision-making on that issue.
2. This Section focuses on financial interest disclosures by council members and the role played by the Chief Executive Officer (CEO) and the Governance unit in that process. Designated employees mostly complied with their financial interest disclosure obligations.
3. The issue of council members' financial interests, and particularly gifts, has proved important to many local government constituents. In 2017, the State Government announced a review of the *Local Government Act 1995* (LG Act),<sup>14</sup> marking the first significant reform of local government conducted in more than two decades. Part of that review process has been an extended period of public consultation. Fifty per cent of the submissions returned through that consultation process addressed the issue of gifts and almost 80 per cent of submissions from the community wanted gift declaration rules tightened. The consultation process revealed that:
 

*“Feedback on the issue of gifts reflected the complexity and contentiousness of the topic, with diverse opinions offered on a suitable regulatory approach to gifts.*

...

*Community members generally opposed the receipt of gifts in all forms, even if they were declared, as all forms of gifts could be perceived as a conflict of interest”.*
4. Amendments to the LG Act and its Regulations have been recently introduced with the passing of the *Local Government Legislation Amendment Act 2019*. These amendments change how and when gifts must be declared.

<sup>g</sup> Since 18 October 2019, the definition of a gift includes a travel contribution: *Local Government Act 1995*, s 5.57(b).

5. Transparency and accountability around financial interests is fundamental to good government. As the Department of Local Government, Sport and Cultural Industries (Department) noted in its position paper on gifts policies:

*“Given the important role of council members and many local government employees as decision-makers in positions of power, the public has a reasonable expectation that the important decisions that a local government makes are free from improper influence. It is critical that the receipt of gifts is openly and transparently acknowledged and recorded, and that those records are made freely available to the community.*

*The receipt or non-disclosure of gifts that may have an effect on, or could be perceived as possibly having an effect on, the decision-making of council members run the risk of damaging the reputation of the local government sector and the trust placed in council members by their communities. In extreme cases this could leave Councils unable to perform their primary function of providing for the good government of people in their districts.”<sup>15</sup>*

6. Similar principles apply to other financial interests of council members and City employees that could affect, or be perceived to affect, decision-making by the City.
7. An important goal of the Inquiry process is to restore public confidence in the City’s ability to provide good government for its community.<sup>16</sup> A thorough assessment of financial interest disclosures is a vital part of achieving that goal.

## Issues considered by the Inquiry

8. The Inquiry examined:

- the extent of compliance with the disclosure requirements for financial interests and gifts;
- where a council member had a financial interest in a matter coming before the Council for a decision, whether that council member made disclosures and took appropriate steps to avoid conflicts of interest;
- the extent to which checks and balances were provided by way of:
  - i. accurate, appropriate and legally compliant disclosures of income sources and other financial interests in council members’ primary and annual returns; and
  - ii. governance mechanisms in place at the City; and
- the protections and support provided by the legislative framework that governs these disclosure requirements, and whether the application of that framework served the goals of the disclosure regime.



## Investigation by the Inquiry

### Applicable Terms of Reference

9. The Terms of Reference require the Inquiry to inquire into and report on:

- adequacy and competency of Council decision-making;<sup>17</sup>
- governance practices, including adherence to the financial interest provisions of the LG Act;<sup>18</sup>
- sponsorship arrangements between organisations and the City and the acceptance of gifts in the form of tickets to events by members from those organisations;<sup>19</sup> and
- whether any member engaged in improper or unlawful conduct in relation to the performance by the Council or the members of any of their functions and obligations.<sup>20</sup>

10. Broadly, the Inquiry must inquire into and report on those aspects, operations and affairs of the City which may be necessary in order to determine whether there has been a failure to provide good government and whether good government can be provided in the future.<sup>21</sup>

### Financial interest disclosures are an essential part of good government

11. In *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222, the Court of Appeal set out the purpose of the framework for the disclosure of gifts and financial interests, as established by the LG Act and applicable Regulations. The following paragraphs from the judgement of the Court helpfully demonstrate the connection between financial interest disclosures, transparent and unbiased decision-making and the provision of good government:

*“The purpose of the above [financial disclosure] provisions is evident from their text, and is directed to the objects specified in s 1.3(2) of the [LG] Act of resulting in ‘better decision-making by local governments’ and ‘greater accountability of local governments to their communities’.*

*In broad summary, the objective legislative intention is to prevent council members from making decisions in matters in which they, or closely associated persons, have an interest which might, or might reasonably be apprehended to, divert the member from deciding the matter on its merits. The regime is also designed to deter third parties who may be affected by decisions of council from seeking to influence the decisions by the provision of gifts and contributions to travel to council members by ensuring disclosure of interests and relationships and preventing participation by an affected member.*

*By requiring disclosure in returns which are available for public inspection, the legislation provides a means for the identification of failures by members to disclose interests at meetings and recuse themselves from consideration of a matter in which they were interested. The disclosure mandated by s 5.82 and s 5.83 also serves to designate persons ‘closely associated’ with a council member, and to prevent the member’s participation in decisions which may affect the financial interests of those associated persons. Importantly for the resolution of this case, the focus of the legislation is on interests and relationships which might influence a council member to decide a matter otherwise than on its merits, or which a fair-minded observer might reasonably apprehend to do so. Contrary to the findings of the Tribunal noted below, the purpose of the regime is not to prevent council members from establishing interests which could improperly influence their decisions. Rather, the [LG] Act requires that, where such an interest exists, the council member must disclose the interest and not participate in a decision which could affect that interest. In that respect, the [LG] Act’s specific express provisions may be seen as an expression of, or closely related to, that aspect of the rules of procedural fairness, otherwise implied in the [LG] Act, which is concerned with bias and reasonable apprehension of bias arising from personal interest”.<sup>22, (h)</sup> [citations omitted]*

## Investigation

12. The Inquiry conducted a comprehensive intelligence-led investigation, which compared the City’s financial disclosure records with intelligence holdings from sources including the Australian Securities and Investments Commission, Land Titles records, open source research and a range of other records held by the City.
13. Relying on its coercive powers under the *Royal Commissions Act 1968* (RC Act)<sup>23</sup> the Inquiry served Notices to Produce Documents or Notices to Produce Statements of Information on council members and the CEO, Mr Martin Mileham. The purpose of these Notices was to obtain information regarding disclosable sources of income and financial interests. The responses provided by council members and Mr Mileham have been considered when making findings in this Section.
14. The Department commenced an inquiry under Division 1 of Part 8 of the LG Act (Departmental Authorised Inquiry) into the “*operations and affairs surrounding the acceptance of tickets to events and the accompanying sponsorship arrangements between organisations and the City from 1 January 2008*”. The Department provided its Departmental Authorised Inquiry files to the Inquiry on 10 May 2018. The Departmental Authorised Inquiry was not finalised before handover to the Inquiry. The Departmental Authorised Inquiry has been considered later in this Report and the Inquiry has considered the information revealed by the Departmental Authorised Inquiry when making its findings in this matter. In doing so, this Inquiry has conducted its examination of that information within the parameters of its own Terms of Reference.

<sup>h</sup> This case did not consider the *Local Government (Rules of Conduct) Regulations 2007*.

## Witnesses

15. The Inquiry held private and public hearings with a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section:

- Council members Ms Lisa Scaffidi, Mr Jim Adamos, Ms Lily Chen, Ms Janet Davidson, Mr Reece Harley, Mr James Limnios, Mr Keith Yong;
- Mr Martin Mileham, CEO;
- Mr Mark Ridgwell, Manager Governance;
- Mr Chad Ferguson, Director of the property development company Devwest Group Pty Ltd;
- Mr Daniel Sean Choung Ow, a former employee of Devwest Group Pty Ltd; and
- Mr Xin Ping Chen (Henry), Ms Chen's accountant.<sup>24</sup>

## Evidence obtained by the Inquiry

### Disclosure of financial interests in primary and annual returns

#### Relevant persons must lodge a primary return and annual returns

16. The LG Act requires that council members and designated employees each file a primary return with the City within three months of their start day. They must also file a retrospective annual return by 31 August for each year they are a council member or a designated employee.<sup>25</sup> In those returns, they must disclose their sources of income,<sup>26</sup> interests in or dispositions of real property located within the City's district or in an adjoining district,<sup>27</sup> certain interests in trusts,<sup>28</sup> interests and positions in corporations<sup>29</sup> and debts owed.<sup>30</sup>
17. The LG Act permits council members and designated employees to make additional discretionary disclosures of any direct or indirect benefits, advantages or liabilities, whether financial or not, "*which the person considers might appear to raise a conflict between the person's private interests and the person's duty as a council member or a designated employee*".<sup>31</sup>
18. As noted in *Scaffidi v Chief Executive Officer, Department of Local Government and Communities*,<sup>32</sup> the main focus of the disclosure regime is to protect the integrity of decision-making by the City.
19. This is further supported by the fact that council members and designated employees are not required to disclose the value or amounts of their interests,<sup>33</sup> and that income and debts do not need to be disclosed if they fall below the prescribed amount of \$500.00.<sup>34</sup>

20. The LG Act prescribes the maximum penalties for not lodging a primary or annual return by the required dates, or for not complying with the requirements for information to be disclosed in those returns, as a \$10,000.00 fine or imprisonment for two years.<sup>35</sup>

**Council members largely complied with disclosure requirements for annual and primary returns**

21. Council members, the CEO and City's Executive Leadership Group (ELG) members (who are designated employees) were largely compliant with the primary return and annual return requirements of the LG Act. However, the Inquiry has identified some isolated instances of non-disclosure by some council members and substantial non-disclosure by one council member, Ms Lily Chen.
22. The Inquiry's investigations have also revealed ambiguities in the legislative framework, particularly around the disclosure of income in primary and annual returns.

**Lodgement of primary returns and annual returns by specified dates**

23. Within the period covered by the Inquiry's Terms of Reference, all council members, the CEO and ELG members lodged their annual returns for the financial years 2015/2016 and 2016/2017 with the City by the due date.<sup>i</sup>
24. Annual returns for the 2017/2018 financial year were due to be lodged by 31 August 2018.<sup>36</sup> The Inquiry's Terms of Reference span the period 1 October 2015 to 1 March 2018. Accordingly, the return date of August 2018 falls outside the Inquiry's Terms of Reference.
25. However, annual returns are completed retrospectively and financial interests accrued from 1 July 2017 to 1 March 2018 would be required to be disclosed in those annual returns. The Inquiry therefore considers it appropriate and within its Terms of Reference to consider the annual returns for 2017/2018.
26. Ms Chen did not lodge her annual return for 2017/2018 by 31 August 2018. All other council members, the CEO and ELG members lodged their annual returns for 2017/2018 with the City by the due date.
27. Although the Council had been suspended by this time, the Department provided the following advice to the City:
- "The Department's view is that even though the Council was suspended, the elected members still acted in their role for part of the relevant period. Therefore, it is best to err on the side of caution and request an Annual Return be lodged".<sup>37</sup>*
28. Mr Mileham wrote to all council members by email on 6 August 2018 advising them that, in accordance with the LG Act, they were required to provide an annual return for the 2017/2018 financial year, notwithstanding they were suspended at the time. Mr Mileham's memorandum attached an example annual return form and the previous return form completed by the relevant council member and reminded the council members that the return should be submitted by no later than 30 August 2018.<sup>38</sup> Ms Chen recalled receiving that information from Mr Mileham.<sup>39</sup>

i Being 31 August of that year: *Local Government Act 1995*, s 5.76(1).

29. Ms Chen did not recall whether she filed an annual return. However, she said she “*might*” not have completed it or might have completed the return and forgotten to lodge it with the City. Ms Chen said that if she did not file an annual return for 2017/2018, it was likely she forgot because she was busy working as a sole legal practitioner.<sup>40</sup>
30. The Inquiry considers that the Department’s advice to the City was correct and that annual returns did have to be completed by council members for 2017/2018, notwithstanding that when a council is suspended, the powers and duties of the Council or any council member cannot be performed by that Council or council member.<sup>41</sup> The Council had sat for approximately eight months of 2017/2018 before it was suspended and would have made many decisions in this time. It was therefore vital that the public continued to have access to an updated register of council members’ financial interests that included the final months of the Council before it was suspended.<sup>42</sup>
31. The Inquiry was able to obtain annual returns for 2017/2018 for all council members except Ms Chen and finds Ms Chen did not file an annual return for the 2017/2018 financial year.

#### Disclosure of real property ownership in primary and annual returns

32. Council members who own real property in the City of Perth or an adjoining district have two types of disclosure obligations: (i) the interest in the property itself,<sup>43</sup> and (ii) any rental or other income received in respect of the property.<sup>44</sup>

#### Ms Lily Chen

33. Ms Chen and her husband owned multiple residential properties in the City’s district and in adjoining districts.
34. Ms Chen acquired a residential property in Nedlands in December 2013. As Nedlands is an adjoining district of the City, Ms Chen was required to disclose this property in her annual return for 2013/2014. Ms Chen did not disclose the interest in her 2013/2014 return,<sup>45, (j)</sup> or in her 2014/2015 annual return.<sup>46</sup> She eventually disclosed her ownership of the property in her annual return for 2015/2016,<sup>47</sup> which meant this interest remained undisclosed for two years.
35. Separately, Ms Chen disclosed a different property she owned in her annual return for 2013/2014. However, Ms Chen gave the property the wrong address in this annual return, writing “114/239 Pier St. WA 6000” instead of the correct address.<sup>48</sup>
36. Ms Chen said she “*forgot about the address*” once the property had settled. The relevant documents were not in her office when she completed her return, so rather than contacting her property manager or obtaining the documents, she simply conducted an online search and used a street address that was close to what she remembered about the property’s location.<sup>49</sup> The result is that Ms Chen declared a property interest she did not have and did not declare a property interest she did have.

j Transcript, L Chen, public hearing, 13 August 2019, p 49-50 (at p 50 Counsel Assisting incorrectly stated the property was acquired in December 2016, not 2013).

37. Ms Chen admitted she had not been careful and had not paid attention to details in filling out her annual return.<sup>50</sup> Ms Chen used this same inaccurate address on her annual return the following year.<sup>k</sup> She eventually recorded the correct address in her annual return for 2015/2016.<sup>51</sup> Ms Chen did not inform the City her previous two disclosures had been inaccurate and did not seek to have her previous disclosure records corrected.
38. Ms Chen's conduct may not have complied with her disclosure obligations. There is no evidence before the Inquiry that Ms Chen wrote down the incorrect address to intentionally mislead the City, or that it resulted in Ms Chen inappropriately voting on matters in which she had an interest. However, Ms Chen's careless approach to disclosure in this instance defeated the purpose for which the disclosure regime exists.
39. The focus of the disclosure regime is on preserving the integrity of the City's decision-making and ensuring that decision-making is performed in the public interest, rather than to benefit individual council members or their associates.
40. The LG Act requires council members to disclose their financial and property interests with enough accuracy and specificity so that a potential conflict of interest can be identified if a matter were to come before the Council that could be affected by a council member's private interests.
41. For example, a council member may be required to abstain from voting on a matter before Council if the council member has a proximity interest in the matter.<sup>52</sup> Proximity interests arise when certain decisions before Council affect land that "adjoins" the council member's land. A proximity interest can only be determined by reference to the specific location of a council member's land.
42. If a matter had come before the Council, which affected the land Ms Chen actually owned and created a proximity interest under the LG Act, there would have been no way for anyone other than Ms Chen to identify the potential conflict of interest.
43. This situation did not arise. However, the clear potential for this situation to occur underlines the point that inaccurate and incomplete disclosures of interests can have significant and undesirable consequences. The need to preserve the integrity – both actual and perceived – of council decision-making in practice requires accurate and complete disclosures of interests. Ms Chen's careless approach to her disclosure obligations in this instance created an unacceptable and entirely unnecessary risk. Regrettably, this reckless indifference to her disclosure obligations was not an isolated event for Ms Chen, as described later in this Section.
44. The Inquiry is not aware of any evidence that other council members did not disclose ownership interests in real property in their primary or annual returns.
45. However, three council members and one member of the ELG either did not, or did not correctly, disclose rental income as a source of income in their returns.

k Form, L Chen, Annual Return for 2014/2015, 28 July 2015, p 1. Although for this return, she recorded the address as "1114/239 Pier St", not "114/239 Pier St".

### Disclosure of rental income in returns

#### Mr Reece Harley

46. Mr Harley disclosed ownership of one property in his primary return. In that same return, he declared rental income earned from that property.<sup>53</sup> It is apparent from the return form that Mr Harley disclosed this rent as though it were an additional discretionary disclosure, as permitted by section 5.87 of the LG Act, rather than as a source of income which he was required to disclose under sections 5.78 and 5.80 of the LG Act. Mr Harley wrote “N/A” under the heading “*sources of other income*”. Mr Harley disclosed this rental income, again as though it were a discretionary disclosure, in his next annual return for 2013/2014.<sup>54</sup>
47. It was appropriate that he disclosed this rental income to the City, although there are some deficiencies in the disclosure. Mr Harley disclosed this rental income in the incorrect part of the form.
48. Mr Harley did not disclose this rental income in any subsequent returns. Where income is disclosed in a return under section 5.80 of the LG Act, it does not need to be disclosed again in each subsequent return,<sup>55</sup> and so it is appropriate that he did not do so, notwithstanding the fact that he completed the initial form incorrectly.
49. In his annual return for 2014/2015, Mr Harley declared co-ownership of two additional properties.<sup>56</sup> In response to the Inquiry’s Notice to Produce a Statement of Information,<sup>57</sup> Mr Harley provided a spreadsheet which showed he did receive rental income from these two properties from at least 2015/2016.<sup>58, (l)</sup> However, he did not disclose rent as an income source from those properties in any return.<sup>59</sup>

#### Dr Jemma Green

50. Dr Green disclosed ownership interests in a number of properties in her primary return dated 3 December 2015 and her annual returns for the years 2015/2016 to 2017/2018.
51. In response to the Inquiry’s Notice to Produce a Statement of Information,<sup>60</sup> Dr Green’s legal representatives provided a table which disclosed Dr Green did receive rental income from three of these properties from at least 2015/2016.<sup>61, (m)</sup> However, she did not disclose rent as an income source from those properties in any return.<sup>62</sup>

#### Ms Lily Chen

52. Ms Chen received rental income from multiple properties from 2011/2012 to 2016/2017. She did not disclose rental income in her annual returns for 2011/2012 or 2012/2013. She did disclose the receipt of rental income in her annual return for 2013/2014.<sup>63</sup> Although Ms Chen did not disclose any rental income in her annual returns for 2014/2015, 2015/2016 and 2016/2017, there was and is no requirement for a council member to include in a return any information regarding a source of income that had already been disclosed in a previous return.<sup>64</sup>

l The period of time in the notice was confined to providing defined sources of income for 2015/2016 and 2016/2017.

m The period of time in the notice was confined to providing defined sources of income for 2015/2016 and 2016/2017.



53. Ms Chen said she had thought it was “*good enough*” that, although she had not disclosed her receipt of rent as a source of income in her annual return for 2011/2012, she had listed her ownership interests in multiple residential properties. She maintained that as a person can only live in one property at a time, it should have been apparent the remaining properties may be subject to a lease.<sup>65</sup> This reasoning does not follow as a matter of course. In any event, Ms Chen’s disclosure in this area was inconsistent, because although she did not disclose rental income from properties in her annual return for 2012/2013, she did so in her annual return for 2013/2014.<sup>66</sup>

#### Mr Paul Crosetta

54. Mr Paul Crosetta, the City’s Director, Construction and Maintenance, disclosed ownership of three properties in addition to his residential address in his primary return dated 7 January 2016.<sup>67</sup> He did not disclose income from any rent from these properties as a source of income. In his annual return for 2015/2016, he disclosed two of these properties in the section headed “*Real property*” as “*own – rented*” and the third was disclosed as having been sold in the section headed “*Disposition of property*”.<sup>68</sup> However, he did not disclose the receipt of any rent as a source of income in the section headed “*Income sources*”.<sup>69</sup> He completed his annual returns for 2016/2017 and 2017/2018 in the same manner; identifying that the two properties were either rented or investments in the section headed “*Real property*”, although he did not declare rent as an income source in those returns.<sup>70</sup>

#### Ambiguities in the disclosure regime – rental income

55. The Inquiry notes the City’s return forms did not expressly state that rent must also be disclosed as a source of income from properties that were listed. The Inquiry also accepts that the City did not advise the three council members referred to above or Mr Crosetta that further disclosure or clarification from them was required after they had submitted the return forms to which reference has been made. The Inquiry does not consider there was any intention by these council members or Mr Crosetta to not comply with their disclosure obligations. The Inquiry considers that if any errors were made, they were inadvertent.
56. In light of the above observations, the Inquiry is not critical of Mr Harley, Dr Green, Ms Chen and Mr Crosetta for not disclosing rental income where they did disclose ownership of the relevant properties from which they received rent. There are ambiguities in this aspect of the disclosure regime. The Inquiry considers it more appropriate to recommend that the Department update its guidance material to clarify:
- the disclosure requirements for rent as an income source, where a council member has appropriately declared ownership of multiple properties; and
  - the annual disclosure requirements for income sources with respect to rent, when further rental properties are acquired after the initial disclosure.

### Disclosure of directorships in companies

57. Council members must disclose in their primary and annual returns the interests and positions they hold in corporations.<sup>71</sup> Information before the Inquiry revealed some council members may not have made complete disclosures of these interests.

#### Mr James Limnios

58. Mr Limnios did not disclose in any of his returns that he was a director of the Limnios Superannuation Fund Pty Ltd.<sup>72</sup> As Mr Limnios became a director of this company on 28 June 2006<sup>n</sup>, it would appear he was required to disclose this position in his primary return dated 8 December 2009.

#### Mr Keith Yong

59. Mr Yong did not disclose in any of his returns that he was a director of Bon Geste Pty Ltd, which is described as a Superannuation Trustee Proprietary Company. As Mr Yong became a director of Bon Geste Pty Ltd on 3 September 2014,<sup>o</sup> it would appear he was required to disclose this position in his annual return for 2014/2015.<sup>73</sup>
60. Mr Yong was also a director of Yong Family Super Pty Ltd and a director and secretary of Maxiwest Pty Ltd, when he was elected in October 2013. He continued to hold those positions throughout his term as a council member.<sup>74</sup> Although he did not disclose those positions under the heading *“Interests and positions in corporations”* in his primary return dated 8 November 2013, he did disclose both companies in other parts of the return. He disclosed that Yong Family Super Pty Ltd was the trustee of a trust he was receiving an income from and Maxiwest Pty Ltd was a trustee of a trust in which he held a beneficial interest.<sup>75</sup> In those circumstances, only limited criticism can be made of Mr Yong for not disclosing the positions he held in those two companies.

#### Ms Lily Chen

61. Ms Chen did not disclose that she was a director of Wayon Pty Ltd in her primary return dated 11 December 2011.<sup>76</sup> As Ms Chen had become a director of this company on 18 June 2008 and was still a director as at 10 August 2018,<sup>77</sup> it would appear she was required to disclose this position in her primary return.
62. Under the heading marked *“Interests and Positions in Corporations”*, Ms Chen wrote “N/A” in her primary return.<sup>78</sup> Ms Chen’s explanation for not disclosing her directorship in this return was, *“This is error because I thought the question is, apart in your own corporation, whether you have an interest or position in other corporations. My mistake, understanding”*. Her explanation for misunderstanding what interests and positions in corporations she was required to disclose was, *“I tended to forget my own because I thought everyone knew, so wrong presumption”*.<sup>79</sup> It is difficult to comprehend how Ms Chen, a legal practitioner, could possibly have this misunderstanding. If her assertion that *“everyone knew”* she was a director of Wayon Pty Ltd was meant to mean there was no need to disclose this interest, then that too is incomprehensible.

<sup>n</sup> Mr Limnios was still a director as of 28 August 2018: ASIC, Historical Company Extract for Limnios Superannuation Fund Pty Ltd, 28 August 2018, p 2.

<sup>o</sup> Mr Yong remained a director for the duration of his term as a council member: ASIC, Historical Company Extract for Bon Geste Pty Ltd, 13 September 2018, p 1.

63. Ms Chen did not make a disclosure of her directorship in the section titled *“Interest and positions in corporations”* until her second annual return for 2012/2013.<sup>80</sup> Her explanation for making this disclosure was the experience of being on Council and acquiring better knowledge of what was required.<sup>81</sup> The Inquiry notes that Ms Chen had disclosed she was a director of Wayon Pty Ltd in her first annual return for 2011/2012, although it was in the section titled *“Income sources”*.<sup>82</sup>
64. Ms Chen also did not disclose in any of her returns that she was a director of Global Australia Pty Ltd, a position she held from 18 March 2008 to 12 September 2013. Her explanation was she had *“totally forgot”*.<sup>83</sup> It would appear Ms Chen was required to disclose this position in her primary return dated 11 December 2011.<sup>84</sup>

### Disclosure of beneficial interests in trusts

#### Dr Gemma Green

65. A Relevant Person is required to disclose the name and address of the settlor and the trustee of any trust from which he or she derives an income<sup>85</sup> and *“any trust in which the person held a beneficial interest”* where no income is derived.<sup>86</sup> The template annual return form provided by the City included separate spaces to enter *“income earned from a trust”* and *“trusts in which the relevant person holds a beneficial interest”*.
66. In her primary return under the section titled *“Trusts”*, Dr Green disclosed, pursuant to section 5.81 of the LG Act, that she held a beneficial interest in the Morton – Green Family Trust. She identified herself as a settlor and wrote her Mount Lawley residence as her address as the settlor. Although section 5.81 of the LG Act also requires disclosure of the name and address of the trustee, Dr Green only completed the details of the address of the trustee (which was her residential address).<sup>87</sup>
67. In her three annual returns, Dr Green wrote identically incomplete details for the settlor and trustee regarding the same family trust in the sections titled *“Income sources”* and *“Trusts”*. In the *“Income sources”* section under the sub-heading *“(b) income from a trust”*, Dr Green identified the name of the trust and the name and address of the trustee (being herself and her Mount Lawley residence). However, in all three annual returns, she only identified the address of the settlor (and not the name, which is also a requirement under section 5.80(2)(b) of the LG Act). This address was Dr Green’s residence.
68. In the section titled *“Trusts”*, in all three annual returns, Dr Green identified her Mount Lawley residence as the settlor’s address, although she did not identify the settlor’s name (as required by section 5.81 of the LG Act). No details were provided in any of the annual returns of the name and address of the trustee, which are also requirements under section 5.81 of the LG Act.<sup>88</sup>

69. Although section 5.78(2)(a) of the LG Act does not require disclosures already made in a previous return to be repeated in subsequent returns, when viewed separately there were deficiencies in the initial disclosures made by Dr Green regarding her receipt of income from, and the beneficial interest she held in, the Morton – Green Family Trust. However, when Dr Green’s primary return and first annual return are viewed in combination, there appears to be a sufficient disclosure in the returns to meet the purpose of the disclosure obligations.<sup>p</sup>
70. During the Inquiry’s investigations in December 2019 of the Morton – Green Family Trust, it identified another trust that Dr Green may have had an interest in. This trust is called the Morton – Green Superannuation Trust (Superannuation Trust), a self-managed superannuation fund that had been active since September 2014.<sup>89</sup>
71. The Inquiry asked Dr Green’s legal representatives if they could confirm whether Dr Green had an interest in the Superannuation Trust. By letter dated 19 December 2019, the Inquiry was advised that *“Dr Green is a member of the Superannuation Trust. However, we are also instructed, she receives no income from the Superannuation Trust and has received no income from the Superannuation Trust, during the period 1 October 2015 to 30 June 2018”*.<sup>90</sup>
72. It is apparent that Dr Green’s membership of the Superannuation Trust was a beneficial interest and if that interest existed during her term as a council member, then Dr Green may have been required to disclose that interest in the relevant return. She did not.
73. In written submissions dated 17 February 2020, Dr Green advised that *“because she received no income from the Superannuation Trust and was not entitled to access it until her retirement (many years hence), she did not consider it was a matter that was required to be disclosed”*. She also submitted that she *“is not a trust or accounting professional and her understanding must be assessed in that light. She did not know that being a member of a self-managed superannuation fund which she has no right to access until she retired could amount to a ‘beneficial interest’ in a trust that she was required to disclose for City purposes”*.
74. The Inquiry considers that Dr Green did not deliberately withhold disclosing this interest, if disclosure was required, and only limited criticism is made of her for not doing so. Her uncharacteristic non-disclosure in this regard highlights the need for the Department to provide the necessary guidance material to assist those who are required to complete returns.

p There may also exist an argument that, at least inferentially, full disclosure had occurred in the primary return as a settlor of a family trust will commonly appoint themselves as a trustee and Dr Green, by completing this section, was disclosing that this was a trust in which she held a beneficial interest. In addition, her address as the settlor was identical to the address of the trustee.

### Disclosure of other income required to be disclosed

75. No council member reported share dividends as a source of income on their return forms in the section at 2(c) titled “*sources of other income*” completed for the period of the Inquiry’s Terms of Reference. Share dividends are assessable income within the meaning of the *Income Tax Assessment Act 1936* and are therefore required to be disclosed as an income source if they exceed the prescribed threshold of \$500.00.<sup>91</sup>
76. Information before the Inquiry revealed some elected members did not disclose all sources of income exceeding the \$500.00 threshold.

#### Ms Lisa Scaffidi

77. Ms Scaffidi earned two disclosable shareholding dividends of \$2,750.00 on 30 June 2016 and again on 30 June 2017. Ms Scaffidi also earned bank interest exceeding the disclosure threshold in 2015/2016 and 2016/2017.<sup>92</sup> She did not disclose this bank interest as being a source of income she received in her annual returns for those periods.<sup>93</sup> She would have been required to have disclosed this income unless she had previously disclosed them in a return.<sup>94</sup> On the assumption disclosure was required, the Inquiry does not consider that this non-disclosure was intentional.

#### Ms Janet Davidson

78. Ms Davidson disclosed bank interest as a source of income in her primary return.<sup>95</sup> She also earned bank interest above the \$500.00 threshold in 2015/2016 and 2016/2017.<sup>96</sup> She did not disclose this as income in her annual returns for those periods.<sup>97</sup> However, as Ms Davidson had already disclosed her bank interest as a source of income in her primary return, she was not required to make any further disclosures.<sup>98</sup> The Inquiry notes that in her annual returns for 2015/2016 and 2016/2017, Ms Davidson wrote “NIL – all stated in 2(a)” in the section at 2(c) titled “*sources of other income*”. That was not strictly true as the income sources written in 2(a) (which was titled “*income from an occupation*”) in both returns did not include her income from bank interest.<sup>99</sup>

### Substantial non-disclosure of income by Ms Lily Chen

79. There were apparent substantial and ongoing non-disclosures of income by Ms Chen. The Inquiry finds these non-disclosures were plainly not attributable to any ambiguities in the legislation or guidance provided by the Department. The Inquiry also finds this repeated non-disclosure reflects an ongoing pattern that cannot be attributed to occasional oversight.
80. Ms Chen appeared to understand both the content and importance of the disclosure requirements. As a practising lawyer, that much would be expected. Ms Chen said she regarded the “*duty of the Councillor*” to file an annual return as a “*very serious*” obligation. She noted the importance of these requirements, saying “*because you elected to a public position and then you need to be responsible – accountable to the general public or to the ratepayer who elected you*”.<sup>100</sup>

81. Ms Chen agreed it was important to ensure all details are truthful and accurate and initially maintained she had completed her returns accurately and “every year”.<sup>101</sup> However, during examination on areas in which she did not disclose income, Ms Chen admitted “*there were missing pieces*” and she had not completed her annual returns accurately.<sup>102</sup>
82. As already noted, the forms for primary and annual returns set out three categories for disclosure: “*income from an occupation*”, “*income from a trust*” and “*other sources of income*”. In her primary return dated 11 December 2011, Ms Chen only disclosed the income she earned as a solicitor through the firm, Lily Chen & Associates.<sup>103</sup> Although Ms Chen was also working as a registered migration agent from the same firm on an ongoing basis from 2011, she did not disclose that occupation until she completed her fourth return for 2013/2014. When asked to explain the delay in disclosing her occupation as a registered migration agent, Ms Chen answered, “*Slow learner*”.<sup>104</sup>
83. Ms Chen also did not disclose other income she earned during her time as a council member. Ms Chen received ongoing commission payments from Stanley International College Pty Ltd (Stanley College) and Bupa Health Insurance (Bupa) as part of referral arrangements she had with those entities. Ms Chen gave evidence she had been receiving commission payments from Stanley College for “*probably four or five years*”.<sup>105</sup> She also said she had received commissions from Bupa for “*maybe three, four years*”,<sup>106</sup> and these payments totalled more than \$1,000.00 annually.<sup>107</sup>
84. Evidence before the Inquiry shows that between 4 February 2013 and 4 November 2014, Ms Chen received five commission payments from Stanley College. The payments ranged from \$1,491.00 and \$6,375.00 and totalled \$18,853.35.<sup>108</sup> Despite these large amounts, Ms Chen did not disclose this income in her annual returns lodged with the City for 2012/2013, 2013/2014 and 2014/2015.<sup>109</sup> Ms Chen had also written “*N/A*” under the heading “*other sources of income*” in her primary return dated 11 December 2011 and her annual return for 2011/2012.<sup>110</sup>
85. Ms Chen contends that the commissions from Stanley College and Bupa “*did not need to be disclosed in Ms Chen’s annual returns because they were income of Wayon Pty Ltd trading as Lily Chen & Associates*”.
86. The contention is partly reliant on an Education Agent Agreement dated 28 June 2016 between Stanley International College Pty Ltd and Lily Chen & Associates (Agreement). Ms Chen signed the Agreement as the “*Authorised Representative*” of the Education Agent, being Lily Chen & Associates. She also relied on an invoice to Bupa from Lily Chen & Associates dated 24 January 2020 in the amount of \$541.92. The invoice did not specify what this payment was for.<sup>111</sup>

87. The contention is that as Lily Chen & Associates had been disclosed as Ms Chen's employer in her primary return<sup>112</sup> then no further disclosure was required as Wayon Pty Ltd was trading as Lily Chen & Associates. The relationship between Wayon Pty Ltd and Lily Chen & Associates was disclosed in Ms Chen's first annual return.<sup>113</sup>
88. In her evidence Ms Chen initially said that as these commissions formed part of the income of Wayon Pty Ltd trading as Lily Chen and Associates, she did not need to disclose this income separately. However, she then admitted she had not received the commission payments from Stanley College or Bupa in her capacity as a solicitor or migration agent, and she should have disclosed the income separately as "*other income*".<sup>114</sup> Ms Chen's admission that she ought to have disclosed these commissions payments as an additional income source is to be preferred. It is consistent with the disclosure requirements of the LG Act.
89. Ms Chen was not only required to disclose "*the name and address of ... her employer*"<sup>115</sup> in relation to income from an occupation, she was also required to disclose "*a description of the occupation*".<sup>116</sup> The only descriptions she gave of her occupations in any of her returns was "*solicitor*",<sup>q</sup> "*migration agent*" and "*councillor*". Ms Chen was not acting in any of those capacities when she was earning commissions from Stanley College and Bupa.<sup>r</sup>

#### **Ms Lily Chen did not disclose ongoing commissions from a property developer totalling \$307,200.00**

90. Ms Chen received ongoing payments from a Perth-based property development company, Devwest Group Pty Ltd (Devwest).<sup>117</sup> Under a consultancy agreement and a fund-raising agreement, both dated 10 April 2013, between Ms Chen and Devwest,<sup>118</sup> Ms Chen referred potential investors to Devwest. Where a referral resulted in an investor paying investment capital to Devwest, Ms Chen was to receive a commission equal to five per cent of the investment figure.<sup>119</sup> Ms Chen signed both agreements as an individual and not in her capacity as an officer of Wayon Pty Ltd trading as Lily Chen & Associates.<sup>120</sup>
91. Ms Chen admitted receiving 10 commission payments from Devwest from 2 April 2013 to 27 April 2017, ranging from \$7,200.00 to \$90,000.00, and totalling \$307,200.00.<sup>121,(s)</sup> These payments are clearly recorded in bank records obtained by the Inquiry and were made from the bank accounts of Hay 263 Pty Ltd on nine occasions and Barker 3 Pty Ltd on one occasion.<sup>122</sup> These entities were two subsidiary companies of Devwest.<sup>123</sup> Devwest created a company for each individual property development and named it from the street address of the particular project the company was supervising.<sup>124</sup> Over a span of four years, these commission payments from Devwest equated to an average annual income of approximately \$77,000.00 for Ms Chen.<sup>125, (t)</sup>

q Or other descriptors for a legal practitioner.

r The Agreement's terms identified Lily Chen & Associates as an "Education Agent" which had completed an Educational Agents Training Course.

s For two of these commission payments Ms Chen stated she split the commission amount with a third party who had provided assistance.

t Even allowing for the splitting of two of these commission payments, Ms Chen's average annual income from Devwest was still in excess of \$66,000.00.



The details in Table 2.5 are from Westpac deposit transaction records.<sup>126</sup>

**Table 2.5: Commission payments from DevWest Group Pty Ltd to Ms Lily Chen between 2013 and 2017.**

Date	Payment	Nature of Payment
<b>2013</b>		
2 April	\$90,000.00	From NAB Hay 263 ATFT Hay 263 Trust Account to Westpac Savings Account of David Majri & Lily Chen (Canning Vale branch)
15 April	\$50,000.00*	From NAB Hay 263 ATFT Hay 263 Trust Account to Westpac Investment Property Loan Account of David Majri & Lily Chen (TMC Adelaide branch)
<b>2014</b>		
26 November	\$34,000.00**	From NAB Hay 263 ATFT Hay 263 Trust Account to Westpac Savings Account of David Majri & Lily Chen (Mount Lawley branch)
<b>2015</b>		
25 September	\$7,500.00	From NAB Hay 263 ATFT Hay 263 Trust Account to Westpac Savings Account of David Majri & Lily Chen (Mount Lawley branch)
25 September	\$67,500.00	From NAB Barker 3 Pty Ltd Account to Westpac savings account of David Majri & Lily Chen (Mount Lawley branch)
23 October	\$7,200.00	From NAB Hay 263 ATFT Hay 263 Trust Account to Westpac Savings Account of David Majri & Lily Chen (Mount Lawley branch)
21 December	\$7,200.00	From NAB Hay 263 ATFT Hay 263 Trust Account to Westpac Savings Account of David Majri & Lily Chen (Mount Lawley branch)
<b>2016</b>		
18 February	\$10,800.00	From NAB Hay 263 ATFT Hay 263 Trust Account to Westpac Savings Account of David Majri & Lily Chen (Mount Lawley branch)
<b>2017</b>		
31 March	\$20,000.00	From NAB Hay 263 ATFT Hay 263 Trust Account to Westpac Savings Account of David Majri & Lily Chen (Canning Vale branch)
27 April	\$13,000.00	From NAB Hay 263 ATFT Hay 263 Trust Account to Westpac Savings Account of David Majri & Lily Chen (Canning Vale branch)

Notes:

\* This payment was evenly split between Ms Chen and a third party.

\*\* This may have been the second payment that Ms Chen split with a third party.<sup>u</sup>

<sup>u</sup> Ms Chen was not certain whether it was this commission or another commission in the amount of \$25,000.00 that was split: Transcript, L Chen, public hearing, 13 August 2019, p 101. However, as can be seen from the table, there was no single commission payment identified in the amount of \$25,000.00 (although three consecutive payments from 23 October 2015 to 18 February 2016 did amount to a total of \$25,200.00 and one payment on 31 March 2017 was for \$20,000.00). Even if this was the commission that Ms Chen split with a third party, she still personally benefited from Devwest commission payments in the amount of \$265,200.00 from 2 April 2013 to 27 April 2017.

92. Ms Chen did not disclose this income in any annual returns lodged with the City, stating she had mistakenly forgotten and that it was not deliberate. She admitted she was required to disclose this income and she should have done so.<sup>127</sup>

**Ms Lily Chen did not disclose commission payments to the Inquiry and other bodies**

93. Ms Chen did not disclose the Devwest commissions to the Inquiry until pressed on the issue at length during her public hearing on 13 August 2019. In March 2019, the Inquiry served Ms Chen with a Notice to Produce a Statement of Information, relying on its coercive powers under section 8A(2) of the RC Act (Notice).<sup>128</sup>
94. The Notice required Ms Chen to disclose all income she had earned in the 2015/2016 and 2016/2017 financial years where that income exceeded \$500.00 per year.<sup>129. (v)</sup> The Notice expressly prompted Ms Chen to disclose income that was in the form of commission payments, bonuses, or fees. The phrase “*commission payments*” appeared three times in the Notice and it was expressly included in what the Inquiry regarded as “*income*”.<sup>130</sup> In her response to the Notice, Ms Chen only disclosed rental income. She did not disclose any of the commission payments totalling \$133,200.00 she had received from Devwest during 2015/2016 and 2016/2017.<sup>131</sup>
95. When questioned by the Commissioner, Ms Chen gave the following evidence:
- “That notice to produce clearly requires you to produce the information related to, among other things, commission payments?---Yes.*
- Doesn’t it?---Yes.*
- That would’ve been apparent to you at the time that you got the notice, wouldn’t it?---I got.*
- It would have been apparent to you at the time you got the notice, wouldn’t it?---Yes.*
- And you knew at the time you got the notice that you had, in those years, received commission payments from Devwest, didn’t you?---Yes.***
- So put those three things together: it would have been obvious to you that you should have told this Inquiry, me, about the commission payments, s*  
*houldn’t it?---Should”.<sup>132</sup> [emphasis added]*
96. Nonetheless, Ms Chen maintained throughout the balance of her evidence she had not intentionally concealed the Devwest commissions from the Inquiry by not disclosing them in her response to the Notice, or from the City by not disclosing them as a source of income in her annual returns.<sup>133</sup>
97. Ms Chen could not initially recall whether the Devwest payments had been included in her tax returns filed with the Australian Taxation Office (ATO), and she admitted she did not check her tax returns to confirm she was providing accurate information to the Inquiry in response to the Notice. Ms Chen could not provide a reason for this, except that she had been negligent.<sup>134</sup>

v Except for (i) any fees, allowances or expenses reimbursed by the City of Perth in connection with her role as an elected member, (ii) any income she received from her occupation/s or (iii) any income she received from a trust.

98. When asked whether she had always disclosed her full income to her accountant for the purpose of preparing her tax returns, Ms Chen replied, “*maybe sometime miss some*”. When asked specifically whether she had disclosed the Devwest commission payments to her accountant, she initially responded, “Yes” before changing her evidence to “*some of them, they knew, some of them they did not*”.<sup>135</sup> After obtaining the details of her accountant from Ms Chen, the Inquiry subsequently called him to a private hearing.<sup>136</sup>
99. From the accountant’s evidence, it emerged Ms Chen disclosed no Devwest commissions to the ATO in any of her tax returns for the financial years 2011/2012 to 2017/2018.<sup>137</sup> Ms Chen’s tax returns for this period included a salary or fee for her work at Lily Chen & Associates. Some of those tax returns also included council sitting fees from the City, one or two additional payments and some rental income. For each of the financial years 2012/2013 and 2015/2016, the purported total income declared in Ms Chen’s individual tax return was considerably less than the income through commission payments she had received from Devwest in the same financial year.<sup>138</sup>
100. Shortly after the public hearing in which she admitted to having received the Devwest commissions, and being told the amount was \$307,200.00, Ms Chen contacted her accountant and advised him she had not disclosed over \$300,000.00 in commission payments to the ATO. She requested he make the required amendments. Ms Chen told her accountant that she “*forgot*” to inform him of this income.<sup>139</sup> She confirmed to the accountant she had received those commission payments in her personal capacity.<sup>140</sup> The accountant gave evidence to the Inquiry that Ms Chen had never disclosed any commission payments to him in the past.<sup>141</sup>
101. Following this evidence from Ms Chen’s accountant, it was put to Ms Chen she did not disclose the Devwest commission payments to her accountant before 13 August 2019. Ms Chen maintained she had, in 2013, “*mentioned to him but not the figure*”. She also maintained she had said to him, “*I got a commission payment from Devwest*”. Ms Chen said she had told her accountant this information “*for tax purpose*”, although she did not provide him with any figures or invoices to substantiate those payments. According to Ms Chen, her accountant did not ask her to provide that information. Ms Chen conceded the accountant “*could not know*” what amounts she had earned from Devwest if she did not provide them to him, and that he therefore could not include that information in her tax returns.<sup>142</sup>
102. On Ms Chen’s own evidence, she did not disclose the actual amount of any commission payments from Devwest to her accountant, and she did not disclose any of the Devwest commission payments to the ATO before being questioned at the Inquiry’s public hearings.<sup>143</sup>

103. An examination of Ms Chen's tax returns for the years 2012/2013, 2014/2015, 2015/2016 and 2016/2017 reveals that if Ms Chen had disclosed the Devwest commissions she received during those years,<sup>w</sup> her combined total taxable income for these financial years could have almost doubled.<sup>x</sup>
104. Ms Chen's compliance with taxation legislation is not of direct interest to the Inquiry. However, Ms Chen's tax records are relevant to the Inquiry's role in making findings regarding her non-compliance with income disclosure requirements that applied to local government and to the Inquiry process. It is significant that Ms Chen did not disclose the same income source to the ATO.
105. When asked repeatedly why she had not disclosed the Devwest commission payments to the City, to the Inquiry, or to the ATO, Ms Chen repeatedly answered to the effect of "*no reason*", "*no excuse*", or "*I forgot*".<sup>144</sup> For an extended period of questioning, she did not provide a reasonable explanation, or indeed any real explanation, as to why she had not disclosed the Devwest commission payments to three separate bodies, as she admitted she was required to do by three separate statutory frameworks.
106. Finally, Ms Chen said that her decision not to disclose the commission payments to the ATO, the City, or the Inquiry was because Devwest owed her money and she was upset about her own unsuccessful investment with Devwest.<sup>145</sup>
107. In addition to referring investors to Devwest for a commission, Ms Chen made her own investment in a Devwest property development project through her family company, Wayon Pty Ltd. Ms Chen gave evidence she had taken out a \$1 million bank loan to facilitate this investment. The investment was documented by an investment agreement which Ms Chen signed in her capacity as a director of Wayon Pty Ltd.<sup>146</sup>
108. As construction on this property had not commenced, Ms Chen's investment remained locked in the project fund and she was unable to access the initial investment capital or receive a return on that investment.<sup>147</sup> After pressure from Ms Chen, Devwest agreed to enter into a loan agreement with Wayon Pty Ltd, whereby Devwest returned \$400,000.00 of the \$1 million investment<sup>148</sup> and paid Ms Chen the amount of monthly interest payable on the bank loan on an ongoing basis.<sup>149</sup> From May 2013 until at least March 2018, being the end of the Inquiry's Terms of Reference, Devwest made regular payments amounting to a total of \$141,882.59 into one of two Westpac joint savings accounts in the names of Ms Chen and her husband.<sup>150</sup>
109. This situation may well have been an unfavourable outcome for Ms Chen and her personal finances. The investment arrangement was, however, separate from the referral arrangement Ms Chen had with Devwest. Ms Chen's investment, profitable or otherwise, does not cancel out the income received under a separate contractual arrangement, and does not negate her obligation to disclose her sources of income to the City in her annual returns. Ms Chen was required to disclose only the source and nature of her financial interests, and not the amounts or value of those interests.

<sup>w</sup> Ms Chen received no Devwest commission payments during 2013/2014 or 2017/2018.

<sup>x</sup> Ms Chen's declared combined total income (less total deductions) for these four financial years was \$302,978.00. Her commission payments from Devwest during the same period was \$307,200.00. Even accepting Ms Chen's evidence to allow for the splitting of two of those payments (which she recalled were in the amounts of \$50,000.00 and \$25,000.00\*), she still received commissions totalling \$265,200.00.

\*there was no single commission payment in this amount.

110. In the period 2 April 2013 to 29 March 2018, Ms Chen received 40 separate deposits from Devwest.<sup>y</sup> Ten of these can be attributed to commission payments to her, ranging from \$7,200.00 to \$90,000.00. Twenty-nine payments can be attributed to deposits made in respect of interest repayments on the bank loan to facilitate the investment by Wayon Pty Ltd, ranging from \$2,755.00 to \$9,183.34 and being paid at an average of once every two months from May 2013 to March 2018. The other deposit was in the amount of \$400,000.00 on 26 June 2015 being a part repayment of the investment by Wayon Pty Ltd following the restructuring of the investment into a loan agreement on that same day.<sup>151</sup> The total amount of these deposits from Devwest was \$849,082.59.
111. From April 2013 to March 2018, Ms Chen was required to lodge five tax returns with the ATO and five annual returns with the City. In the case of the Notice, Ms Chen was specifically prompted to consider and disclose commission payments. Ms Chen was further prompted by the Inquiry to accurately disclose all her income during her examination at her public hearings. She admitted to receiving the commission payments from Devwest only after extended questioning by Counsel Assisting, and in some cases only after being confronted with formal financial records.
112. The Inquiry considers it highly improbable that, at each of these 12 interfaces with her disclosure obligations, Ms Chen simply forgot she had received numerous commission payments from Devwest of up to \$90,000.00. Her evidence in this regard is highly unsatisfactory.
113. Ms Chen did not comply with her disclosure obligations on multiple occasions over a number of years. It is open to the Inquiry to find these breaches occurred either intentionally or through ongoing negligence.
114. The Inquiry put to Ms Chen that she had “*constantly concealed these payments from authorities*” to which she was “*compelled to disclose them*”. While Ms Chen had again admitted “*part of the reasons*” for her non-disclosure was because of a “*fight over [her] investments*” with Devwest, she otherwise emphatically denied that she had intentionally concealed the payments from the City, the ATO, or the Inquiry.<sup>152</sup> She once again offered the explanations that it was “*not intentionally*”, there was “*no reason*” and that she “*really forgot*”.<sup>153</sup>
115. At a minimum, Ms Chen’s non-disclosure of the Devwest commissions to three separate bodies across 12 separate occasions shows an ongoing disregard of her apparent disclosure obligations under the law and a level of carelessness that should be of the utmost concern to the City. It is completely at odds with Ms Chen’s obligations as a council member and her training as a lawyer.
116. Considering all of the evidence and for the reasons set out in this Section, it appears Ms Chen may have intentionally withheld this information from, among others, the City and the Inquiry.

y Through its subsidiary companies, Hay 263 Pty Ltd (on 39 occasions) and Barker 3 Pty Ltd (on one occasion).

117. The Inquiry finds the conduct by Ms Chen in this matter may have infringed five of the eight principles that are intended to guide the behaviour of council members, as set out in the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations), namely:<sup>154</sup>

- a. *act with reasonable care and diligence;*
- b. *act with honesty and integrity;*
- c. *act lawfully;*
- d. *avoid damage to the reputation of the local government; and*
- e. *be open and accountable to the public.*

#### Ms Chen's evidence and recollection on this matter

118. Ms Chen purported to be suffering from a deficient memory that had not been medically diagnosed and for which she had not sought medical treatment. She speculated it might be because of her age or that she had too many things on her mind.<sup>155</sup> Although she had not suffered any difficulties with her memory as a council member, the issue became apparent to her in February 2018 just before the Council was suspended. Her gradual memory losses had become evident to her, *"in past few months"*.<sup>156</sup>
119. The Inquiry notes Ms Chen did not raise this issue regarding her memory loss at her private hearing; which Ms Chen acknowledged.<sup>157</sup> However, she raised it without prompting very early during the first day of her public hearings stating, *"My memory is not so great now"*.<sup>158</sup>
120. The Inquiry has not been provided with any medical evidence or other evidence that would support Ms Chen's claim of memory issues.
121. In the absence of such evidence, the Inquiry does not accept Ms Chen has a recognisable memory deficiency that only became apparent at or about the same time the Council was suspended and the Inquiry was announced. The Inquiry notes that since then she has continued to operate her own law firm and migration agency. The Inquiry finds Ms Chen's alleged memory loss was a disingenuous attempt to justify her inability to legitimise her conduct that was the subject of the Inquiry's investigations. It was yet another unsatisfactory assertion made by Ms Chen in the witness box when giving evidence under affirmation.

#### Accounting Standard AASB – Related Party Disclosures

122. Australian Accounting Standard *AASB 124 Related Party Disclosures* requires that all local governments disclose, in Annual Financial Reports, related party relationships, transactions and outstanding balances.<sup>159</sup> *"Key Management Personnel"* (council members, the CEO and the ELG members) are required to complete a form with details of the names of close family members and entities that they or their close family member control or jointly control.

123. All council members, the CEO and ELG members submitted their Related Party Disclosures for 2016/2017. For 2017/2018, all members of the ELG, the CEO and all council members, except Dr Green and Mr Harley, submitted their Related Party Disclosures declaration.
124. The Inquiry observes that like the primary and annual returns, this form was not always accurately completed. For example, in the disclosure form the City states that *“Close family members at a minimum include your partner, children (including partner’s children) and other dependents over the age of 16, and **must be listed below**”*.
125. The form requires council members to list the names of close family members, their relationship to the council member, and any entities controlled or jointly controlled by each close family member in a given financial year. Despite this, Mr Limnios wrote *“Not applicable”* to this requirement on his form dated 12 September 2018 for the year 2017/2018, despite having close family members, including his wife, who were his co-directors of various companies at the relevant time.<sup>160</sup>
126. Failing to declare appropriate information reduces transparency and the City’s ability to comply with its legislative responsibilities.

#### City’s governance of financial disclosure requirements

127. In *Scaffidi v Chief Executive Officer, Department of Communities and Local Government* [2017] WASCA 222, the Court stated:  
*“By requiring disclosure in returns which are available for public inspection, the legislation provides a means for the identification of failures by members to disclose interests at meetings and recuse themselves from consideration of a matter in which they were interested”*.<sup>161</sup>
128. This reflects a view that primary and annual returns are designed to function as a safeguard to enable discovery of inconsistencies in council members’ disclosures.
129. The responsibility for accurate completion of primary and annual returns rests with the person making those disclosures. The City provides council members with departmental guidelines and an example of a return form to assist their disclosure.<sup>162</sup> Nevertheless, the process of receiving and collating the information in returns received by the City should not be a rubber-stamping exercise.
130. Mr Ridgwell gave evidence that the City did not undertake an assessment of the interests disclosed in primary and annual returns lodged with the City. The only checks conducted by the City as to the information contained in these returns are, *“to ensure that it meets the criteria that is set for completion of it, so adequate disclosure i.e., in the instances where a person has landholdings, they have to annotate it as nil rather than leaving it blank”*. These inspections of the returns are conducted by other governance officers, not by Mr Ridgwell.<sup>163</sup>



131. The returns are then retained in a register and available for inspection by members of the public. The extent of the City's oversight was to, *"make sure that their disclosures are captured and then registered"*. It appears that, provided the council member had entered an interest or words to the effect of *"nil"* or *"N/A"* under each of the disclosure headings, the City did not follow up with council members or otherwise confirm the accuracy and completeness of the disclosures made.<sup>164</sup>
132. For example, where a council member had disclosed ownership of multiple residential properties and no disclosure of any rental income, the City did not clarify with the council member whether rental income had been obtained from any of the properties. This was so despite Mr Ridgwell's agreement that such a situation would *"at least give ... a suggestion"* the person had properties which were investment properties. Likewise, the City did not follow up if interest from bank accounts which was above the prescribed amount had been disclosed as income.
133. The City does not compare annual returns with those lodged in previous years to ensure the details being recorded are consistent. This was despite the fact that in one case an annual return submitted by a council member simply said *"See annual return 2011/2012"* under the heading *"Real property"*.<sup>165</sup>
134. Disclosing interests in this way is permitted by the legislation and the guidance material provided by the Department. The LG Act provides a council member is not required to *"include in a return any information which has been disclosed in a previous return"* by the council member.<sup>166</sup> Guidance material previously circulated by the then Department of Local Government and Communities in 2011 included an example annual return form which used the phrase *"See annual return for 2009"*.<sup>167</sup>
135. It is apparent the City's Governance unit does not conduct any checking through independent databases of the disclosures made and does not engage in any proactive management of potential conflicts which may arise. Council members are not required to submit any records to substantiate their disclosures.
136. The returns are available for public inspection.<sup>168</sup> A concerned person who is aware of a particular interest held by a council member could apply to inspect the returns and bring any discrepancies to the attention of the City or the council member. In the Inquiry's view, this does not provide adequate or meaningful protection against council members failing to disclose financial interests, failing to disclose conflicts of interest or failing to recuse themselves from decisions which could be affected by a private interest. This risk exists whether the non-disclosure is intentional or inadvertent. In the Inquiry's view, the current disclosure regime and the governance mechanisms which surround it do not adequately support the principle behind the legislation.

## Legislative framework

137. It is also the Inquiry's view the legislative framework governing financial interest disclosures lacks clarity.
138. The requirement under section 5.78(2)(a) of the LG Act for matters to be disclosed only once means a person seeking information about disclosures that have been made by a Relevant Person may need to go back many years to examine the primary return and all annual returns filed by the Relevant Person. The result is the disclosure regime lacks transparency and makes it very difficult for Relevant Persons to be held to account and for local governments to adequately monitor interests that may affect impartiality.
139. It would not be unnecessarily burdensome for those who must complete annual returns to state in each return their real property, income sources, interests in trusts and corporations and their debts for the last financial year. These details are designed by the legislative provisions to be very general in nature and the Relevant Person can be assisted by having a copy of their previous return provided to them to determine if any changes need to be made. Even if no changes are required, the return should still be completed in full.
140. Mr Ridgwell supported this change when he was questioned about the current regime:
- "... would you think that would be something that would assist the City in keeping track of the consistency of returns if in fact each return has to specify exactly what income or what real property is applicable for the last financial year?---Yes, I would agree. I always encourage people to fill out the disclosure as if it's a new disclosure as well, so that you're repeating so that it comes to forefront of mind as well to be able to do that".<sup>169</sup>*

## Gifts

### Statutory framework for the disclosure of gifts

141. Gifts (which now include contributions to travel) are subject to a different disclosure regime than other financial interests. Prior to 4 March 2016, gifts and third-party contributions to travel were to be disclosed in annual returns, similar to income and property interests. Council members were required to provide descriptions and amounts of gifts they received and the names and addresses of the persons who made each gift. From 4 March 2016, these interests had to be disclosed on a rolling basis and with greater specificity.

### Definition of a Gift

142. From 4 March 2016 to the end date of the Inquiry's Terms of Reference, section 5.82 of the LG Act required council members to disclose certain "*gifts*" they had received.<sup>170</sup> It was therefore important all Relevant Persons understood what type of interest constituted a gift, whether a person was permitted to accept that gift and how gifts that were accepted were to be disclosed.

143. The term “*gift*” was defined in section 5.82(4) of the LG Act. Where a provider makes a disposition of property or confers a financial benefit on a council member and the council member does not provide consideration in money or money’s worth or provides consideration that is not “*fully adequate*”, then that property or benefit is likely to be a gift that required disclosure.
144. A gift from a relative of the Relevant Person did not require disclosure<sup>171</sup> and an interest from a disposition of property by a will was not regarded as a gift.<sup>172</sup> Financial or other contributions to travel were not considered to be gifts for the purposes of section 5.82 of the LG Act and were dealt with separately under section 5.83 of the LG Act.<sup>z</sup>
145. The proper construction of the definition of gift in section 5.82(4) of the LG Act was considered by the Court of Appeal in *Scaffidi v Chief Executive Officer, Department of Communities and Local Government* [2017] WASCA 222. The case illustrates the potential complexity that can apply to benefits conferred on council members, particularly where a council member is attending an event or providing services in his or her capacity as a council member.

#### Council members may be required to refuse a Gift

146. Additional regulations applied where the provider of a gift was undertaking or seeking to undertake, or who it is reasonable to believe, was intending to undertake, “*an activity involving a local government discretion*”.
147. A “*gift*” (with minor exceptions) had the same meaning as a gift under section 5.82 of the LG Act. A “*prohibited gift*” was a gift worth \$300.00 or more or a gift that was one of two or more gifts given by the same person within six months that were in total worth \$300.00 or more. An “*activity involving a local government discretion*” was an activity that cannot be undertaken without an authorisation from the local government or an activity by way of commercial dealing with the local government.<sup>173</sup>
148. During the period of the Inquiry’s Terms of Reference, regulation 12(2) of the Conduct Regulations provided a council member must not accept a “*prohibited gift*” from a person who is undertaking or seeking to undertake, or who it is reasonable to believe is intending to undertake, “*an activity involving a local government discretion*”.<sup>174</sup>
149. Regulation 12(3) of the Conduct Regulations required a council member to disclose a “*notifiable gift*” from a person who was undertaking or seeking to undertake, or who it was reasonable to believe was intending to undertake, an activity involving a local government discretion. A “*notifiable gift*” was a gift worth between \$50.00 and \$300.00 or a gift that was one of two or more gifts given by the same person within six months that were in total worth between \$50.00 and \$300.00.<sup>175</sup>

z Section 5.83 has been deleted by *Local Government Legislation Amendment Act 2019*, s 37.

150. A council member was required, within 10 days of accepting the notifiable gift, to notify the CEO in writing that he or she has accepted the gift and include the name of the person who gave the gift, the date on which the gift was accepted, a description and the estimated value of the gift and the nature of his or her relationship with the giver of the gift. If the gift was “notifiable” because it was one of two or more gifts given by the same person within six months that were in total worth between \$50.00 and \$300.00, a council member had to also disclose to the CEO, in writing, a description, the estimated value and the date of acceptance for each other gift accepted within that six month period.<sup>176</sup> The CEO was required to maintain a register of gifts recording the details of the disclosures of notifiable gifts by council members.<sup>177</sup>

#### Content of the duty to disclose gifts

151. If a council member accepted a gift that was not a prohibited gift and was not exempt from the disclosure requirements, he or she had to disclose the gift in accordance with the disclosure requirements.
152. Local governments are also required to adopt a code of conduct to be observed by council members. During the period of the Inquiry’s Terms of Reference, the City had a Code of Conduct which contained provisions on the acceptance and disclosure of gifts by council members and generally replicated the existing statutory obligations.<sup>178</sup>
153. Part 4.5 of Council Policy CP10.1 required the disclosure of the gift to be made in writing to the CEO within 10 days of receiving the gift and it had to include a description of the gift, the name and address of the person who made the gift, the date on which the gift was received, the estimated value of the gift at the time it was made and the relationship between the council member and the person who made the gift.
154. Part 4.5 of CP10.1 also required the CEO to keep a register of disclosures made by council members.

#### Consequences of failing to comply with the disclosure requirements

155. It was an offence for a council member to fail to comply with the requirements of section 5.82 of the LG Act<sup>179</sup> or to provide information in a gift declaration under section 5.82 of the LG Act that the council member knew to be false or misleading in a material particular or likely to deceive in a material way.<sup>180</sup> Those offences were punishable by a fine of \$10,000.00 or imprisonment for two years.
156. Failure by council members to disclose gifts in accordance with regulation 12 of the Conduct Regulations may be dealt with by the Local Government Standards Panel (LGSP) or, where the council member had previously been found to have committed two or more breaches of the Regulations, by the State Administrative Tribunal (SAT). The LGSP and SAT can order the council member be publicly censured or be required to publicly apologise or undertake training. The SAT also has the power to order that the council member be suspended from office for up to six months or be disqualified from holding office for up to five years.

## Non-compliance with gift disclosure requirements

### Ms Lily Chen

157. Ms Chen is a member of the Liberal Party and ran as a Liberal candidate for the seat of Mirrabooka in the 2017 State Elections. She was unsuccessful.<sup>181</sup>
158. On 28 September 2016, Ms Scaffidi and her husband, Mr Joe Scaffidi donated some pottery bowls to benefit Ms Chen's State election campaign. Their estimated total value was \$75.00. Ms Scaffidi gave evidence she intended the bowls to be raffled or used as a door prize at Ms Chen's fundraising event. She arranged to provide them *"in regret of"* being unable to attend the event and pay the fundraising ticket price.<sup>182</sup>
159. On the afternoon of 11 October 2016, Mr Graham Hansen, a Perth resident, emailed Mr Ridgwell and the City's Governance unit with two questions to be raised at the Council's Ordinary Meeting that evening (Council meeting). Mr Hansen requested that Ms Chen be asked whether she had made disclosures to the City about donations she had received in connection with her State election campaign and whether the City had advised Ms Chen that such disclosures needed to be made. Mr Hansen also wanted Ms Scaffidi questioned about her donation of a gift to Ms Chen's election campaign for the seat of Mirrabooka.<sup>183</sup>
160. Mr Ridgwell forwarded this email to Ms Chen.<sup>184</sup> Ms Chen responded 19 minutes later, stating:

*"Noticed with thanks!*

*I accepted the donation on the advice of the CEO. Secondly, I did not use them for my campaign purpose but to donate to Chung wah association for its functions in Chinese New Year in 2017. Thirdly, I do not need to declare until next year's annual return".*<sup>185</sup>
161. Ms Chen and Mr Ridgwell then had a telephone conversation about the issue.<sup>186</sup> About two and a half hours later, Mr Ridgwell responded to Ms Chen by email stating:

*"Just confirming our telephone conversation.*

*You have received crockery from Mr Joe Scaffidi for a nominal value of \$75.*

*A gift declaration is required to be completed on your return to Council House and submitted to the CEO, it is not to wait until the Annual Return process.*

...

*If any of the above is contrary to our discussion, can you please advise".*<sup>187</sup>
162. Ninety minutes later, the Council meeting took place with Ms Chen and Mr Ridgwell in attendance.<sup>188</sup>

163. At some point before 13 October 2016, Ms Chen declared the gift of the bowls using the appropriate gift declaration form (form). She dated the form 10 October 2016. Notably, the form was time-stamped to indicate the CEO Office received the form on 12 October 2016, being the day after the Council meeting. Director, Corporate Services, Mr Mianich, signed for the receipt of the form, instead of the CEO Mr Mileham, and he dated that signature 13 October 2016.<sup>189</sup>
164. The date written on the form by Ms Chen was 12 days after her receipt of the gift. The Council meeting was 13 days after receipt of the gift and the form was stamped as received by the CEO office 14 days after receipt of the gift. On any version of events, Ms Chen had not disclosed the gift within 10 days as it would appear she was required to do. Ms Chen's justification was that she was busy.<sup>190</sup>
165. Ms Chen's evidence on this matter requires careful consideration. Ms Chen said she had not completed the form before the statutory deadline because she was busy. When presented with the email exchange with Mr Ridgwell from 11 October 2016, she then said she had completed the form after the deadline (although before the email exchange). However, she had not submitted it to the City. She said this was because she believed, at the time of completing the form, she was not required to declare the gift in that manner and would not need to declare it until completing her annual return for 2016/2017 in the following year.<sup>191</sup>
166. The Inquiry notes if that was the case, as it had been prior to 4 March 2016, such a disclosure would have been made in the annual return form for 2016/2017 which Ms Chen was required to complete between 1 July 2017 and 31 August 2017.<sup>192</sup> Therefore, the disclosure would not have been made on the separate declaration form which Ms Chen had completed. This form had been created earlier in 2016 for the express purpose of declaring gifts on a rolling basis following the legislative changes to the disclosure of gifts which came into effect on 4 March 2016. That creation date – 9 March 2016 – appears in the footer of the form.<sup>193</sup> The version of events put forward by Ms Chen would render the form she completed entirely redundant.
167. The Inquiry also notes the gift declaration form is split into demarcated sections clearly marked “STEP 1”, “STEP 2”, and “STEP 3”. The direction “STEP 3 – *Submit Declaration to the CEO within 10-days of acceptance of the Gift*” appears in a brightly highlighted text box immediately below where Ms Chen signed and dated the form as part of “STEP 2”.<sup>194</sup>
168. Throughout her evidence before the Inquiry, Ms Chen made assertions that her failure to complete other forms was because she was a very busy person.<sup>aa</sup> She also asserted she was too busy to complete this very form within the 10-day timeframe. The Inquiry finds it highly improbable that on this specific occasion, Ms Chen would complete a form she believed to be unnecessary 8–10 months ahead of schedule and retain it in her possession for that period.

aa For example, (i) Ms Chen was too busy to undertake a proper investigation of a request by the City to provide a description of clothes she had claimed a reimbursement: Transcript, L Chen, private hearing, 1 July 2019, p 69 and (ii) Ms Chen was too busy to complete an annual return for 2017/2018 as had been requested by the City: Transcript, L Chen, public hearing, 13 August 2019, p 40.

169. It is also implausible that, if Ms Chen had already completed the form, she did not inform Mr Ridgwell of this fact during a telephone conversation in which he told her this very form was required and directed her to complete it on her return to Council House.
170. Ninety minutes before the Council meeting, it is clear Ms Chen had not submitted the form to the CEO. Mr Hansen's question was put to Ms Chen at the Council meeting and the response was recorded as:

*"Cr Chen advised that she had disclosed the donations by completing the disclosure of interest form and had submitted it to the City of Perth".<sup>195</sup>*

171. At Ms Chen's private hearing, Counsel Assisting put to her she had misled the Council as she had not submitted the form. Ms Chen asserted that, when arriving at the Council meeting, she took the form she had previously completed and, *"just hand it in to Governance or a Director"*. She did not identify the recipient, although Ms Chen said she *"didn't give to CEO, the CEO was sitting on the front with the Lord Mayor"*.<sup>196</sup>
172. Ms Chen only gave this explanation after she was shown the page from the minutes of the Council meeting and asked to read the response she had given to Mr Hansen's question in which she stated she had submitted the form to the City.<sup>197</sup> However, this explanation was completely at odds with her evidence immediately before that:

*"Ms Chen, isn't it the case then that if that's what happened, that you had not completed that Gift Declaration form prior to the Council meeting, that you've misled the Council?---I didn't mislead. I completed but I didn't submit.*

*When you said that you had completed the relevant form?---I did.*

*Had you submitted it?---No".<sup>198</sup>*

173. The Inquiry does not accept Ms Chen's evidence that she completed the form on 10 October 2016. The Inquiry finds Ms Chen completed the form on 11 or 12 October, after a member of the public raised concerns about her disclosures and after Mr Ridgwell explicitly instructed her to do so. The Inquiry finds Ms Chen backdated the form to give the impression she had disclosed the gift of her own volition the day before the Council meeting.
174. The Inquiry also finds Ms Chen may not have disclosed the gift to the City within 10 days of receipt.
175. The Inquiry also finds Ms Chen had not submitted the form to the City before the Council meeting, and may have knowingly misled the Council and the public by stating she had done so during that meeting's Public Question Time.



176. Ms Chen listed the Chung Wah Association as the entity that would benefit from her acceptance of the gift,<sup>199</sup> although she ultimately donated the items to the Jiang Su Association.<sup>200</sup> Ms Chen declared on the form that she had “*relinquished*” the gift to the Chung Wah Association on 29 September 2016, being the day after she received the gift and at least 11 days before she made the declaration.<sup>201</sup> If Ms Chen did donate the bowls to Jiang Su Association, she may have knowingly made a misleading declaration to the City as to who would “*benefit from acceptance of the gift*”.

### Connection between the gift declaration and voting on Council matters

177. Ms Chen also raised a connection between the gift item and a matter that was to appear before the Council in the coming weeks. When Mr Ridgwell forwarded Mr Hansen’s question to Ms Chen there was no reference to voting matters, although Mr Hansen’s question to Ms Scaffidi did raise the matter of Ms Chen being conflicted and unable to vote on the heritage listing of Ms Scaffidi’s building on Wellington Street.<sup>ab</sup> However, in her response, Ms Chen wrote:
- “Fourthly, I do not prepare to vote [on] the heritage item as I accepted the donation from the Lord Mayor on behalf of Chinese Community”.*<sup>202</sup>
178. Mr Ridgwell’s response to Ms Chen was, although she was required to disclose the gift to the City, the gift would not require her, or indeed permit her, to abstain from voting on the heritage matter when it came before Council:
- “I wish to also clarify that the receipt of the Gift is therefore below \$200 and therefore does not make you a closely associated person and you are to consider any matters before Council”.*<sup>203</sup>
179. On 1 November 2016, despite Mr Ridgwell’s advice, Ms Chen declared an impartiality interest in respect of the gift from Mr Scaffidi.<sup>204</sup> However, she ultimately voted on the matter.<sup>205</sup>

ab This matter concerned the potential listing of the Grand Central Hotel on the City’s Heritage Register. Ms Scaffidi and her husband had a significant financial interest in this property.

## Findings

### Finding 2.2.3 – 1

#### Ms Lily Chen

The Inquiry makes the following findings:

- i. Ms Chen did not disclose income in her primary return dated 11 December 2011 and in her annual returns for 2011/2012, 2012/2013, 2014/2015, 2015/2016 and 2016/2017.
- ii. Ms Chen did not disclose interests in real property in her annual returns for 2013/2014 and 2014/2015.
- iii. Ms Chen disclosed the incorrect address for one of her real property interests in her annual returns for 2013/2014 and 2014/2015.
- iv. Ms Chen did not disclose rent as an income source she had received in her annual returns for 2011/2012 or 2012/2013. The Inquiry notes that Ms Chen disclosed the properties from which she received rental income in her annual returns.
- v. Ms Chen did not disclose she was a director of Wayon Pty Ltd in her primary return dated 11 December 2011 and in her annual return for 2011/2012.
- vi. Ms Chen did not disclose she was a director of Global Australia Pty Ltd in her primary return dated 11 December 2011 and her annual returns for 2011/2012, 2012/2013 and 2013/2014.<sup>ac</sup>
- vii. Ms Chen did not file an annual return for 2017/2018 with the City by 31 August 2018.
- viii. Ms Chen did not disclose to the City's CEO Mr Scaffidi's gift within 10 days of receipt.
- ix. Ms Chen backdated the gift declaration form regarding Mr Scaffidi's gift.
- x. Ms Chen gave a misleading answer to a question from the public at the Ordinary Council Meeting on 11 October 2016 regarding her disclosure obligations of the gift she received from Mr Scaffidi.
- xi. Ms Chen produced a statement of information that does not appear to contain all information required to be produced under a Notice dated 1 March 2018 [sic 2019] issued pursuant to section 8A of the RC Act.

ac Although Ms Chen resigned as a director of Global Australia Pty Ltd on 12 September 2013, she was still required to disclose her position in her annual return for 2013/2014 as she was still a director "at any time during the return period": *Local Government Act 1995*, s 5.84(1)(a)(iii).

### Finding 2.2.3 – 2

#### Mr Reece Harley

The Inquiry makes the following findings:

- i. Mr Harley did not disclose rent as an income source he had received from one listed property in his primary return or in his annual return for 2013/2014. In his annual returns for 2015/2016, 2016/2017 and 2017/2018 he did not disclose rent as an income source he had received from any of the listed properties.
- ii. The Inquiry notes that Mr Harley disclosed the properties from which he received rental income in his annual returns. The Inquiry considers Mr Harley's non-disclosure of rent as an income source in those returns should be seen in that context. For that reason, the Inquiry has not referred this matter to the Department.

### Finding 2.2.3 – 3

#### Mr Paul Crosetta

The Inquiry makes the following findings:

- i. Mr Crosetta did not disclose rent as an income source he had received in his primary return dated 7 January 2016 or as an income source in his annual returns for 2015/2016, 2016/2017 or 2017/2018.
- ii. The Inquiry notes that Mr Crosetta disclosed the properties from which he received rental income in his annual returns as "*rented*" or "*investment*" and considers his specific non-disclosure of rent as an income source in those returns should be seen in that context. For that reason, the Inquiry has not referred this matter to the Department.

### Finding 2.2.3 – 4

#### Mr James Limnios

The Inquiry makes the following findings:

- i. Mr Limnios did not disclose he was a director of Limnios Superannuation Fund Pty Ltd in his primary return dated 8 December 2009 and in any of his annual returns for the years 2009/2010 to 2017/2018. The Inquiry has referred this matter to the Department for it to consider whether offences may have been committed under Part 5, Division 6 of the LG Act.
- ii. Mr Limnios did not disclose he had close family members who were his co-directors in Iraklion Group Pty Ltd, Limnios & Johns Pty Ltd, Limnios Superannuation Fund Pty Ltd and Olympic Group Pty Ltd in his AASB Related Party Disclosure form for 2017/2018.

### Finding 2.2.3 – 5

#### Mr Keith Yong

The Inquiry makes the following findings:

- i. Mr Yong did not disclose he was a director of Bon Geste Pty Ltd in any of his annual returns for 2014/2015, 2015/2016 and 2016/2017. The Inquiry has referred this matter to the Department for it to consider whether offences may have been committed under Part 5, Division 6 of the LG Act.

### Finding 2.2.3 – 6

#### Dr Jemma Green

The Inquiry makes the following findings:

- i. Dr Green did not disclose rent as an income source she had received in her annual returns for 2015/2016, 2016/2017, or 2017/2018.
- ii. The Inquiry notes that Dr Green disclosed the properties from which she received rental income in her annual returns and considers her non-disclosure of rent as an income source in those returns should be seen in that context. For that reason, the Inquiry has not referred this matter to the Department.
- iii. Dr Green did not disclose she held a beneficial interest in the Superannuation Trust in the return that she may have been first required to do so or in any other subsequent return when she may have been required to do so. The Inquiry has referred this matter to the Department for it to consider whether offences may have been committed under Part 5, Division 6 of the LG Act.

### Finding 2.2.3 – 7

#### Ms Lisa Scaffidi

The Inquiry makes the following findings:

- i. Ms Scaffidi did not disclose shareholding dividends she had received, in excess of \$500.00, as income in her 2016/2017 or 2017/2018 annual returns.
- ii. Ms Scaffidi did not disclose bank interest she had received, in excess of \$500.00, as income in her 2015/2016 or 2016/2017 returns.
- iii. The Inquiry has referred these matters to the Department for it to consider whether offences may have been committed under Part 5, Division 6 of the LG Act.

### Finding 2.2.3 – 8

#### The City of Perth

The Inquiry makes the following findings:

- i. The City did not undertake a proper analysis of the primary and annual returns filed by council members to ensure they contained all relevant information and were sufficiently detailed to identify potential conflicts that could arise.

## Council member entitlements

### Introduction

1. The Terms of Reference for the Inquiry require it to give due consideration to, and inquire into and report on, among other relevant matters *“whether any member engaged in improper or unlawful conduct in relation to the performance by the Council or the members of any of their functions and obligations”*.<sup>206</sup>
2. The Inquiry is also required to inquire into and report on matters of the aspects, operations and affairs of the City of Perth (City) which may be necessary to determine whether there has been a failure to provide good government, the prospect of good government being provided in the future, and any steps which may need to be taken to ensure that good government happens in the future.<sup>207</sup>
3. The conduct of some council members may have been illegal or improper. Such conduct by a council member is directly linked to good government, particularly where that conduct relates to inappropriate use of entitlements afforded to that person because of his or her status as a council member.
4. Some of the events in this Chapter occurred before the time period stipulated in the Terms of Reference commenced. The Inquiry is authorised to inquire into and report on a period before 1 October 2015, if it considers that to be necessary for the purpose of properly discharging its functions, and placing the matters inquired into within a relevant context in the circumstances.<sup>208</sup>
5. The Inquiry considers that the use of the dining room by council members prior to 1 October 2015 contextualises the use of the dining room within the period covered by the Terms of Reference.

### Issues considered by the Inquiry

6. The Inquiry has identified seven significant issues that relate to the potential misuse of council members’ entitlements.
7. First, whether certain City council members misused their entitlements to entertain guests in the City of Perth Council (Council) dining room (dining room).
8. Secondly, whether the administrative arm of the City failed to properly address any misuse by council members of their entitlements to entertain guests in the dining room.
9. Thirdly, whether Ms Lisa Scaffidi as the Lord Mayor failed to take the appropriate action to prevent the misuse by council members of their entitlements to entertain guests in the dining room.
10. Fourthly, whether any council members misused their entitlements to entertain guests at restaurants within the City when the dining room was unavailable by seeking reimbursements of the costs from the City.

11. Fifthly, whether the Administration failed to properly address any misuse by council members of their entitlements to entertain guests at restaurants within the City when the dining room was unavailable.
12. Sixthly, whether Mr Jim Adamos claimed reimbursement from the City of costs that were not associated with his attendance at Council-related functions or activities.
13. Seventh, whether the Administration failed to properly consider Mr Adamos's claims for reimbursement of costs purportedly associated with his attendance at Council-related functions.

## Investigation by the Inquiry

### Witnesses

14. The Inquiry held private and public hearings with a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section:

- Council members Ms Scaffidi, Mr Adamos, Mr Rob Butler, Ms Lily Chen, Ms Janet Davidson, Dr Jemma Green, Mr Reece Harley, Mr James Limnios, Ms Judy McEvoy, Mr Keith Yong;
- Mr Martin Mileham, CEO; and
- Mr Mark Ridgwell, Manager, Governance.

## Evidence obtained by the Inquiry

### Summary and reconciliation of the relevant evidence

15. There is no doubt that council members commit themselves to performing many hours of unpaid work. Although they receive attendance fees for committee and council meetings,<sup>209</sup> only the Lord Mayor is entitled to receive a salary.<sup>210, (ad)</sup>
16. During the period of the Inquiry's Terms of Reference a council member (including the Lord Mayor) was, however, able to claim reimbursement for certain expenditure incurred in the performance of his or her duties and was entitled to a limited use of the dining room to entertain guests at the City's expense.
17. The City maintains a comprehensive Policy Manual which contains a variety of policies relevant to the operation of the City and its Council. A copy of this Policy Manual was provided to each council member upon being elected to Council for the first time<sup>211</sup> and was regularly updated.

ad Council Policy 10.5 provides that the Lord Mayoral allowance is to be set at the maximum level within the appropriate band for the City determined by the Salaries and Allowances Tribunal: Policy, City of Perth Council Policy Manual, CP10.5, Council Member Allowance and Meeting Attendance Fees, 30 April 2015, p1.

The Policy Manual included policies relevant to:

- the circumstances in which council members could provide hospitality on behalf of the City to their invited guests in the dining room; and
- the reimbursement of council members for certain expenditure incurred in the performance of their duties.

### Council Policy CP10.12 – Provision of Hospitality

18. Council Policy 10.12 (CP10.12) is a three-page document setting out, among other things, the catering services provided by the dining room. During the period of the Inquiry's Terms of Reference, CP10.12 stated that its objective was to determine "*the nature and extent of catering services for civic functions and official meetings*".<sup>212</sup>

19. The relevant portions of CP10.12 read as follows:

*"POLICY STATEMENT*

*The Council acknowledges that as Western Australia's Capital City local government, it has unique civic responsibilities to receive and host visiting dignitaries, significant business partners and corporations, community organisations, and residents and ratepayers of the City.*

*The Council shall maintain a limited hospitality facility available to Elected Members to assist them to meet their unique civic responsibilities on the following basis:—*

*1. Dining Room*

*The dining room being available to Elected Members from 12.30 pm to 3.30 pm on Fridays, excluding the second Friday of each month, and 7.30 pm to 10.30 pm on the second Friday of each month and on one Saturday per month (except December). The following must be adhered to in relation to Council Members use of the dining room:—*

*...*

*1.2 a maximum of ten guests, including members' spouses, are permitted in the Dining Room. Any additional guests must be noted and referred to the General Purposes Committee;*

*1.3 a guest book identifying the main guest of honour at each function is to be maintained;*

*...*

*1.7 bookings for the use of the Dining Room must be made through the councillors' Resource Officer;*

*1.8 the Dining Room is available to Freeman during regular Dining Room hours on Fridays with a maximum of three guests, including Freeman's spouses;*

*...*

*1.9 Elected Members may use restaurants (within the City of Perth area) for hospitality purposes on Fridays or for Saturday Dinners if there are insufficient numbers to meet the minimum catering requirement for the City of Perth Dining Room, being 10 people; or where the Dining Room is fully booked".<sup>213</sup>*



20. CP10.12 is to be read in conjunction with Council Policy 10.8 (CP10.8) which is titled “Office Accommodation – Elected Members”. Part of the Policy Statement for CP10.8 states: “The Reception Suite at Council Chambers and Committee Rooms and dining room are not to be used for other than official functions”.<sup>214</sup>
21. There is no ambiguity in CP10.8 or CP10.12 as to the limitations placed on the use of the dining room by council members. CP10.8 stipulates that the dining room is “not to be used for other than official functions”. Likewise, CP10.12 states that the use of the dining room is a “limited hospitality facility available to Elected Members to assist them to meet their unique civic responsibilities”. Those unique civic responsibilities arise from the fact that the Council is “Western Australia’s Capital City local government”.
22. The City’s Council Policy Manual did not impose a financial threshold upon council members for the expenses they incurred in their use of the dining room. Ms Davidson gave evidence that she believed each council member could use the dining room up to \$12,000.00 annually.<sup>215</sup> Similarly, Mr Yong told the Inquiry that he asked what was the budgetary limit for the use of the dining room and was told it was \$12,000.00 by Mr Dale Quinlivan (the Manager, Executive Support).<sup>216</sup> Mr Ridgwell was also aware of the \$12,000.00 limit, but could not say from where it originated.<sup>217</sup>
23. From documents in the Inquiry’s possession, it is evident that for a number of years the City’s Budget Item “Dining Room – Catering Supplies and Beverages” was allocated to council members and “Freeman” on the following basis:
  - ninety-ninths of the balance was uniformly allocated to each of the nine council members; and
  - one-tenth of the balance was allocated to “Freeman”.<sup>218</sup>
24. As at June 2015, the annual amount of \$12,000.00 (which had “been nominally set for a number of years”) had been allocated to each council member for their use of the dining room.<sup>219</sup>
25. Notwithstanding the Council policies that mandated limited use of the dining room for council members to entertain guests at the City’s expense, evidence before the Inquiry clearly established that some council members flagrantly ignored the limitations that their own policies had set down and invited guests for their own self-interest instead of the City’s interest.

### Council Policy CP10.6 – Elected Members – Reimbursement of Expenses

26. Council Policy 10.6 (CP10.6), titled *“Elected Members – Reimbursement of Expenses”*, stated that its objective is to *“provide for the reimbursement of expenses incurred by an Elected Member while performing his or her duties”*.<sup>220</sup> During the period of the Inquiry’s Terms of Reference, parts 1.1 to 1.8 of CP10.6 provided for the reimbursement of costs associated with a broad range of travel and incidental expenses including attending conferences, travel and parking, professional development, interstate and overseas travel, childcare costs, telephone/facsimile costs, protocol use, spectacles and other aids, personal donations and an electronic diary.<sup>221</sup>
27. Relevantly, part 1.9 of CP10.6 also stated that the City shall meet costs associated with a council member’s *“clothing apparel, drycleaning, personal presentation and incidental costs associated with a member’s attendance at Council-related functions and activities”*.<sup>222</sup>
28. Part 3 of CP10.6 provided that the costs in part 1 were to be met by the Council up to a limit of \$13,360.00 in each financial year. Part 6 of CP10.6 provided that a record of all council member reimbursements was to be maintained.
29. The above provisions in CP10.6 operated throughout the period of the Inquiry’s Terms of Reference except for an amendment to part 1.9, effected on 21 November 2017, that inserted *“to a maximum claimable amount of \$3,000.00 per annum”* and deleted *“and incidental costs”* with respect to a council member’s attendance at Council-related functions and activities.<sup>223</sup>
30. Evidence before the Inquiry established that one council member claimed for reimbursement of costs from the City pursuant to part 1.9 that he was not entitled to claim. These costs were met by the City.

#### Issue (1): Whether council members misused the dining room

31. Seven of the nine council members who were suspended in March 2018 were questioned about their use of the dining room.<sup>ae</sup> Two former councillors were questioned, namely, Mr Butler and Ms McEvoy.



City of Perth Council dining room.

<sup>ae</sup> Mr Hasluck and Ms Barton were not questioned due to their short time as council members before the suspension and their very limited use of the dining room.

### Mr Rob Butler

32. Mr Butler was a council member for the City from 3 May 2003 until 21 October 2015 when he failed to be re-elected. He was the Deputy Lord Mayor from 22 October 2013 to 21 October 2015.<sup>224</sup> In the last full financial year that he was a council member, Mr Butler had used up his annual dining room allowance of \$12,000.00 and made arrangements with his fellow council member, Ms Davidson, to access the unused portion of her allowance.<sup>225</sup>
33. When questioned about his use of the dining room, Mr Butler was frequently non-responsive and evasive. He was argumentative and many of his answers lacked veracity and consistency.
34. When asked what were the restrictions on the guests that a council member could invite to the dining room he answered, *“there was nothing in the policy that restricted who you could invite”* although he then added, *“You couldn’t just invite every Tom, Dick and Harry”*.<sup>226</sup>
35. He then confirmed it was his recollection:
  - there was nothing in the City’s policy that restricted who a council member could invite to the dining room;
  - that council members could entertain guests for private events that were not related to Council business; and
  - guests could be invited by a council member with respect to a matter that was not related to the council member’s civic responsibilities.

Mr Butler maintained these scenarios would comply with the Council policy.<sup>227</sup>

36. Mr Butler admitted that there were occasions when he invited personal friends who were either ratepayers or non-ratepayers.<sup>228</sup>
37. After agreeing that there was no point having a Council Policy Manual unless the policies were complied with, Mr Butler was shown the relevant provisions of CP10.8 and CP10.12.<sup>229</sup> Nevertheless, when asked whether he always complied with the council policies regarding the use of the dining room, Mr Butler answered “yes”.<sup>230</sup>
38. Notwithstanding the above evidence, Mr Butler then provided these answers:

*“Are you saying that you did not abuse your use of the dining room?*  
*---I’m saying that, yes.*  
*That every single guest you had fell within the provisions of the Council Policy Manual that I’ve taken you to?---No.*  
*No, they didn’t?---I mean, you say yes or no and it’s – if that’s what you want, yes or no but, you know – yes or no. The answer is no.*  
*Mr Butler, I just want the truth. So there were some guests of yours who didn’t fall within Council policy?---Correct”*.<sup>231</sup>

39. Mr Butler then gave evidence that there was “*an acknowledgement between the councillors*” that for a Saturday night dinner at the dining room, council members could invite family and friends as their guests. This convention, according to Mr Butler, came into effect in 1998 as council members held the view they were entitled to do this because of the hours they had put in.<sup>232</sup>
40. Mr Butler was then asked the following questions:
- “So the ratepayers who weren’t invited, what view do you think they would take of that?---Well, what view? The view might be, you do work your butt off so therefore, you’re entitled to it, go for it.*
- You’re entitled to it?---Make it happen.*
- Then it just makes a mockery of the Council’s policy on these matters, doesn’t it?---Not a total mockery, no.*
- What, a half mockery then?---Yes.*
- A partial mockery?---Yes.*
- It’s a mockery, isn’t it?---It’s a yes or a no and if it’s a yes, no and if it’s a no, no.*
- It’s completely ignoring Council policy, isn’t it?---No, not completely because there’s more in the policy than just the Saturday night.*
- The policy makes it clear that it’s a ‘limited hospitality facility available to council members to assist them to meet their unique civic responsibilities’?---That’s right.*
- A free meal for friends and relatives, that doesn’t meet your civic responsibilities, does it?---I think it goes more than just a free meal, I think it goes to the time and effort and the conversation around the table in reference to the City of Perth and so forth. So it’s more than just a free meal.”*<sup>233</sup>
41. Mr Butler’s evidence was contradictory and inconsistent. At times it was fanciful, such as when he asserted that every ratepayer of the City was his friend.<sup>234</sup> His justifications for using the dining room in the way he did were not only in breach of Council policy, but entirely unmeritorious. The Inquiry is only prepared to accept his evidence on relevant issues where it is against his own interests.
42. Mr Butler admitted that he never identified his main guest of honour for any function that he hosted in the dining room as required by part 1.3 of CP10.12.<sup>235</sup>

### Ms Janet Davidson

43. Ms Davidson was elected in February 1998 and remained a council member until she resigned from her position on 27 May 2019.<sup>236</sup>

### Dining room expenditure

44. Ms Davidson was an extensive user of the dining room. Over the 29-month period of the Inquiry's Terms of Reference, she entertained 269 guests at a total cost to the City of \$20,260.80. Although she did not use the dining room to entertain any guests after October 2017, the average monthly cost to the City for Ms Davidson and her guests still came to just under \$700.00.

45. Ms Davidson gave evidence that council members could invite anyone to the dining room and that she would be entitled to invite her husband and eight other guests who were friends of hers and not City ratepayers.<sup>237</sup> She believed that a council member could have lunch for family and friends for somebody's birthday, although she did not "think it would make a very good look". Ms Davidson was then asked these questions:

*"So you know of occasions when councillors would have guests that weren't ratepayers and that the function was clearly not related to any Council related matters, would that be fair to say?---Yes.*

*And you believe that councillors were entitled to do that?---Yes.*

*And their meals would be paid for by the City?---Yes.*

*Including their drinks?---Yes.*

*Which included alcohol?---Yes".<sup>238</sup>*

46. Counsel Assisting later asked:

*"Council policy should be followed at all times by councillors, should it not?---Yes.*

*Otherwise there's not much point in having a policy, is there?---No.*

*You don't want to honour a policy more in its breach than its practice, would you?---No.*

*Otherwise, there's not much point having it?---M'mm.*

*Commissioner: Indeed, isn't it the role of a councillor to lead by example in that regard?---Yes".<sup>239</sup>*

47. After being taken through the relevant provisions of CP10.8 and CP10.12, Ms Davidson was asked "So where did this entitlement come that councillors could just use the dining room [without any restrictions] at ratepayers' expense?" She said "I can only say normal practice". Ms Davidson stated that this practice was in place when she began serving as a council member in 1998.<sup>240</sup>

48. Ms Davidson was asked the following questions by the Commissioner:

*“Explain to me, please, Ms Davidson how it is proper behaviour for a councillor to entertain family and friends in the dining room in the way that you did when the Council policy does not permit it?---I understand that. As I said, accepted practice.*

*How was that proper behaviour for a councillor? If you have some explanation, I would like to hear it?---Yes. Other than the dining room was made available to council members in order to give dining opportunities to a variety of people.*

*But you know that wasn’t my question, don’t you?---Yes.*

*How was it proper behaviour for a councillor, who should lead by example and follow the Council’s policy, to entertain family and the friends in the way what you did?---That is true according to these guidelines now.*

*It wasn’t proper behaviour, was it?---No”.*<sup>241</sup>

49. Ms Davidson agreed that the unrestricted use by council members of the dining room was a considerable benefit that council members would not necessarily want to have stopped. She also agreed that it would be useful for councillors to turn a blind eye to what was stipulated in the Council Policy Manual.<sup>242</sup>
50. Ms Davidson agreed that it was “extraordinary” that the Council policy regarding the use of the dining room by council members was not followed and that it was also extraordinary that it had to be pointed out to her, being a councillor of 20 years, what the Council policy was with respect to the dining room.<sup>243</sup>
51. Ms Davidson accepted that in regard to the Council policy, the use of the dining room to entertain the friends of council members was an “appalling use of Council moneys”.<sup>244</sup>
52. Ms Davidson was asked:
- “Did you ever consider that [what view the ordinary ratepayer would have] as you sat down with nine or 10 of your friends?---I always appreciated what I received and as I say, it was by practice that those times for the dining room occurred.*
- But did you ever consider, is this really right? Should I be entitled to this? Did that thought ever cross your mind?---No.*
- Why not?---Just something that you actually did.*
- No pangs of guilt?---I can’t [say] that you’re making me feel terribly good about it, so I would agree with you, there probably is [sic] pangs of guilt.*
- Not at the time though?---No, I – no”.*<sup>245</sup>

53. The Commissioner then asked:

*“And when entertaining them [family and friends], did you consider that to be ethical behaviour?---At the time, yes, because the dining room was there to be used”.*<sup>246</sup>

Ms Davidson deliberately ignored the Council’s own policies with respect to the use of the dining room, policies that she admitted she would have read. She maintained that the Council policies were *“not pointed out by admin”*.<sup>247</sup> That is not correct as the Inquiry has sighted written memoranda from 2001 and 2005 addressed to the Lord Mayor and council members at the time (which included Ms Davidson) regarding the use of the dining room.<sup>248</sup> Ms Davidson displayed a lack of understanding of the inappropriateness of her excessive and improper use of the dining room in her 20 years as a council member. Of all the council members questioned about their misuse of the dining room, the Inquiry finds Ms Davidson’s self-entitlement and justification of her over-usage the most reprehensible.

### Mr James Limnios

#### Hospitality expenditure

54. During the 29 months of the Inquiry’s Terms of Reference, Mr Limnios entertained 269 invited guests in the dining room at a total cost to the City of \$20,399.43. This equated to a monthly expenditure of just over \$700.00. In the 2016 calendar year, he invited 186 guests to the dining room at a cost of \$13,712.93.
55. When asked whether there were any restrictions placed on the type of guests a council member could invite to the dining room, Mr Limnios stated that ratepayers, residents, business people and people that the council member was encouraging to be part of the City could be invited and that the *“dining room was there to support your role as a councillor”*. He admitted inviting relatives including his wife,<sup>af</sup> his father, his mother, his two sisters and his godfather.<sup>249</sup> Mr Limnios understood that the entertaining of guests in the dining room had to be connected with his civic responsibilities as a council member. He maintained that he was still performing his civic responsibilities when he invited his friends who had no connections to the City, because he was *“promoting the City”*. He denied taking such friends to the dining room because it meant that neither he nor his friends would have to pay for it.<sup>250</sup>
56. Mr Limnios admitted that an estimated 5–10 per cent of his guests were friends or relatives,<sup>251</sup> but he claimed that *“in most instances”* the people he invited had connections with the City.<sup>252</sup>
57. Mr Limnios said that when he would invite his friends, the civic responsibility he was exercising was that he was *“encouraging people to come to the City and be involved with the City”*.<sup>253</sup> He claimed that in return for the City’s investment in his use of the dining room, the City received *“promotion, support, encouragement”*.<sup>254</sup>

af Spouses of council members were permitted to attend the dining room: Policy, City of Perth, CP10.12, Provision of Hospitality, 22 February 2011.



58. These “returns” are ambiguous and unquantifiable. Even if these returns were achieved by Mr Limnios’s use of the dining room, the Inquiry does not accept it was a cost-efficient method of achieving them. When taken through the relevant Council policies regarding the council members’ entitlements to use the dining room, Mr Limnios admitted CP10.12 was not always adhered to and that it seemed nothing was done to stop this.<sup>255</sup>
59. Mr Limnios was at times evasive and non-responsive when asked questions regarding his personal use of the dining room. The Inquiry finds that his answers were self-serving and were, at times, not entirely accurate. The Inquiry does not accept that his invitations to his friends and relatives to dine at the dining room were motivated solely for the purpose of promoting the City. The Inquiry finds a reasonable inference can be drawn that because these guests were either Mr Limnios’s friends or relatives, there was a personal benefit for him and his guests to have a meal without paying for it. It can reasonably be inferred that this fact would have been a motivation for Mr Limnios to make use of the dining room to entertain guests he was related to or who were his friends.
60. Even if it is accepted that Mr Limnios invited his friends and relatives for the vague purpose of promoting the City, he was still in breach of the Council policy regarding the use of the dining room as it was not being used as a “limited hospitality facility” available to Mr Limnios to assist him to meet his “unique civic responsibilities” as a council member of “Western Australia’s Capital City local government”.<sup>256</sup>
61. Although the existence of a fine-dining facility with expansive river views may have been unique to this particular local government, that fact did not mean Mr Limnios’s civic responsibilities entitled him to invite his own friends and relatives who had no connection to the City for a meal; the cost of which was incurred by the City. The Inquiry accepts the evidence from Martin Mileham, the City’s Chief Executive Officer (CEO), as to the type of guests permitted to use the dining room:

*“Was it your understanding that the dining room shall only be used by Elected Members if they had guests that were somehow connected to the City?---Yes.*

*Say in the sense that they had business dealings with the City or there were other Councillors from other Cities attending as guests, things like that?---Yes, the overarching City business.*

*Would that extend though to just inviting friends who might happen to be ratepayers of the City of Perth?---Might happen to be wouldn’t be a great reason. If they were being invited for specific stakeholder work under the auspices of the City, maybe, but certainly just a general invite ‘Come and have lunch’, I wouldn’t think would be appropriate”.<sup>257</sup>*

62. The requirement in part 1.3 of CP10.12 identifying the main guest of honour in a guest book is consistent with Mr Mileham's evidence that a friend of a council member (whether a ratepayer or not) could be invited if he or she was involved in specific stakeholder work for the City. In these situations, the identification of a main guest of honour would be a relatively simple exercise. In circumstances where a council member was only inviting friends and relatives for the generic purpose of promoting the City, it would be difficult to identify a genuine main guest of honour within the group as there is no good reason to specially honour one guest over any other. The Inquiry notes it is therefore unsurprising that many council members failed to comply with part 1.3 of CP10.12.
63. As to Mr Limnios's estimate that his friends and relatives only represented 5–10 per cent of the total number of guests that he invited, the Inquiry finds that this estimate may be inaccurate. Mr Limnios did not remember ever recording his guest of honour when attending the dining room.<sup>258</sup> Nor was he ever asked to provide the names to the City of the guests he was inviting and he was uncertain how often he would email his guests' names to Cecelia Firth, the City's Resource Officer for council members. It is therefore not possible for the Inquiry (or indeed Mr Limnios) to verify the accuracy of his estimates. When asked whether he was sure it was not more than 5 or 10 per cent, Mr Limnios answered: *"I wouldn't know"*.<sup>259</sup>

### Mr Keith Yong

#### Hospitality expenditure

64. From 1 October 2015 to when he failed to be re-elected on 21 October 2017, Mr Yong invited 299 guests to the dining room at a total cost \$21,517.36. He therefore spent on average over \$850.00 a month entertaining guests. In the calendar year 2016, he invited 171 guests at a cost of \$11,587.73. Mr Yong was one of the most prolific users of the dining room. For the financial years 2015/2016 and 2016/2017, he hosted 306 guests incurring a total cost of \$21,870.72 for the City.<sup>260</sup>
65. When asked whether there were any restrictions placed on who he could invite to the dining room, Mr Yong stated that he was not aware of any restrictions placed by the City and he understood he could invite whoever he wanted. When he was asked where he got that understanding from Mr Yong stated that it was *"the City"*. However, he conceded that although he asked Mr Quinlivan about what the annual limit was on council members' expenditure in the dining room, he never asked whether there were any limits on the type of guests he could invite. Mr Yong admitted that he broadly interpreted the term *"guest"* and that he did not confine his guests to those he invited when he was carrying out his civic responsibilities. That meant he could entertain his own guests for personal reasons, including friends and relatives and their meals would be paid for by the City.<sup>261</sup>
66. Even though Mr Yong had read the Council policies and that he remembered they placed limitations on council members' use of the dining room, he agreed he did not abide by those policies.<sup>262</sup>

67. The Inquiry accepts that there were occasions when Mr Yong used the dining room in accordance with the provisions of CP10.12.<sup>263</sup> However, the Inquiry also finds that there were many occasions when he entertained guests purely for his own personal reasons without undertaking any of his civic responsibilities. With respect to these occasions his evidence was candid and contrasts sharply with the evidence of Mr Limnios referred to above. Mr Yong's evidence included the following admissions:

*"What about the guests that came and dined out at the City's expense who were just your friends and relatives, what return from that expenditure did the City receive?---None.*

*None, is that your answer?---No, just purely entertain friends and relatives.*

*Your own personal entertainment?---Yes".<sup>264</sup>*

68. The Inquiry also accepts Mr Yong's concession that he ignored Council policy when he used the dining room for those purposes.<sup>265</sup>
69. The Inquiry also accepts the accuracy of Mr Yong's answer to the following question, which concerned the behaviour of council members using the dining room for personal reasons:

*"So what would you think the ordinary City of Perth ratepayer would think of that behaviour?---Unacceptable".<sup>266</sup>*

70. By Mr Yong's own admissions, he clearly breached CP10.8 and CP10.12. In contrast to the evidence of some other council members, he made no attempt to justify his behaviour with implausible explanations.
71. Mr Harley recalled an occasion in the dining room in the lead up to the October 2017 election when he observed Mr Yong hand out yellow coloured voter enrolment forms to his guests at the end of their dinner.<sup>267</sup>
72. Mr Yong gave inconsistent accounts as to whether he did hand out such forms to his guests after entertaining them in the dining room. Although he admitted he had handed out the yellow coloured voter enrolment forms to his close friends and relatives, he at first could not recall if he had handed out such forms to his guests in the dining room. He then maintained that it *"definitely did not happen"*. His explanation as to why he would not do that was, because it would not be proper for him to be giving out such forms in the dining room.<sup>268</sup> The Inquiry does not accept Mr Yong's eventual denials that he had not handed out voter enrolment forms to his guests on an occasion in the dining room. Given Mr Yong's evidence that he would invite his friends to the dining room for purely personal reasons, the Inquiry accepts the evidence of Mr Harley.
73. The Inquiry finds that Mr Yong behaved improperly by not only inviting his friends as guests to the dining room but also, on one occasion, handing out voter enrolment forms to his guests after they had dined there. The Inquiry finds, to the required standard, that part of Mr Yong's motivation in inviting guests on this occasion was to hand out voter enrolment forms to support him in the forthcoming election.

## Ms Lily Chen

### Hospitality expenditure

74. Over the 29 months of the Inquiry's Terms of Reference, Ms Chen entertained 332 guests in the dining room at a cost of \$23,440.68. This was an average monthly expenditure of over \$800.00.
75. An examination of Ms Chen's financial year use of the dining room is telling, as the \$12,000.00 limit was based on a financial rather than calendar year. For the financial year 2015/2016, Ms Chen had expended \$11,963.53 entertaining 179 guests by April 2016. She did not use the dining room for the last two months of that financial year, because she had almost reached her \$12,000.00 limit.<sup>269</sup> For the financial year commencing 1 July 2016, Ms Chen had entertained 151 guests in the dining room to the end of November 2016<sup>270</sup>; a monthly average of 30 guests. She did not use the dining room again for the balance of that financial year.<sup>ag</sup> From 1 July 2016 to 25 November 2016 Ms Chen incurred costs of \$10,782.25 at a monthly average of above \$2,150.00.<sup>271</sup>
76. From 1 July 2015 to 25 November 2016 (in other words just under 17 months), Ms Chen incurred costs of \$22,745.78 entertaining 330 guests in the dining room. That represents a monthly average of entertaining nearly 20 guests at a cost to the City of over \$1,300.00. There was no evidence before the Inquiry that Ms Chen exceeded her \$12,000.00 limit in any financial year, although she admitted that it was likely she used close to this amount for the other years she was a council member.<sup>272</sup>
77. Ms Chen admitted to using the dining room to entertain her immediate family and she agreed that Council policy did not permit her two children to be invited. She justified inviting her children because there was an unwritten rule that councillors were permitted to invite family members and that this had been in place for many years.<sup>273</sup>
78. Ms Chen also admitted to inviting friends who were ratepayers to the dining room, which she maintained was a discharge of her duties as they spoke about Council issues. Ms Chen made the implausible assertion that she had to invite ratepayers to the dining room if they expressed a wish to see it.<sup>274</sup> After admitting that she overused the dining room, Ms Chen admitted she entertained guests that she should not have in the dining room and that had happened on more than just an isolated occasion.<sup>275</sup> She did, however, deny using the dining room to entertain guests for her own personal business reasons, because *"this is my own conscience, my choice, principle in life"*.<sup>276</sup> The Inquiry rejects that evidence of Ms Chen. The Inquiry accepts the evidence from other witnesses that on two known occasions she entertained guests at the dining room purely to advance her own personal business dealings and/or political standing at a State level. These occasions are dealt with elsewhere in this Report.
79. When asked about what benefit her use of the dining room brought to the City, Ms Chen said that some of her guests raised issues of general concern, which she reported back to the Administration to take action. However, she admitted that the dining room was an unnecessary location for these conferrals, which she agreed could have been communicated to her over the telephone or over a coffee.<sup>277</sup>

ag This non-use of the dining room coincided with the time that Ms Chen took a number of months leave of absence from the Council in order to contest the March 2017 State election.

80. Ms Chen's answers to questions regarding her personal use of the dining room were frequently non-responsive and evasive. Questions often had to be repeated and many of Ms Chen's answers were self-serving, inaccurate or implausible.
81. The Inquiry finds that during the period of the Inquiry's Terms of Reference, Ms Chen deliberately breached the Council policy regarding her use of the dining room. She was an unreliable witness and her evidence on relevant issues is only accepted where it involves admissions against her interests.

### Mr Jim Adamos

#### Hospitality expenditure

82. During the period of the Inquiry's Terms of Reference, Mr Adamos entertained 275 guests either at the dining room or city restaurants at a total cost to the City of \$20,514.61. This equated to an average monthly cost of just over \$700.00.
83. Mr Adamos admitted he misused the dining room by inviting extended members of his family. His explanation was that he *"made the mistake of misusing the policy at that time"*, although he was not able to offer an explanation as to why he made that mistake. He said that he did not remember the convention or unwritten agreement amongst council members that on a Saturday night the dining room could be used to entertain friends and relatives.<sup>278</sup>
84. Mr Adamos admitted that on approximately *"half a dozen times"* in his seven years as a council member he had only his wife and extended family members as his guests in the dining room. He admitted this was *"poor judgment"* on his part. Like other council members who were questioned regarding this, Mr Adamos agreed there was no point having a Council policy regarding the restricted use of the dining room if those restrictions were simply going to be ignored.<sup>279</sup>
85. Mr Adamos admitted that he invited his friends to the dining room, although he maintained they were only friends of his who he had first met as stakeholders or ratepayers of the City and whom he had subsequently befriended. He denied that he would invite these friends for personal reasons and said that the reason for the invitation *"would have been about the City"*.<sup>280</sup>
86. The Inquiry finds that Mr Adamos misused the dining room by inviting extended members of his family as guests. The question whether Mr Adamos misused the dining room by inviting his friends for the reasons he gave is more difficult to answer. For example, the Inquiry was unable to test the accuracy of Mr Adamos's evidence that the friends he invited were only those individuals he had first met as stakeholders or ratepayers of the City and who subsequently became his friends. That is because the City did not require that records be kept of the names of invited guests to the dining room. Mr Adamos did not even follow the Council policy requirement that the main guest of honour of each function be identified in the guest book.<sup>281</sup> The Inquiry was also unable to test Mr Adamos's evidence that the inviting of his friends *"would have been about the City"* as there was no Council policy requiring council members to identify the precise reason for the invitation. Though these matters are addressed in the Inquiry's recommendations, the lack of such records hindered the Inquiry's efforts to independently verify Mr Adamos's account.

87. The large number of guests Mr Adamos entertained during the period of the Inquiry's Terms of Reference does give rise to a suspicion that he may have entertained his friends in the dining room in circumstances that were not necessary to assist him to meet his "*unique responsibilities*" as a council member of "*Western Australia's Capital City local government*".<sup>282</sup> However, as the evidence falls short of establishing that fact to the required standard, the Inquiry makes no finding that Mr Adamos misused the dining room by inviting stakeholders and ratepayers who were his friends.

#### Other council members' use of the dining room

88. The council members referred to above extensively used their entitlement to entertain guests in the dining room. Leaving aside Mr Butler who was not re-elected in the October 2015 elections, the other five council members each incurred costs of over \$20,000.00 in their use of the dining room during the period of the Inquiry's Terms of Reference.
89. The other council members' expenditure during that time was far less. Ms Scaffidi entertained 139 guests at a cost to the City of \$10,109.82. Given her position as the Lord Mayor, the Inquiry finds that this cost reflects a reasonable use of the dining room.
90. Use of the dining room by Ms McEvoy, Mr Harley, Dr Green, Ms Barton and Mr Hasluck during the period of the Inquiry's Terms of Reference was either minimal or non-existent. The Inquiry finds, unlike other council members, these individuals were able to perform their "*unique civic responsibilities*" in a manner that didn't require incurring significant costs for the City by their use of the dining room.
91. Dr Green gave evidence that she used the dining room just once when she invited her husband, her mother, her parents-in-law and her sister-in-law. Dr Green admitted that there was only one "*bona fide ratepayer*" amongst her guests (being her husband), but this was a justification she was given that would permit her to use the dining room. She could not recall how or from whom she got that information.<sup>283</sup>
92. Dr Green was of the view that had she regularly invited her relatives to the dining room then that would not have been appropriate. However, the one occasion that she did was for the purpose of understanding what the experience was like and what she could use it for in her role. In those circumstances she did not feel it was an inappropriate use of resources.<sup>284</sup>
93. Considering her explanation and given Dr Green's known opposition to the excessive use of the dining room by council members, the Inquiry does not make any adverse finding against Dr Green for her one-off use of the dining room.
94. Mr Harley's use of the dining room was minimal. Although he did admit to inviting friends who were not stakeholders of the City, this was in circumstances where stakeholders of the City had also been invited. Mr Harley further admitted that when he was first elected he did make use of the dining room "... *from time to time, but there reached a point in time where I formed the view that it was being misused and I stopped making bookings*".<sup>285</sup> He agreed that it was only then his "*ethical considerations eventually prevailed*".<sup>286</sup>

95. The Inquiry heard hearsay evidence from Mr Adamos regarding Mr Harley's alleged use of the dining room for a buck's party. Mr Adamos did not witness this alleged use and had only heard about it from other council members who he couldn't identify. He did not ask Mr Harley if he had ever held such an event.<sup>287</sup> Due to the hearsay nature of Mr Adamos's evidence, his inability to recall who told him and the lack of any reliable corroboration of the event, the Inquiry finds that Mr Harley did not misuse the dining room for a buck's party.
96. Like Dr Green, Mr Harley was known for his opposition to the use of the dining room beyond what was contained in CP10.12. However, unlike Dr Green, he did invite guests to the dining room on more than one occasion in circumstances which he accepted was clearly a misuse of the dining room. With respect to those occasions he was asked:  
*"And, by your own admission, even though you weren't a principal offender, as it were, you did take advantage of it for a while?---Yes at the beginning, but not to a great extent, and you would, I believe, have access to the figures if you've requested them from the City. Councillors were provided with quarterly statements".*<sup>288</sup>
97. An examination of the City's expenses spreadsheets for Mr Harley supports his evidence that during the period of the Inquiry's Terms of Reference he was not misusing the dining room to any significant extent. In those circumstances, the Inquiry does not make an adverse finding against Mr Harley regarding his use of the dining room.<sup>289</sup>
98. Ms McEvoy, who was a councillor from 1997 to 2017,<sup>290</sup> was the most experienced council member during the period of the Inquiry's Terms of Reference. Ms McEvoy used very little of her entitlements under CP10.6 and CP10.12 during this period and disapproved of council members who used their entitlements more liberally.<sup>291</sup> Apart from introducing the guest book for the dining room (as required by part 1.3 of CP10.12), because *"that was a bit of a bone of contention of mine, because it needed to be put down who was actually attending"*,<sup>292</sup> Ms McEvoy did nothing else to curtail the misuse of the dining room, even though she had concerns about it.<sup>293</sup>
99. Ms McEvoy believed it was the responsibility of the City's Administration to bring any misuse to the attention of the council members.<sup>294</sup> As noted above, the Administration had reminded the Lord Mayor and council members of the restrictions regarding their use of the dining room in 2001 and again in 2005 (on both occasions Ms McEvoy was a council member).
100. Regulation 3(1)(d) of the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations) states that *"a person in his or her capacity as a council member should avoid damage to the reputation of the local government"*. The misuse of the dining room *"was a matter that was widely reported by the media"*.<sup>295</sup> As the most experienced council member and, more relevantly, a council member who did not abuse her entitlements to use the dining room and who had concerns about its potential misuse, it is surprising that Ms McEvoy did not do more to dissuade her fellow council members from misusing their entitlements with respect to the dining room.



## Issue (2): City's response to council members' misuse of the dining room

### Prior to 1 October 2015

101. As outlined above, the Council policies that addressed the use by council members of the dining room were ignored over a considerable period. The practice or convention that was in place since at least 1998, when Ms Davidson was first elected, was that council members were permitted to invite family members and friends as guests to the dining room.
102. The Inquiry also finds that some council members broadly defined their civic responsibilities when it came to justifying their invitation of guests to the dining room who had no connection to the City other than being ratepayers. That interpretation, however, ignored the provisions of CP10.12, which stated that the dining room was to be *"a limited hospitality facility"* that would be made available to council members *"to assist them to meet their unique civic responsibilities"*.<sup>296</sup> The Inquiry finds the administrative arm of the City did very little prior to the period of the Inquiry's Terms of Reference, and nothing constructively during the period of its Terms of Reference, to address what was clearly a misuse by some council members of their entitlement to entertain guests in the dining room.
103. Records from the City suggest that memoranda were provided to council members on two separate occasions reminding them of *"the Council's protocols and procedures relating to hospitality in the dining room and councillors' lounge"*. These memoranda were from 2001 and 2005. They were both in almost identical terms.
104. The first was from Noelene Jennings, Director, Corporate Services, to the Lord Mayor and council members and dated 21 June 2001. The second was dated 21 September 2005 and forwarded to the Lord Mayor and council members by Jamie Parry, Manager, Corporate Support.
105. In these memoranda, CP10.12 is paraphrased. With respect to the use of the dining room both memoranda stated the following:
 

*"The City of Perth, as the capital city and premier local authority of the State of Western Australia, is expected to be able to provide entertainment to visiting dignitaries from overseas, eastern states, major corporations, business and community groups, as well as **long-standing ratepayers and residents based within the City**. An effective means of offering and returning hospitality to groups and individuals is by the provision of meals in civic functions"*.<sup>297</sup> [emphasis added]
106. The Inquiry heard no evidence as to why these reminders were forwarded to council members in 2001 and 2005. However, it is reasonable to infer that the purpose was to address the misuse or broad interpretation that council members were applying to the guests they invited. The Inquiry heard from council members who were councillors in 2001 and/or 2005, who gave evidence that this was the case at these times.<sup>298</sup>

107. Given the evidence that the Inquiry heard regarding the use of the dining room post 2005, the Inquiry finds that if the purpose of these memoranda was to stop the misuse of the dining room facilities, they failed.

#### What was done by the Administration during the Inquiry's Terms of Reference?

108. After Mr Adamos admitted that he made a mistake in misusing the Council policy regarding the use of the dining room, he was asked:

*"I'm asking you to think as to why you made the mistake?---I can't think at the time, it's just it was the wrong thing for me to do.*

*And you were never pulled up for it, were you?---No.*

*Is that because the policy could be breached by councillors and there would be no penalty imposed or they weren't told they could not do that? Is that why these mistakes were made by you?---Well, I don't know. Nobody ever raised it with me. I suppose if they did raise it, I might have learned from it.*

*So no-one raised it with you in the seven years that you were a councillor?---Not that I remember, no.*

*In which time you entertained hundreds of guests, didn't you?---Yes".<sup>299</sup>*

109. And further:

*"... All right, so there's a least half a dozen occasions in which you dined with, say, your wife and extended family members at the City's expense?---That's right.*

*You weren't entitled to do that, were you?---No, you're right, I wasn't.<sup>ah</sup>*

*So why did you do it?---It was a poor judgment on my part.*

*Or did you do it because you knew you could get away with it?---No, I didn't. It was poor judgment on my part but at the same time if it was the wrong thing to do, if somebody pulled me up on it, it would have stopped the practice.*

*Yes, because nobody pulled you up, you just continued to do it, didn't you?---Yes, that's right.*

*Even though you knew it was contrary to Council Policy?---I guess that's right.*

*Not guess, it is right, isn't it?---Yes".<sup>300</sup>*

110. The Inquiry heard no evidence nor sighted any documents refuting Mr Adamos's evidence that the City's Administration did not raise the misuse of the dining room with council members following his election in October 2011. The Inquiry finds that was the case, even though such misuse was commonplace by 2015.
111. The Administration had no effective means of determining who were the guests that the council members had invited and the reasons for these invitations. The only requirement identifying any guest was part 1.3 of CP10.12, which provided "a guest book identifying the main guest of honour at each function is to be maintained".<sup>301</sup> The evidence before the Inquiry established that council members did not comply with this requirement.<sup>302</sup>

ah It is accepted that pursuant to part 1.2 of CP10.12 Mr Adamos was entitled to invite his wife as a guest but no other family members.

112. Mr Ridgwell was responsible for ensuring council members complied with the Council policy regarding the use of the dining room from 2017 onwards. Prior to that it was Mr Quinlivan. Mr Ridgwell gave evidence that he was not in favour of council members using the dining room and the entitlement of \$12,000.00 each annually was excessive.<sup>303</sup> He agreed that council members inviting their friends as guests to the dining room was not appropriate. However, he conceded that *“there was no mechanism that I’m aware of that would go through a testing of the appropriateness or otherwise of the guests”*.<sup>304</sup> Mr Ridgwell’s concession was properly made.
113. Mr Ridgwell gave evidence that rather than attempting to ensure that council members complied with the current policy he concentrated on having the policy reviewed and ultimately amended. Mr Ridgwell was then asked:

*“Why did it need to be reviewed if Elected Members only had a “limited hospitality facility” available to them to assist them to meet their unique civic responsibilities? ---That doesn’t give – for me, that policy doesn’t give me a definitive answer about how I can assess who was appropriate and otherwise to it all. So I wanted the policy reviewed for its appropriateness of actually having the spend at all because it is, as it says in there, unique responsibilities. I’ve worked in other local governments where we dent [sic] operate this way with a dining room. I didn’t believe the use of a dining room at all was appropriate.*

*So the status quo just remained?---Whilst we were going through the policy review process”*.<sup>305</sup>
114. Mr Ridgwell’s attempts to have the policy relating to the use of the dining room reviewed were unsuccessful. He agreed that it was difficult to get council members to attend meetings to address the issue, because they did not want their privilege of using the dining room taken away. The conflicts of interest prevalent were obvious. Council members who stood to gain a benefit from an entrenched practice of ignoring the limitations placed on their use of the dining room were not going to support any changes. Mr Ridgwell agreed the policy was not changed prior to the suspension of the Council in March 2018.<sup>306</sup>
115. Mr Ridgwell accepted that in hindsight it would have been appropriate for him to tell the council members to comply with the current policy while he made efforts to change the policy. The Inquiry finds that Mr Ridgwell should have done that.
116. Mr Ridgwell also admitted that he had heard of the unwritten rule that council members could entertain friends and relatives at the dining room on Saturday nights when it was open. He admitted that he did not try to stop that practice.<sup>307</sup> The Inquiry finds that it was incumbent on him to have done that, notwithstanding the backlash that may have occurred from some council members.

117. Mr Mileham gave evidence that Annaliese Battista, Director, Economic Development and Activation, was given “*complete control*” of the dining room shortly after he became CEO “*so it could be managed appropriately with the assistance of Governance*”. A reason for that was because the Administration wanted a return to a more consistent approach that complied with the Council policy and to manage costs. The Inquiry found no evidence of these outcomes being achieved prior to the suspension of the Council. Mr Mileham’s evidence was that the Administration was still “*reviewing the whole dining room set-up prior to my termination*”. It was only after the appointment of the three Commissioners to fulfil the role of Council that the decision was made to close the dining room.<sup>308</sup> The Inquiry finds that this decision was appropriate and notes it was made by those who had no vested interest in the continuing operation of the dining room.

### Issue (3): What should the Lord Mayor have done regarding the misuse of the dining room

118. It is trite to say that, of all council members in a local government, the council member elected as the Mayor or Lord Mayor should lead, often by example. For the following reasons, the Inquiry finds that Ms Scaffidi failed in her leadership responsibilities as Lord Mayor by not encouraging council members to comply with Council policies regarding their use of the dining room.
119. By her own admission Ms Scaffidi was another council member who gave a very broad interpretation of the Council policies regarding the use of the dining room:
- “I will pose this scenario to you: did you believe that an Elected Member was entitled to have as their guests just friends and family?---Well, often, as we have realised earlier, friends can be work colleagues and family can also be ratepayers too.*
- I see, so provided there was at least one guest in the party which could be as many as 10, is that right?---Up to 10, yes.*
- As long as one person there was a ratepayer, that would entitle the Elected Member to have what would essentially be a private function without any other connection to the City?---I don’t think it was ever that formalised in my time as a councillor and Lord Mayor.*
- Could someone do that?---Could someone?*
- Could an Elected Member do that?---Invite anybody?*
- Yes?---M’mm.*
- Is that your understanding?---Yes. Yes, and they did.*
- And be paid for by the City?---That is definitely how the dining room had been operating during my time as the Councillor and Lord Mayor.*
- ...
- Are you saying that Elected Members could entertain guests for private events in the dining room that weren’t---?---Private luncheons or dinners yes.*
- related to Council business?---Yes.*
- Yes?---Yes.”<sup>309</sup>*

120. After Ms Scaffidi had given evidence that “over time, the usage of the dining room and the pattern of the usage of the dining room had certainly changed”, she was asked the following:

*“You’ve just given evidence as to how this was the practice that went for many, many years and my question to you was, how come someone in authority, like the Lord Mayor, did not say, ‘We need to comply with our own Council policies’?---I admit error there and perhaps given the extent that you’re telling me that there was, you know, birthday parties and the like, it should have been done.*

*You knew that was being abused in that way, didn’t you?---Well, abused is ---*

*Okay, misused in that way, how about that? You were aware of that, weren’t you? ---Was I aware of the misuse? I felt that there was a laxness perhaps in it and yes, I regret now not tightening it up but at the same time, any ratepayers who came in and people, it was a privilege to be there and they certainly took it as that.”<sup>310</sup>*

121. And further on:

*“So my question for you is, if an Elected Member had read those two Council policies that I’ve taken you to, 10.12 and the earlier one, 10.8, if they just simply invited friends for a meal, they would be deliberately breaching Council policy?---Yes.*

*From what I understand of your evidence, Elected Members believe that they are entitled to invite precisely those guests that I’ve identified, a group of 10 friends?---Yes.*

*Do you accept that if that was the case, then the Council policy was clearly breached?---Yes.*

*So then my question for you is, why didn’t you, as the Lord Mayor, say, ‘You must adhere to the Council policy’?---If the extent of breach is as wide as you suggest, I wished I had and I regret that.*

*I haven’t given you any specific examples of Elected Members doing exactly that, I just simply asked you whether it was your view an Elected Member was entitled to do that, and you agreed and now you’ve also agreed that that is in clear breach of the Council policy? So how on earth did you allow that to happen in all your years as the Lord Mayor?---I accept that.”<sup>311</sup>*

122. As demonstrated from her evidence, Ms Scaffidi was aware of a long-standing culture of council members using the dining room for personal use in contravention of Council policies. Yet she did nothing to address the misuse of the dining room when she was Lord Mayor between 2007 and 2015. Although she promised to look at the use of the dining room after the 2015 election, meetings to discuss the matter among council members were never successfully convened.<sup>312</sup>
123. The Inquiry finds that Ms Scaffidi failed to take the necessary action to encourage strict compliance with the Council policies regarding the use of the dining room. Examples of taking such action would include issuing a memorandum (or requesting the CEO to issue a memorandum) or raising the issue with transgressing council members in private.

124. The Inquiry notes that the five council members who incurred dining room costs in excess of \$20,000.00 each during the period of the Inquiry's Terms of Reference were all members of the Ms Scaffidi's "WhatsApp" team.<sup>ai</sup> Mr Butler, who was also aligned with Ms Scaffidi prior to his loss at the 2015 elections, was another frequent user of the dining room. In those circumstances, the Inquiry finds that it would not have been easy for Ms Scaffidi to counsel those council members who were aligned with her to comply strictly with their dining room entitlements. Such counselling was unlikely to be well-received. Nevertheless, this did not provide a legitimate excuse for her failure to do so.

#### **Issue (4): Council members misusing their entitlements to claim reimbursements for restaurant meals**

##### **Ms Lily Chen**

125. Ms Chen admitted to using the provisions of part 1.9 of CP10.12, which entitled a council member to take guests to a restaurant within the City if the dining room was fully booked or not open on a Saturday night. She admitted to doing this "one to three times". Ms Chen volunteered that one of those restaurants was a Chinese restaurant called Han Palace, located on Bennett Street in East Perth. She admitted that this was with approximately 6–8 friends and that it was "*just a meal with friends*".<sup>313</sup>
126. A subsequent examination of the City's records by the Inquiry showed that Ms Chen made only one claim for the reimbursement of dining expenses incurred at the Han Palace Chinese Restaurant at 73–75 Bennett Street, East Perth. This related to a claim for lunch she hosted on 20 February 2015 for 5 or 6 members of the East Perth Community Safety Group and was in the amount of \$533.20.<sup>aj</sup>
127. It is evident from an exchange of emails between Ms Chen and Jim Meneely, the Chairman of the East Perth Community Safety Group,<sup>314</sup> and then with Ms Chen and Ms Firth,<sup>315</sup> that this lunch was with a community organisation and was convened to discuss safety of the city and the forthcoming *City of Perth Act 2016*. Although from one email's subject heading it may have also included a celebration of the Chinese New Year.<sup>316</sup>
128. It is apparent this lunch did not take place at the dining room due to one of the reasons specified in part 1.9 of the CP10.12, and as it involved discussing City issues with a community organisation,<sup>317</sup> the Inquiry accepts it was appropriate for Ms Chen to claim a reimbursement of the cost from the City.

ai Ms Davidson, Mr Yong, Ms Chen, Mr Adamos and Mr Limnios (although Mr Limnios did not remain on this team for the entire period of the Inquiry's Terms of Reference).

aj Form, L Chen, *City of Perth Elected Member Claim for Reimbursement Expenses*, February 2015. This form was not signed by Ms Chen, however the receipt from the Han Palace Restaurant was attached and there was a handwritten note on the reverse of the form which read, "Lily Chen hosted East Perth Safe City Group [sic East Perth Community Safety Group]".



129. After being prompted, Ms Chen also recalled taking guests who she knew (and were possibly friends)<sup>318</sup> to the Szechwan Zen Chinese Restaurant in Northbridge on 30 January 2016.<sup>319</sup> She was then shown a receipt from this restaurant and email correspondence she had with City staff, which established that she claimed a reimbursement from the City for the full amount of the cost of that meal, being \$480.40.<sup>320</sup> It is apparent from the restaurant's receipt that there was a table of nine (Figure 2.7 and Figure 2.8).
130. Ms Chen admitted that she should not have been entitled to be reimbursed by the City, although she made the claim because she had previously been reimbursed for the Han Palace Restaurant and she was following the unwritten rule that permitted council members to entertain their own personal guests at the City's expense on a Saturday night.<sup>321</sup> Ms Chen admitted the only return the City got from this expenditure was that the owners of the restaurant gained a benefit. Ms Chen also admitted there might have been another time in which she made a claim to the City for the costs of entertaining guests at a City restaurant to which she was not entitled.<sup>322</sup>
131. The Inquiry finds that on at least one occasion, Ms Chen sought reimbursement from the City (which it subsequently met) for costs associated with dining with her friends at a restaurant for which she was not entitled to claim.



**Figure 2.7:** Original tax invoice, issued to Ms Lily Chen, Szechwan Zen Chinese Restaurant, 30 January 2016.



maxplus pty ltd  
Szechwan zen chinese restaurant  
ABN:49166452124

# INVOICE

# 2

Bill To:  
city perth  
cr lily chen

Date: Jan 30, 2016  
Due Date: Jan 30, 2016

Balance Due: \$ 0

Item	Quantity	Rate	Amount
to fu with salty egg york	1	\$19 <sup>80</sup>	\$19 <sup>80</sup>
BYO	9	\$3	\$27
chinese tea	9	\$1 <sup>50</sup>	\$13 <sup>50</sup>
taro toast rolls	2	\$9 <sup>80</sup>	\$19 <sup>80</sup>
mushroom with beancurd	1	\$15 <sup>80</sup>	\$15 <sup>80</sup>
stir fried beef tenderlion	1	\$18 <sup>80</sup>	\$18 <sup>80</sup>
bitter melon with eggs	1	\$16 <sup>80</sup>	\$16 <sup>80</sup>
crumbed prawn	1	\$24 <sup>80</sup>	\$24 <sup>80</sup>
lamb ribs	1	\$25 <sup>80</sup>	\$25 <sup>80</sup>
barramondi steamed	1	\$70	\$70
lobstor ginger and shallot	1	\$182 <sup>70</sup>	\$182 <sup>70</sup>
crunchy cucumber	1	\$6 <sup>80</sup>	\$6 <sup>80</sup>
szechwan style pickled vege	1	\$5 <sup>80</sup>	\$5 <sup>80</sup>
spinach with ginger sauce	1	\$6 <sup>80</sup>	\$6 <sup>80</sup>
boiled beef slices chillie	1	\$12 <sup>80</sup>	\$12 <sup>80</sup>
spicy bean jelly	1	\$6 <sup>80</sup>	\$6 <sup>80</sup>
black fungus salad	1	\$6 <sup>80</sup>	\$6 <sup>80</sup>

Subtotal: \$480<sup>40</sup>  
Total: \$480<sup>40</sup>  
Amount Paid: \$480<sup>40</sup>

Notes:  
Paid already

Figure 2.8: Amended invoice, issued to Ms Lily Chen, Szechwan Zen Chinese Restaurant, 30 January 2016.

### Mr Jim Adamos

132. After prompting, Mr Adamos recalled using the provisions of part 1.9 in CP10.12 to entertain Michael Sutherland and his wife at The Point Bar and Grill Restaurant on 28 January 2017. However, he, denied inviting the Sutherlands to dine with him and his wife simply because they were friends, maintaining that Mr Sutherland was “*a stakeholder of the City*” and he was connected with the City being a “*Freeman*” and the then Speaker of the Legislative Assembly.<sup>323</sup> When taken to the provisions of CP10.12, Mr Adamos agreed that the Sutherlands did not fall within those guests entitled to be invited to dine at the dining room and that it was wrong to invite them. He maintained he believed he was entitled to invite Mr Sutherland as he was a “*dignitary*” and he had missed the word “*visiting*” that appeared in front of the word “*dignitaries*” in CP10.12.<sup>324</sup> Mr Adamos admitted that he paid the bill of \$410.00 for the meal that night and was subsequently reimbursed by the City after he made a claim.<sup>325</sup> Mr Adamos agreed he should not have claimed for this meal, although he maintained the City benefited from the meal. This was despite him not being able to give a single example of what that benefit was, aside from continuing his relationship with Mr Sutherland.<sup>326</sup>
133. The Inquiry rejects Mr Adamos’s assertion that he was “*conducting official business*” by simply speaking to Mr Sutherland “*about issues going on in the City of Perth*”.<sup>327</sup> The fact that a council member speaks to a friend, who is a former council member, about general matters regarding the City (which each would have a common interest in) does not elevate this dining experience into “*official business*”. Mr Adamos could not remember the exact discussions regarding the City.<sup>328</sup> In those circumstances, the Inquiry rejects Mr Adamos’s evidence that “*we would have spoken predominately about City business*”<sup>329</sup> and is able to find that if any issues regarding the City were discussed they were of a minor nature and were not the main reason for these two friends and their wives to spend the evening together. This finding is consistent with the Inquiry’s earlier finding regarding the invitations to the dining room by council members for their friends and/or relatives for the generic purpose of promoting the City.
134. Again, after prompting, Mr Adamos admitted that he took his wife and his parents-in-law out for dinner at the C Restaurant on St Georges Terrace on 25 February 2017.<sup>330</sup> Mr Adamos was shown the form for reimbursement expenses that he had completed for the cost of these meals in which he claimed the total amount of the restaurant’s invoice, which was \$486.90.<sup>331</sup> In that claim form Mr Adamos certified that his expenditure of \$486.90 at the C Restaurant was “*incurred on Official Business*”.<sup>332</sup> He was subsequently reimbursed this amount by the City (Figure 2.9 and Figure 2.10).<sup>333</sup>

135. Mr Adamos admitted that having dinner with his parent-in-laws was not official business. Mr Adamos was then asked the following questions:

*“Can I ask then why you did that [make a claim for this reimbursement]?---It was the wrong thing to do.*

*It’s obviously the wrong thing to do but I want to know why you did it. I don’t want to have to ask that question over and over again. Mr Adamos, can you please tell the Commissioner why you did that? ---I don’t know why I did it. I shouldn’t have done it, it was the wrong thing to do.*


*My explanation as to why you did it is because you knew you could do it and get away with it and be reimbursed, isn’t that why you did it?---That’s right”.*<sup>334</sup>

136. The Inquiry finds that Mr Adamos had no right to claim reimbursements from the City for the restaurant meals he had with his wife and Mr and Mrs Sutherland and then with his wife and his parents-in-law. His claim for reimbursement of the meal he had with his wife and his parents-in-law is particularly concerning. The fact that Mr Adamos would falsely certify that such an occasion was “official business” is troubling. It was inappropriate conduct by an experienced council member, particularly one who had previously campaigned on the basis that he was a trustworthy and reliable person who was a highly ethical member of the community.<sup>335</sup> Unfortunately, the Inquiry has found there were other occasions regarding Mr Adamos’s conduct as a council member that were also of some concern.



**Figure 2.9:** Tax invoice, issued to Mr Jim Adamos, C Restaurant in the Sky, 25 February 2017.

**CITY OF PERTH ELECTED MEMBER**  
**CLAIM FOR REIMBURSEMENT EXPENSES**  
*(Policy No. 10.6)*

  
**CITY of PERTH**

**NAME:** Cr Adamos **MONTH:** February 2017

**PARTICULARS OF CLAIM**  
 This allowance claim covers costs applicable to City of Perth Policy 10.6: Elected Members - Reimbursement of Expenses.

**CAR USE ON OFFICIAL BUSINESS** (please complete details on reverse)

**Vehicle Details** **This Claim** **DATE RECEIVED BY CEO OFFICE**  
 Make: \_\_\_\_\_ = \$ \_\_\_\_\_ **9 MAR 2017**  
 Registration No: \_\_\_\_\_  
 Engine Displacement: \_\_\_\_\_

**OTHER EXPENSES** (Please attach Dockets/Receipts where applicable)

Personal	Clothing	Parking	Other	Telephone/ Facsimile
			C RESTAURANT (DINING ROOM) UNABLE TO OPEN DN SAT 25/2/17 DUE TO INSUFFICIENT NUMBERS.	
<b>Total:</b>	<b>Total:</b>	<b>Total:</b>	<b>Total:</b> \$486.90	<b>Total:</b>

**Other Expenses Sub-Total** = \_\_\_\_\_

**Authorised for Payment:** \_\_\_\_\_  
 Chief Executive Officer  
bas  
9-3-2017  
 Date

I certify that the above expenditure was incurred on Official Business.  
 Period Covered: From \_\_\_\_\_ to \_\_\_\_\_  
 being a grand total amount of: \$486.90

\_\_\_\_\_  
 Signature of Claimant

**Figure 2.10:** Claim for Reimbursement Expenses Form, City of Perth, C Restaurant in the Sky, 25 February 2017, certified by Mr Jim Adamos, 9 March 2017.

**Issue (5): Whether the administrative arm of the City failed to properly address any misuse by council members of their entitlement to reimbursement for restaurant expenses**

137. In contrast to the failure by the City's Administration to enforce compliance by council members of identifying the "*main guest of honour*" at each function in the dining room, by February 2017 the City made it a requirement for council members to provide the names of guests that they had entertained at restaurants when the dining room was closed or unavailable.<sup>336</sup> An obvious reason for that requirement would be to ensure that the relevant expenditure was incurred on "*official business*" (as required on the claim form for reimbursement expenses). It would also assist with determining whether the meal was necessary for the council member to meet his or her "*unique civic responsibilities*" (as required by CP10.12 of the Council Policy Manual).
138. With respect to the claim for reimbursements by Mr Adamos for the two restaurant outings referred to above, Ms Firth requested the names of his guests.<sup>337</sup> In each instance Mr Adamos responded by email with "*myself, Helen Adamos, Michael Sutherland, Michelle Sutherland*"<sup>338</sup> and "*Mr and Mrs Monastra, myself and my wife (Mrs Helen Adamos)*".<sup>339</sup> With respect to both claims the reimbursement was provided without any further inquiry by the City's Administration.<sup>340</sup>
139. As Mr Sutherland was a former long-standing City councillor<sup>ak</sup> and a State Member of Parliament<sup>341</sup>, the Inquiry makes no finding that the City should have clarified Mr Adamos's certification on the claim form he had completed that the expenditure was incurred on official business. That is not to say the Inquiry accepts the expenditure was incurred on official business. The Inquiry has found that it was not (see above). However, the Inquiry finds that it was not unreasonable for the City to accept the accuracy of Mr Adamos's certification that his claim for reimbursement was appropriate.
140. However, the second claim for reimbursement by Mr Adamos should have been investigated further. The Inquiry finds that the City ought to have requested further information from Mr Adamos as to who "*Mr and Mrs Monastra*" were, what was their connection to the City and what was the official business he had certified as having occurred and/or the civic responsibilities he was undertaking. If those enquiries had been made and truthful responses given, then the claim should have been rejected as it failed to comply with the provisions of CP10.12.
141. The Inquiry also finds that there was a failure by the City to properly scrutinise the claims for reimbursement made by Ms Chen with respect to the reimbursement of restaurant expenses that were paid to her on the two occasions referred to above. With respect to Ms Chen's claim for reimbursement of the cost of the meal at the Han Palace Restaurant on 20 February 2015, the City ought to have ensured the relevant claim form was signed by Ms Chen to certify that the expenditure was incurred on "*official business*". Ms Chen did not sign the form.<sup>342</sup>

ak A Council Member qualifies to be a Freeman of the City after being a councillor for 10 years: Transcript, J McEvoy, private hearing, 12 July 2019, p 95; Mr Sutherland had been a councillor from 1995 to 2008.

With respect to Ms Chen's claim for reimbursement of the cost of the meal at the Szechwan Zen Chinese Restaurant on 30 January 2016, had the City requested the names of the guests, their relationship to Ms Chen and the purpose of the attendance at the restaurant, then the claim ought to have been rejected as it failed to comply with the provisions of CP10.12. Furthermore, despite a request from the Inquiry, the City was unable to produce a claim form from Ms Chen relating to the reimbursement she received for this meal. Although Ms Chen provided invoices and a receipt to the City,<sup>343</sup> it appears she did not, and was not asked to, complete or sign a claim form certifying that the expenditure was incurred on "*official business*". Nevertheless, the City reimbursed the full amount of \$480.40 once the second invoice was received.<sup>344</sup> The Inquiry finds that for this claim by Ms Chen, the City did not comply with the record-keeping requirements outlined in CP10.6.

**Issue (6): Whether Mr Jim Adamos made claims for reimbursement pursuant to part 1.9 of CP10.6 that were not related to his attendance at Council-related functions and activities**

142. The Inquiry found evidence of potentially suspect claims by Mr Adamos to the City for clothing, apparel and dry-cleaning costs that were reimbursed notwithstanding their suspicious nature. Mr Adamos was questioned about these claims.
143. Before he was taken to specific claims, Mr Adamos was asked:  
*"Have your claims for clothing, apparel and dry-cleaning always been in accordance with the requirement that it be associated with Council-related functions and activities?---Yes.*  
*You're absolutely certain of that?---Yes, I am".<sup>345</sup>*
144. Mr Adamos was then questioned regarding his claim for reimbursement with respect to the Swan River Run on 24 July 2016, in which he represented the City on behalf of the Lord Mayor.<sup>346</sup> The day before, Mr Adamos purchased socks, a Nike shirt, Nike tracksuit pants, a training fleece and Nike tennis shoes totalling \$400.00.<sup>347</sup>
145. Mr Adamos justified this claim on the basis that he did not have adequate clothing to wear to the event and it would not have been appropriate for him to simply wear shoes, pants, a shirt and sports jacket. He gave evidence that he had no clothing that suited "*what was on that [the City's] briefing note*" which he said "*from memory was something about active wear*".<sup>348</sup> The briefing note Mr Adamos referred to stated that the dress code was "*Informal*".<sup>349</sup> He maintained that the only sneakers he had were "*some old dirty sneakers but not appropriate to wear to an event like that*".<sup>350</sup>

146. The Inquiry finds that Mr Adamos improperly claimed for the reimbursement of the clothing apparel he purchased. Although, strictly speaking, the claim complied with part 1.9 of CP10.6, the Inquiry finds that the items were not necessary purchases. His duties at this function were to give a four-minute speech prior to the run and then start the race.<sup>351</sup> The Inquiry finds that Mr Adamos already had suitable clothing that he could have worn and finds that he would not have purchased any of these items if he was not going to be reimbursed.<sup>352</sup> The Inquiry accepts Mr Adamos's eventual concession that the purchase of these items at the ratepayers' expense would not have passed "*the pub test*". In those circumstances, the Inquiry rejects Mr Adamos's evidence that he would have personally bought some clothing to appear at this event. It would have been perfectly acceptable to wear clothing and shoes he already possessed that fitted the broadly defined dress code he was given.<sup>353</sup> It was completely unnecessary for the City to incur the expense of fully clothing Mr Adamos for this one-off attendance that had him performing an official function that lasted for a matter of minutes.
147. Pursuant to part 1.9 of CP10.6, Mr Adamos regularly claimed from the City for dry cleaning costs (including ironing) during the period of the Inquiry's Terms of Reference.<sup>354</sup> He did this by completing the relevant form<sup>355</sup> and submitting invoices from a laundry service. He was fully reimbursed for all his claims for dry cleaning costs in the total amount of \$2,889.79 during this period.<sup>356</sup> That was an average monthly cost of just under \$100.00.
148. Mr Adamos gave evidence that he would get suits dry-cleaned and shirts ironed that he wore at Council-related functions and activities at a laundry service called Jack's Wash House.<sup>357</sup> From an examination of the invoices from Jack's Wash House which Mr Adamos provided to the City, it is evident that most of the costs incurred related to the ironing of shirts. It is arguable whether the costs of ironing shirts fall within "*dry cleaning*", which is specified in part 1.9 of CP10.6. It could be regarded as "*incidental costs associated with a member's attendance at Council-related functions and activities*". The Inquiry finds that an interpretation of those descriptions that includes the ironing of shirts worn at Council-related functions and activities is not unreasonable.
149. Mr Adamos was questioned in some detail regarding the average number of Council-related functions and activities he would attend in a month. He initially stated 60, but when it was pointed out that that meant he was going to two Council-related functions or activities every day he corrected it to "*probably about 30–40 functions a month*". When questioned in more detail about exactly what those functions were he nevertheless maintained that estimate of 30–40 per month, although he was not able to precisely identify the functions or activities that would make up that number.<sup>358</sup> Given his inability to identify Council-related functions that constituted this monthly estimate, the Inquiry finds that Mr Adamos exaggerated the number of events he attended to justify his excessive use of the laundry services he claimed were eligible for legitimate reimbursement.



150. Mr Adamos was referred to six invoices from Jack's Wash House between 31 March 2016 and 14 May 2016. He maintained that all of the shirts referred to in these invoices were for ironing of business shirts that he wore for Council-related events.<sup>359</sup> The contents of these invoices are summarised as follows in Table 2.6.

**Table 2.6: Summary of invoices claimed by Mr Jim Adamos for laundry services between 31 March 2016 and 14 May 2016.**

Date of invoice	Number of shirts	Cost claimed
31 March 2016	13	\$52.00
13 April 2016	8	\$32.00
22 April 2016	5	\$20.00
28 April 2016	8	\$32.00
3 May 2016	7	\$28.00
14 May 2016	6	\$24.00

151. This meant that after having 13 of his business shirts ironed on 31 March 2016 Mr Adamos then claimed for another 28 business shirts from 13 April to 3 May 2016. His explanation was that this was probably the period he was out for 20 days straight, attending Council-related functions. In his public hearing on 8 August 2019, Mr Adamos said that he would be able to provide the Inquiry with the records of each Council event he attended between 13 April 2016 and 3 May 2016 by accessing his City electronic diary. He stated that he would provide the Inquiry with the information from those diary entries if he “*can get to it*”.<sup>360</sup>
152. The Inquiry subsequently received an affidavit with annexures from Mr Adamos dated 22 November 2019.<sup>361</sup> In summary, the affidavit established that during the period in question, based on his electronically recorded acceptance of invitations, Mr Adamos considered it “*reasonably likely*” he attended 14 events in his capacity as a council member. Based on his usual conduct with respect to particular functions he asserted it was also “*reasonably likely*” he attended a further three and also a fourth event.
153. With respect to the 14 events, there were four days when Mr Adamos attended two events on the same day (21 April, 26 April, 29 April and 1 May 2016). Given the short span of time between events on these 4 days (as recorded in Mr Adamos’s electronic calendar) it is highly unlikely that Mr Adamos would have worn another shirt to the second event. That meant he would have worn a total of 10 shirts on these 14 occasions.
154. As to the other four events, one of those was the opening ceremony of a festival in Langley Park on 16 April 2016. However, as Mr Adamos ultimately declined that invitation and he has no specific recollection whether he actually attended, the Inquiry is not prepared to accept that he did. Another event was a citizenship ceremony on 20 April 2016 at Council House. The Inquiry notes that the time of this ceremony overlapped with another appointment in East Perth that Mr Adamos has claimed he attended on that day. Even if he did attend both events, it is highly unlikely he would have changed his shirt.

155. The remaining two events were held on 17 April 2016 and 22 April 2016. None of the 14 confirmed events were held on these days. Even if it is accepted that it was “*reasonably likely*” Mr Adamos attended these events then the most likely number of shirts he had worn to “*council-related functions or activities*” during the period 13 April to 3 May 2016 was 12. This number falls substantially short of the 28 shirts Mr Adamos paid to be ironed during the period and for which he successfully sought reimbursement.<sup>al</sup> Accordingly, the Inquiry does not accept Mr Adamos had a legitimate claim for the reimbursement of the costs for all the shirts he had ironed during this period, despite his assertions that he did. The circumstantial evidence regarding the volume of shirts for which he claimed ironing costs allows for the only reasonable inference to be drawn that it simply was not possible for them to all be worn by Mr Adamos for his attendance “*at Council-related functions and activities*”.
156. After he was questioned about the six invoices referred to in the table at paragraph 150, Mr Adamos was asked:
- “Mr Adamos, before I do, are you absolutely certain that every item that you claimed to be dry-cleaned, be it ironing or dry-cleaned, was a legitimate item for you to claim?---Yes, from my memory, yes. Every time I put those receipts in, from memory they were always shirts.*
- And you crossed out those items [on the invoices] in which it was clear they did not belong to you?---That’s right.*
- You’re absolutely adamant on that?---I’m sure of it, unless I missed one.*
- You would carefully check, wouldn’t you?---I would carefully check.”<sup>362</sup>*
157. Mr Adamos was shown a further three invoices from Jack’s Wash House from September and October 2016. He maintained that these invoices were all for shirts that he had worn for Council-related functions or activities.<sup>363</sup> The relevant details of these invoices appear in Table 2.7:<sup>364</sup>

**Table 2.7: Summary of invoices claimed by Mr Jim Adamos for laundry services between 27 September 2016 and 13 October 2016.**

Date of invoice	Number of shirts	Cost claimed
27 September 2016	10	\$40.00
10 October 2016	9	\$36.00
13 October 2016	13	\$52.00

al Even if it is assumed (a) Mr Adamos wore different shirts on those days he had attended two functions and (b) he had attended the four events that it was “*reasonably likely*” he did, that meant he wore a total of 18 shirts which is 10 less than the number he had had ironed.

158. After being shown these three invoices Mr Adamos was asked the following questions:

*“27 September you’ve submitted and got, it would seem, ironed 10 shirts, 13 days later, the second one, 10 October, you’ve got another nine and then just three days later, you’ve got another 13 shirts either ironed or dry cleaned. 32 shirts over 16 days, can you see that?---Yes.*

*Not every single one of these shirts was worn for a Council-related function or activity were they?---Yes, they were, but some of those shirts may have been from a period before that.*

*You maintain that, do you?---Yes.*

*There’s an awful lot of shirts in the ironing basket between 10 October and 13 October, wasn’t there?---Yes, there was.*

*You had to take nine on 10 October and another 13 on the 13th. Let’s just stay with that for the moment. How could you have possibly – obviously you would take all the shirts that needed to be ironed on the one occasion?---Yes.*

*So based on that, you took all the shirts that needed to be ironed from the ironing basket on 10 October but three days later there’s another 13. From what you’re saying, you used 13 shirts in Council-related activities between 10 October and 13 October?---But some of them may have been there from before that. I may not have always washed them or taken them all on the first occasion.*

*Still, it’s 22 shirts over the course of three days, bearing mind you already had 10 done less than two weeks earlier?---M’m.*

*I’m not an accountant, Mr Adamos, but the maths don’t add up to me. Do they add up to you?---When you put it that way, no, they don’t, but as I say, I don’t know if they were the shirts from those particular weeks or prior.*

*I’m just suggesting to you on the face of it, it looks like you’re getting shirts either dry-cleaned or ironed that weren’t related to Council activities?---No.*

*No? So on your version, the maths don’t add up, do they?---No, they don’t.*

*I’m going to give you another opportunity, Mr Adamos, to answer this question: did you make claims for dry-cleaning and/or ironing for items that you weren’t entitled to claim?---No.”<sup>365</sup>*

159. In his above answers, Mr Adamos asserted that the shirts that were submitted for ironing during this period may have come from the ironing of shirts that had been washed in the days or weeks prior but were still to be ironed. However, earlier invoices from Jack’s Wash House that were submitted by Mr Adamos to the City in his claims for reimbursement refute that explanation.<sup>366</sup> The relevant details of these invoices are contained in Table 2.8.

**Table 2.8: Summary of invoices claimed by Mr Jim Adamos for laundry services between 2 and 19 September 2016.**

Date of invoice	Number of shirts	Cost claimed
2 September 2016	8	\$32.00
8 September 2016	11	\$44.00
19 September 2016	8	\$32.00

160. Again the Inquiry finds that with respect to the above period between 27 September 2016 and 13 October 2016, the circumstantial evidence regarding the volume of shirts for which Mr Adamos claimed ironing costs allows for the reasonable inference to be drawn that it simply was not possible for all these shirts to be worn by Mr Adamos for his attendance *“at Council-related functions and activities”*.
161. Mr Adamos submitted the below invoice dated 12 October 2015 to the City from Jack’s Wash House in order to claim reimbursement for these costs.<sup>367</sup> This invoice amount of \$46.00 was subsequently reimbursed to Mr Adamos by the City (Figure 2.11).<sup>368</sup>
162. When shown this invoice Mr Adamos admitted that he should never have claimed for these items, which he agreed was school clothing for his two boys that had been drycleaned. Mr Adamos maintained that this was his *“oversight”* and that it was *“a mistake”* before saying *“I don’t know why I claimed it”*.<sup>369</sup>
163. The Inquiry finds that Mr Adamos did not make a mistake in submitting this invoice as a claim for reimbursement. In making that finding, the Inquiry notes that all the items on the invoice were clearly defined as children’s clothing and there was no other item on the invoice that belonged to Mr Adamos. The Inquiry also notes that these items would likely have been the winter uniforms of Mr Adamos’s two sons who were attending school. The date of the invoice, 12 October 2015, was the first day for the fourth school term for that year.<sup>370</sup> Mr Adamos agreed that schools change into summer uniform at the start of term 4.



**Figure 2.11: Tax invoice, issued to Mr Jim Adamos, Jack’s Wash House, 12 October 2015.**

164. Despite his denials,<sup>371</sup> the Inquiry finds, based on all the evidence and to the required standard, that Mr Adamos deliberately submitted this invoice, perhaps to test if the City would reimburse him without seeking clarification. If a staff member of the City's Administration had queried Mr Adamos as to the contents of the invoice, then it would have been plausible for Mr Adamos to assert that it was a mistake. The City, however, did not question the invoice and subsequently reimbursed Mr Adamos the full amount. Taken in isolation, a plausible argument could be made that Mr Adamos mistakenly submitted this invoice to the City for reimbursement. However, this was not an isolated example of Mr Adamos claiming reimbursement for expenditure to which he was not entitled.
165. The Inquiry finds the reasonable inference can be drawn that after the City accepted this claim without question, Mr Adamos was fortified in his view that the City was not scrutinising his claims for laundry expenses. He then continued to submit invoices of items that were dry-cleaned or ironed, which he knew he was not entitled to claim for reimbursement. The large volume of shirts he had ironed at Jack's Wash House allows for a reasonable inference to be drawn that the shirts were not all worn by him for Council-related functions or activities. Mr Adamos accepted that his conduct, when viewed objectively, might seem contrary to his evidence that his reimbursement claim for the dry-cleaning costs of his sons' school uniforms was an unintentional mistake:
- "Because this is in 2015, it got through to the keeper, you were reimbursed and then you started getting an awful lot of items either dry-cleaned or ironed in 2016 and I've taken you to two periods for that following year?---No.*
- It seems to all tie together, doesn't it?---Definitely not.*
- But it all seems to tie together though, doesn't it?---No, it doesn't.*
- You've tested the water to---?---No.*
- see if this got through, it did and so thereafter at times in 2016 you were submitting more items---?---I can't explain.*
- Let me finish – more items than you were entitled to be reimbursed for, yes?---No.*
- But it seems like that, doesn't it?---No.*
- It seems like that, doesn't it?---Not to me. This is a mistake. This is not---*
- No? You looking at it objectively?---It might seem like that".<sup>372</sup> [emphasis added]*
166. After being questioned regarding his claims for reimbursement from the City for dry-cleaning costs, Mr Adamos was asked the following questions:
- "I'm going to give you another opportunity now, it's sort of a related area because it's to do with entitlements. You know how I've said to you that those dry-cleaning items that you claimed for your sons' school uniforms?---That's right.*
- I said to you that – I put it to you that you deliberately did that, to which you emphatically denied?---That's right.*
- Again, you still maintain that?---I do. I don't know how that receipt came---*
- I'm not going to go over, I just want to make sure you maintain that?---Yes.*

*I'm going to ask you this direct question now and consider your answer carefully, okay?---Mm hmm.*

*I put it to you that you were claiming clothing items or clothing or apparel items for persons in your family other than yourself. So you were buying them and then claiming them as a disbursement?---No.*

*No?---No.*

*...*

*No other items of clothing?---No.*

*That you did not wear or that you did not buy for yourself?---I may have bought some – no, everything I bought was for myself.”<sup>373</sup>*

167. Mr Adamos was then shown the receipt and tax invoice from the Foot Locker store in Murray Street, Perth dated 3 May 2016<sup>374</sup> for a Nike pair of boy’s running shoes<sup>am</sup> costing \$99.95. He made a claim for reimbursement of the cost of these shoes from the City, which it accepted (Figure 2.12).<sup>375</sup>
168. Although he could not recall making this purchase, Mr Adamos accepted the shoes must have been for one of his sons and they could not have been for him, because he had purchased a pair of sports shoes for himself two months later to attend the Swan River Run referred to above.<sup>376</sup>



Nike Free 5.0 GS (2015).

**Foot Locker.**

Receipt and Tax Invoice  
Foot Locker Australia, Inc.  
A.B.N. 22 619 093 977  
A.R.B.N. 089 717 251

STORE: 94751      REGISTER: 002  
CASHIER: Mervize  
ASSOCIATE: 00000000851

-NK FREE 5-0 (GS) WOLF G

6575938704060 1 @ 99.95

99.95 1

PRICE EXCLUDING GST

ST

PRICE INCLUDING GST

90.86

9.09

99.95

AMOUNT TENDERED

Cash

100.00

TOTAL PAYMENT

CHANGE

100.00

.05

Trans:140635      May 03, 2016 11:59 AM

94751 MURRAY STREET  
197 MURRY STREET  
197 MURRY STREET  
PERTH, WA 06000  
08 62179400

SPECIAL OFFER

Get \$10 OFF your next purchase!  
Minimum \$50 purchase required  
go to [www.footlocker.com.au/survey](http://www.footlocker.com.au/survey)  
or call 1-800-461-931  
within 14 days and tell  
us about your visit.

Offer available first day of month  
following survey completion.

Offer valid for 30 days.

Figure 2.12: Tax invoice issued to Mr Jim Adamos, Foot Locker, 3 May 2016.

am The receipt and tax invoice described the shoes as “NK FREE 5-0 (GS) WOLF G”. The Inquiry was able to verify from an online shoe store that this was a description for a Nike brand boys running shoes (cost \$99.95) available from 2015: *Home > Boys* on Sportitude website.



169. Mr Adamos was then asked the following questions:

*"So this is an appalling misuse of what you're entitled to for reimbursements, wasn't it?---Yes, it is.*

*What's your explanation for it?---I don't know how that came about.*

*Mr Adamos, please. Are you seriously expecting---?---The only thing is---*

*Are you seriously expecting that answer to be accepted as an honest and truthful one?---It doesn't sound it but I don't remember putting in this claim, but I must have.*

*...*

*So you're rorting the system, aren't you?---Not rorting the system, I---*

*What other explanation is there for it?---I don't have any other explanation for it.*

*So my explanation for it is that you're rorting the system, that's what you were doing, making a claim for an item which you had no right to claim at all, which you full well knew, that's right, isn't it?---It seems so.*

*Well, it is so. It's not 'seems so' it is so. There is no doubt about it, you weren't entitled to make that claim?---That's right, I wasn't entitled to make that claim.*

*...*

*That is appalling conduct, is it not, by someone who promoted himself as being an ethical candidate for the elections the year before, isn't it?---That's right.*

*It's not just appalling conduct for a candidate who's relying on his ethics, but it's appalling conduct for any candidate, isn't it?---Yes.*

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

*And you didn't expect the sort of scrutiny that you're now getting for your claims did you?---No.*

*Because you got away with this one as well, because this claim was paid out?---Yes, it was".<sup>377</sup>*

170. By his own admission, Mr Adamos accepted his claim for reimbursement of these running shoes was a fraud. The Inquiry finds that Mr Adamos intentionally submitted this receipt to the City to claim a reimbursement and in doing so falsely represented to the City that it was apparel associated with his attendance at a Council-related function or activity. He expected the City would not exercise the necessary scrutiny to determine the validity of the claim and would automatically process it for payment. The Inquiry finds that is precisely what happened.



### Mr Jim Adamos's health issues

171. Mr Adamos advised the Inquiry that he was suffering from some health issues when he gave evidence. He argues that they made him “*vulnerable and prone to agree to propositions that were being put to him during his examinations*”. Various medical reports, including one dated 23 October 2019 from a medical specialist, were provided to the Inquiry. This specialist saw Mr Adamos for the first time on 23 September 2019, more than six weeks after he had given evidence regarding the subject matter of this Section. The consultation was for “*assessment purposes*” only and not for the “*providing of ongoing treatment*”. The report made no reference to the specialist having read any of the transcript of Mr Adamos’s evidence to the Inquiry from the previous month. Although this and the other medical reports were signed, no evidence of a medical nature was heard or adduced to the Inquiry under oath or affirmation. Nor was any of it subject to any examination under oath or affirmation. It was open to Mr Adamos and his legal representatives to put on such evidence, but it must be assumed they chose not to do so.
172. The Inquiry has carefully considered all the material provided on Mr Adamos’s behalf regarding his health and accepts it has some effect on how his evidence should be considered. The Inquiry has, in the circumstances, accorded this material the weight it deserves. Nonetheless, the admissions against interest made by Mr Adamos were all corroborated by contemporaneous records. This has allowed the Inquiry to be satisfied to the required degree of its findings against Mr Adamos. Furthermore, a review of the transcript of Mr Adamos’s evidence demonstrates that he frequently denied adverse propositions that were put to him by Counsel Assisting.

### Issue (7): Did the administrative arm of the City properly consider claims for reimbursement for expenses by Mr Jim Adamos

173. By his own admission, Mr Adamos accepted that he made claims for reimbursements that he should not have made. And although he denied any wrongdoing, it is apparent that the volume of invoices he was submitting for reimbursement regarding his laundry expenses required greater scrutiny.
174. The practice of the City was to receive one claim form for multiple expenses with receipts or invoices attached from council members who were claiming reimbursements pursuant to part 1.9 of CP10.6. The council member would sign and certify that the total amount of the expenses “*was incurred on Official Business*”. After the CEO authorised the claim for payment by signing the claim form, the City would issue a payment voucher to the council member that attached a summary of the matters to be reimbursed. The council member would then receive a form confirming that the amount had been transferred into the council member’s nominated bank account.<sup>378</sup> This procedure was adopted by Mr Adamos when he claimed the cost of:
- the dry-cleaning for his sons’ uniforms in the sum of \$46.00;<sup>379</sup> and
  - his son’s running shoes in the sum of \$99.95.<sup>380</sup>

175. The Inquiry finds that there was a lack of scrutiny by the City in its assessment of expenditure claims by council members. The most striking example of that was its failure to question the invoice submitted by Mr Adamos regarding the laundry of his sons' school uniforms. Even a cursory glance of that invoice would have established there was no possible way those costs related to "*a member's attendance at Council-related functions and activities*".<sup>381</sup> Similarly, the large number of invoices submitted by Mr Adamos for laundry services over an extended period of time should have caused some closer scrutiny of what those laundry services were, and for enquiries to be made of Mr Adamos.
176. A council member submitting to the City an invoice for reimbursement for purchase of a pair of Nike brand shoes from a store that is a well-known retail outlet for the sale of sports shoes should have been followed up by the relevant administrative officer. The question to Mr Adamos would have been a very simple one: What was the Council-related function or activity that you attended which required you to wear these shoes?

### Travel entitlements

177. The Inquiry investigated whether council members improperly sought reimbursements for travel expenses. Although no such conduct was identified during the period of the Inquiry's Terms of Reference, it should be noted that the Inquiry's investigations were confined to an audit and review of invoices for any factual errors. As the Inquiry did not have access to the travel records of council members, it was not possible to examine whether any activities of an inappropriate nature (such as undertaking personal business dealings) may have occurred during travel that was claimed to be related to the City. The Inquiry lacked the resources that the Corruption and Crime Commission (CCC) had regarding its investigation of the travel undertaken by Ms Scaffidi. The CCC's report on that matter was handed down on 5 October 2015.<sup>382</sup>

### Council members' claims for reimbursements of expenses pursuant to part 1.9, CP10.6

178. The Inquiry finds that certain council members spent considerable sums of money on clothing and apparel and then claimed reimbursement from the City pursuant to part 1.9 of CP10.6. Aside from Mr Adamos, the Inquiry found no misconduct by any council member with respect to these purchases as the Council policy entitled them to do so, provided the items were associated with attendance at Council-related functions and activities.
179. It is apparent that the excessive use of the provisions of part 1.9 of CP10.6 by some council members led to the Council amending the clause by capping the maximum that could be claimed to \$3,000.00 per annum.<sup>383</sup> Even then not all council members agreed with the cap. Ms Chen and Mr Adamos were of the view that it was too low. Ms Chen thought it should be \$6,000.00 and maintained that notwithstanding her occupation as a lawyer, she needed an annual allowance in this amount as she attended a lot of functions as a councillor and she needed a different set of clothes for each function.<sup>384</sup> Mr Adamos was not able to say how much more the allowance should be, although he said that a limit of \$3,000.00 per year was not reasonable in his case.<sup>385</sup>

180. The Inquiry finds that this attitude of Ms Chen and Mr Adamos is an example of the culture of self-entitlement that existed amongst a number of council members at the City.
181. The Inquiry notes that since the suspension of the Council in March 2018, CP10.6 was amended on 29 September 2018. It is evident from those changes that the reimbursement of expenses for council members has been considerably restricted. It is now limited to an annual allowance of \$3,500.00 per annum for information and communications technology. The following expenses are also reimbursable, subject to the application and submission of appropriate supporting documentation: child care and carer expenses and travel and parking expenses to attend or perform at an authorised function.<sup>386</sup> There is no clause in the current CP10.6 that allows for the reimbursement of expenses for *“clothing, apparel, dry cleaning or personal presentation associated with a member’s attendance at Council-related functions and activities”*. The Inquiry endorses the changes that have now been made to CP10.6. These changes have limited the scope for claiming reimbursements by council members and reduced the opportunity for unnecessary or fraudulent claims.

## Conclusion

182. Regulation 3 of the Conduct Regulations provides for the general principles to guide the behaviour of council members. Members of the community have a legitimate expectation that those who they elect to represent their community will comply with the five principles set out in regulation 3(1)(a)-(e):

- Council members Ms Scaffidi, Mr Adamos, Mr Rob Butler, Ms Lily Chen, Ms Janet Davidson, Dr Jemma Green, Mr Reece Harley, Mr James Limnios, Ms Judy McEvoy, Mr Keith Yong;
- Mr Martin Mileham, CEO; and
- Mr Mark Ridgwell, Manager, Governance.

The Inquiry, however, finds that with respect to their use of the dining room and their claims for reimbursement of their expenses, there were some council members who failed to comply with these principles.

## Findings

### Finding 2.2.3 – 9

The Inquiry makes the following findings:

- i. Certain council members<sup>an</sup> made improper use of their entitlements to use the dining room by not complying with the Council policies. In so doing, these council members may have breached regulation 7(1)(b) of the Conduct Regulations. At the very least, they caused a financial detriment to the City by hosting guests who should not have been invited to the dining room. As this is a breach involving a rule of conduct, it is defined as a “*minor breach*”.<sup>387</sup>
- ii. The City failed to properly scrutinise and regulate the use of the dining room by council members thereby enabling its improper use to continue.
- iii. Ms Scaffidi, as the Lord Mayor, failed to take adequate measures to encourage compliance with Council policies by council members regarding their limited entitlements to invite guests to the dining room.
- iv. Mr Adamos and Ms Chen made improper use of their entitlements to entertain guests at restaurants within the City when the dining room was unavailable by seeking reimbursements of the costs from the City for meals they were not entitled to claim.<sup>ao</sup> In so doing, these council members may have breached regulation 7(1)(b) of the Conduct Regulations. At the very least, they caused a financial detriment to the City which reimbursed their unauthorised claims. As this is a breach involving a rule of conduct, it is defined as a “*minor breach*”.<sup>388</sup>
- v. The City failed to properly scrutinise the claims for reimbursement by Ms Chen and Mr Adamos referred to in (iv) above and erred in reimbursing these council members the amounts that were claimed.
- vi. Mr Adamos incorrectly certified on a “*City of Perth Elected Member Claim for Reimbursement Expenses*” form dated 9 March 2017, that the costs of dining with his parents-in-law and wife at the C Restaurant on 25 February 2017 were incurred on “*official business*”.
- vii. Mr Adamos made claims for reimbursement of expenses from the City pursuant to part 1.9 of CP10.6 that were not associated with his attendance at Council-related functions or activities; namely, laundry expenses relating to shirts and school uniforms and a pair of boy’s running shoes. In so doing, Mr Adamos may have breached regulation 7(1)(b) of the Conduct Regulations. At the very least, this caused a financial detriment to the City which reimbursed these unauthorised claims. As this is a breach involving a rule of conduct, it is defined as a “*minor breach*”.<sup>389</sup>
- viii. The City failed to properly scrutinise the claims of Mr Adamos for reimbursement of his expenses outlined in (vii) and erred in reimbursing the amounts that were claimed.

an Namely, Mr Yong, Ms Chen, Ms Davidson, Mr Limnios and Mr Adamos. Another council member, Mr Butler, also made improper use of his entitlements of the dining room, although this use occurred almost entirely before the period of the Inquiry’s Terms of Reference as he was not re-elected at the elections held on 21 October 2015.

ao With respect to Ms Chen, this concerned her claim for a reimbursement of costs for her and her guests at the Szechwan Zen Restaurant on 30 January 2016. With respect to Mr Adamos this concerned his claim for reimbursements of costs for him and his guests at the Point Bar and Grill Restaurant on 28 January 2017 and the C Restaurant on 25 February 2017.

## Improper use of councillor position to obtain a private benefit

### Introduction

1. A council member must not make improper use of their office to gain an advantage for themselves or another person, whether directly or indirectly.<sup>390</sup>
2. The Inquiry has evidence that former council member, Ms Lily Chen, used her councillor title, City of Perth (City) business cards (City business cards), City office space, and City email account to increase her standing and obtain benefits in her private business dealings. This was improper. It may also be a breach of regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations). Breaches of regulation 7 of the Conduct Regulations are dealt with by the Local Government Standards Panel.
3. Ms Chen agreed that council members should only use their councillor title when performing civic duties, and should not use the title of councillor to promote their private interests. She also maintained she had never used her councillor title to promote her private interests.<sup>391</sup> Despite this, the evidence reveals an ongoing pattern of conduct in which Ms Chen did use her position as a council member to promote her own private and business interests in both Western Australia and China.
4. It is clear Ms Chen repeatedly used her councillor title, her City business cards and the facilities of the City in pursuing her private and business interests. In doing so, she showed an ongoing disregard for the importance of maintaining an appropriate separation between her civic duties and her private interests. The continued use of her title and position also provided Ms Chen with a cultural status or standing within the Chinese community. While this standing cannot be accurately measured, it has provided her with distinct advantages.

### Issues considered by the Inquiry

5. The Inquiry must consider “*whether any member engaged in improper or unlawful conduct in relation to the performance by the Council or the members of any of their functions and obligations*”.<sup>392</sup>
6. Broadly, the Inquiry must inquire into and report on matters that affect good government at the City.<sup>393</sup> Ms Chen’s conduct, as described in this Section, may have breached legislation that was made to regulate the activities of the City and its Council. Improper conduct of a council member is directly linked to good government, particularly where that conduct relates to an improper use of benefits and privileges that are afforded to the person only because of their status as a council member.

## Investigation by the Inquiry

7. The Inquiry interviewed, and held private and public hearings, involving a number of people in the course of investigating this matter. The positions given below for council members and employees are the positions held at the time of the events described in this Section:

- Council members Ms Chen and Ms Lisa Scaffidi;
- Mr Mark Ridgwell, Manager, Governance;
- Mr Geoffrey Blades, who was engaged by the City in 2013 to conduct a performance review of Mr Gary Stevenson, CEO;
- Mr Daniel Ow Sean Choung, a former employee of Devwest Group Pty Ltd;
- Mr Chad Ferguson, a Director of Devwest Group Pty Ltd; and
- Mr Anthony Tran, a lawyer and migration agent who had a business relationship with Ms Chen.

## Evidence obtained by the Inquiry

### Ms Lily Chen's professional background

8. Ms Chen was first elected as a councillor on 15 October 2011 and was reelected on 17 October 2015. Her recent term expired on 19 October 2019.
9. Ms Chen is a lawyer and registered migration agent. Ms Chen and her husband are directors of Wayon Pty Ltd (Wayon) trading as Lily Chen & Associates.
10. Ms Chen was born in Nanjing, China, and maintains strong ties with Perth's Chinese community. She was President of the Chinese Women's Federation from 2009 to 2014. She was also Vice President of the Migration Institute of Australia from 2012 to 2014 and has been President of the National Australian Chinese Women's Association since 2012. Ms Chen is a member of the Chung Wah Association, Western Australia's largest and most established Chinese organisation, which was established in 1909 to care for the welfare of its members, the promotion of Chinese culture and maintaining goodwill between the Chinese community and the local community.
11. Wayon is also the holding company of the Australian Migration Times. The stated aim of *"the editorial team"* of the Australian Migration Times, which describes itself as a community newspaper, is *"to introduce and promote the Chinese community and culture to the wider local community"* as well as *"introducing, equipping and informing the latest migration policies to all potential migrants with a Chinese ethnicity background"*. Ms Chen is listed as the editor-in-chief and the legal advisor for the publication.<sup>394</sup>

12. Ms Chen is also a member of the Liberal Party and President of the WA Chinese Liberal Club Incorporated. She unsuccessfully ran as a Liberal candidate for the seat of Mirrabooka in the May 2017 Western Australian State Elections.<sup>395</sup>
13. Ms Chen's position as a council member was highly regarded within the Chinese community and carried significant cultural status. She agreed that elected members to government positions have a high status in Chinese culture and are regarded as trustworthy within the Chinese community.<sup>396</sup>

#### Prior conduct regarding the use of the Perth Town Hall

14. The Inquiry may inquire into and report on any conduct by Ms Chen before 1 October 2015 if it is necessary to "*placing matters inquired into within a relevant context in the circumstances*".<sup>397</sup> Ms Chen continually denied throughout her evidence that she used her position as a council member to benefit her own personal business interests or the business interests of others during the period of the Inquiry's Terms of Reference. If there was evidence of such conduct by Ms Chen prior to 1 October 2015 then it would be capable of demonstrating a longstanding pattern of conduct in which she used the advantages available to her as a council member to obtain private benefits for herself or others.
15. A witness before the Inquiry gave evidence that Ms Chen's use of her Councillor position in her private capacity was an issue extending back to her first year as a council member. The Inquiry therefore considers it appropriate to consider the conduct outlined below, although it occurred prior to 1 October 2015.
16. In 2012, Mr Geoffrey Blades, a director of Lester Blades,<sup>ap</sup> was engaged by the City in the selection process of the person who would replace Mr Frank Edwards as the City's Chief Executive Officer (CEO).<sup>398</sup>
17. Following the appointment of Mr Gary Stevenson as the CEO in October 2012, Mr Blades was again engaged by the City to conduct performance reviews of Mr Stevenson in 2013 and 2014.<sup>399</sup> Mr Blades recalled meeting with Ms Chen during the 2013 performance review and Ms Chen telling him:
 

*"... when the previous CEO was here I used to be able to use the Perth Town Hall whenever I wanted to bring in groups of people that ... I know and bring them in for different functions and I could use it and I never used to have to pay for it. Now under Gary I have to pay for it".*<sup>400</sup>
18. Mr Blades said he remembered this conversation "*now as clearly as I remember it in 2013*".<sup>401</sup> However, documents obtained by the Inquiry suggest this conversation may have occurred during the 2014 performance review.<sup>402</sup>
19. At her public hearing, Ms Chen acknowledged that "*Anyone who hires the Town Hall should pay*", and she agreed on some occasions the associations she was connected with had to pay the City a fee to use the Perth Town Hall.<sup>403</sup>

ap A company specialising in the recruitment and appointment of senior executives.



20. Ms Chen initially said she could not remember if Mr Edwards allowed her to use the Perth Town Hall without paying a fee. However, after some prompting, she agreed that “*probably once*” Mr Frank Edwards did allow her to use the Perth Town Hall for an event she was involved in organising, without paying a fee. She accepted this would have been for one of the Chinese associations with which she was affiliated.<sup>404</sup>
21. Ms Chen could not remember being asked anything by Mr Blades in relation to Mr Stevenson.<sup>405</sup> Ms Chen’s answers were often evasive or non-responsive and her evidence was that her memory was poor.<sup>406</sup>
22. By comparison, Mr Blades’s evidence was clear on this point and the Inquiry finds him to be a credible witness on this issue. Mr Blades was an external consultant. It is highly unlikely he would have known that the previous CEO had permitted Ms Chen to use the Perth Town Hall free of charge, or that Mr Stevenson had required payment to use the venue, unless Ms Chen had given him this information.
23. For these reasons, the Inquiry prefers the evidence of Mr Blades to that of Ms Chen and accepts that shortly after she was elected, Ms Chen used her position as a council member to hold private functions in the Perth Town Hall, free of charge, for an organisation in which she had private membership. This conduct was an early example of Ms Chen’s ongoing behaviour, in which she appeared to make improper use of her councillor role to obtain private benefits for herself and her associates.

#### **Use of councillor role in procuring overseas investors for private business interests**

24. Ms Chen used her Councillor position to facilitate the introduction of Chinese investors to a Perth-based property development company, Devwest Group Pty Ltd (Devwest). Ms Chen potentially earned commissions from these introductions.
25. Other issues arise in relation to Ms Chen’s association with Devwest. These have been considered in another Section in this Chapter. They are:
  - Ms Chen’s apparent failure to disclose income received from Devwest to the City and the Australian Tax Office; and
  - Ms Chen’s apparent failure to disclose income received from Devwest to the Inquiry, after a Notice to Produce a Statement of Information was served upon her by the Inquiry under the provisions of the *Royal Commissions Act 1968*.

#### **Ms Lily Chen’s business relationship with Devwest**

26. Devwest primarily develops apartment blocks and large commercial buildings in Perth. Most of its investment capital comes from overseas investors, who are typically from China. Many of these investors are attracted through introductions and referrals, for which the referring party earns a commission based on the investment amount.
27. It appears that a number of migration agents, including Ms Chen, had ongoing referral relationships with Devwest. These agents used the investment process to enable investors to obtain certain classes of Australian business visas, which permitted the investors or their family members to migrate to Australia.<sup>407</sup>

28. These referral relationships were typically documented by capital-raising agreements that set out the terms of the arrangement and the commission to be paid.<sup>408</sup> For Ms Chen, the referral arrangement was governed by a consultancy agreement and a fund-raising agreement both dated 10 April 2013 between Ms Chen and Devwest.<sup>409</sup>
29. The commission or success fee was usually five per cent of the investment figure.<sup>410</sup> This was the case for Ms Chen.<sup>411</sup> Mr Chad Ferguson, a director of Devwest, gave evidence that, while investment amounts ranged from several hundred thousand dollars to \$5 million, a typical investment would be \$1.5 million, resulting in a potential commission of \$75,000.00 to the referring party.<sup>412</sup>
30. Mr Ferguson gave evidence that Ms Chen used her role as a council member to impress and attract potential investors from China for Devwest projects.<sup>413</sup> As already noted, Ms Chen's position as a council member was highly regarded within the Chinese community and carried significant cultural status.

#### **Ms Lily Chen's use of the Council dining room to host potential Devwest investors**

31. Ms Chen used the Council dining room (dining room) on at least one occasion to host officers of Devwest, along with potential investors for Devwest property developments.<sup>414</sup>
32. Initially, Ms Chen denied she ever used the dining room to entertain guests for her own personal business reasons, which she knew she was not permitted to do.<sup>415</sup> She stated she did not use the dining room for that purpose, because "*this is my own conscience, my choice, principle in life*". This denial occurred at Ms Chen's public hearing before she was examined about Devwest. The Inquiry notes Ms Chen was very reluctant to reveal her business dealings with Devwest until pressed. After the Inquiry made clear to Ms Chen it was aware of her relationship with Devwest, she admitted she had invited Devwest officers and potential investors to the dining room on possibly two occasions.<sup>416</sup> This was consistent with the evidence of Mr Ferguson, who recalled attending the dining room twice at the invitation of Ms Chen in or about 2017.<sup>417</sup>
33. Nevertheless, Ms Chen maintained that, as she was showing these guests "*the hospitality of the City*", she had not breached the council policy relating to the dining room. The Inquiry rejects that explanation.
34. Council Policy CP10.12 deals with the "*Provision of Hospitality*" and expressly states the dining room shall be maintained as "*a limited hospitality facility available to Elected Members to assist them to meet their unique civic responsibilities*".<sup>418</sup>
35. Ms Chen refused to admit she had invited the Devwest officers and potential investors to attend the dining room for predominately private reasons. This was despite her admission that she had a vested personal interest in being paid a commission by Devwest "*if the result is good*".<sup>419</sup>

36. Whilst Devwest did own property within the City, Mr Ferguson recalled he attended the dining room with potential investors and other senior Devwest officers on one occasion that was related to the dealings Devwest had with Ms Chen in a private business capacity, rather than any property interests Devwest held within the City. Mr Ferguson could not remember the reason for the other occasion Ms Chen had invited him to the dining room.<sup>420</sup>
37. On the one occasion that Mr Ferguson recalls, the Inquiry finds that Ms Chen was not using the ratepayer-funded dining room as part of her “*unique civic responsibilities*”. This use was clearly connected to private business dealings in which she had a personal financial interest.
38. Given Ms Chen’s fund-raising agreement with Devwest and the positive impression the potential investors would have had from their experience of attending the dining room and dining free of charge, the Inquiry finds this was not a proper use of the dining room by Ms Chen and a use that may have been a breach of regulation 7 of the Conduct Regulations.
39. The Inquiry is not able to determine whether Ms Chen secured a commission in relation to the investors who attended the dining room on this occasion. However, Ms Chen’s conduct is clearly not a proper use of her elected office. This conduct, at the very least, appears to be a concerted attempt by her to gain an advantage in her private capacity.

#### Ms Lily Chen repeatedly used her councillor title in meetings with potential investors

40. The Inquiry heard that Ms Chen used her status as a council member to improve her standing with potential investors in Western Australia and China. As noted, Ms Chen had a direct financial interest in the outcome of her introductions of these investors to Devwest.
41. Senior officers of Devwest travelled to China with Ms Chen on at least two occasions, where she introduced them to many potential investors.<sup>421</sup>
42. Mr Ferguson, who had been personally introduced to foreign investors by Ms Chen on an overseas networking trip with her, gave the following evidence in examination by Counsel Assisting:

*“Can you tell me, does Ms Chen introduce herself or mention the fact that she’s a Perth City Councillor to these people [potential Chinese investors]?---Look I mean, it doesn’t – I can’t recall it being, you know, part of the introduction, but obviously it gets brought up at some point in our dealings.*

*Yes?--- Investors are aware of it.*

*You obviously have some familiarity with Chinese culture and the like?--- I do.*

*Is it your understanding that Government officials, particularly elected ones, are held in very high regard?--- Absolutely.*

*In China?--- Absolutely.*

*Is that why Ms Chen is such a valuable asset for the company to have, amongst other things obviously, would that be one?---Yes, that's fair to say.*

*She promotes herself when she's acting in the interests of your company as a Councillor for the City of Perth?---Yes, as I said, I don't recall she goes, 'I'm Lily Chen from the City of Perth', but it comes up at some point, you know, obviously, whether it's the first meeting, second meeting or, you know, whenever. The investors are aware that she is a Councillor for the City of Perth.*

*And then notwithstanding the translation difficulties, is it obvious to you that these investors are impressed with that?---Absolutely".<sup>422</sup>*

43. Mr Ferguson's evidence that Ms Chen's position as a City of Perth councillor was a valuable asset for Devwest was telling. The Inquiry is not suggesting that being a councillor should be a secret, or that Ms Chen was not entitled to tell people she was a councillor. However, given the significant advantages afforded to her within the Chinese culture as an elected council member, Ms Chen should have been particularly careful to maintain an appropriate separation between her civic duties and the private interests she had with Devwest. Given the substantial commissions which she stood to make from referring investors to Devwest, there was clear potential for her to misuse her official position for a personal advantage or benefit. Her invitation to Devwest senior officers and potential investors of Devwest projects to the dining room was a clear example where Ms Chen did not separate her civic responsibilities from her private interests.
44. Ms Chen had also handed her City business card to private business connections in China, rather than her private business card which she also carried. When first questioned, Ms Chen denied having handed out her City business card when in China for business not connected with the City. When she was reminded by Counsel Assisting that the Inquiry was aware of the truthful answer to almost every question it asked, Ms Chen then said she could not remember. When it was directly put she had handed out her City business card to people in China when she had been there for her own personal business dealings, Ms Chen answered, "*Maybe occasion*". She was then asked, "*Definitely occasionally, isn't that right?*" and she responded, "*Yes*".<sup>423</sup>
45. The Inquiry notes that this was just one example of numerous occasions when Ms Chen would initially answer a question with a self-serving incorrect response before she would eventually give an accurate response that was against her interests. This repeated behaviour reflected poorly on Ms Chen's overall credibility as a witness. Whenever she was initially questioned about conduct that was inappropriate, Ms Chen would often answer with unequivocal denials until presented with material that tended to contradict those answers, whereupon her evidence would change.

### Ms Lily Chen obtained a private benefit

46. Ms Chen did, in fact, receive a substantial financial benefit from the referral arrangement she had with Devwest. She eventually admitted receiving commission payments from Devwest from April 2013 to April 2017 totalling \$307,200.00, ranging from \$7,200.00 to \$90,000.00.<sup>424, (aq)</sup> Prior to that admission, Ms Chen maintained she could not remember receiving any other commissions payments during her time as a council member apart from noticeably smaller payments by several other entities she had little difficulty identifying.<sup>425</sup> This matter is dealt with in more detail in another Section in this Chapter.

#### Use of councillor role in connecting a Chinese investment company with State Government officials in private business dealings with Mr Anthony Tran

47. In 2016, Ms Chen used her role as a council member to facilitate introductions and meetings between a business associate named Mr Anthony Tran and members of the State Government.
48. Ms Chen had a direct financial interest in these introductions and meetings. If they resulted in a successfully funded infrastructure project, Ms Chen was to receive a proportion of an introduction fee that was to be paid for the project.<sup>426</sup> For the reasons outlined below, the Inquiry finds Ms Chen was acting in her private capacity in these dealings, and not in her capacity as a council member.
49. Ms Chen first met Mr Tran at a Migration Institute of Australia conference in 2015.<sup>427</sup> She was not acting in her capacity as a council member at this event, although she gave Mr Tran her City business card rather than her private business card. Ms Chen said that she usually carried both her City and private business cards, and had given her private card to others at the event. She was not able to account for her choice in giving Mr Tran her City business card, and her evidence on this point was inconsistent.<sup>428</sup>
50. Mr Tran believed Ms Chen gave him her private business card,<sup>429</sup> although he thought the City business card belonging to Ms Chen contained her photo (which it did not) so he may have been mistaken. Mr Tran was able to recall that, throughout their interactions, he saw Ms Chen's City business card more often than he saw her private business card and that she had given one of his business contacts her City business card.<sup>430</sup>

aq For two of these commission payments Ms Chen stated she shared the amount with a third party who had provided assistance.

### Ms Lily Chen hosted Mr Anthony Tran at the Council dining room and in her office at Council House

51. Ms Chen hosted Mr Tran for lunch in the dining room in late 2015 or early 2016. Mr Tran gave evidence that the other guests at the table were members of the Young Liberals, and the lunch was primarily to facilitate networking related to Ms Chen's bid for the 2017 State election.<sup>431</sup> However, as outlined below, the Inquiry notes that Ms Chen's personal business relationship with Mr Tran began within about six months of this lunch. In those circumstances, the Inquiry finds that Ms Chen's use of the dining room on this occasion was for the dual purpose of developing a personal business relationship with Mr Tran and her own political ambitions at a State level.
52. At her private hearing, Ms Chen denied meeting anyone at her Council House office to discuss private business dealings.<sup>432</sup> However, evidence shows that on 10 May 2016, Mr Tran did meet with Ms Chen in her Council House office to discuss a potential business arrangement between them.<sup>433</sup> This meeting took place in Council House despite both parties being in their own private offices in Perth until the time of the scheduled meeting. To arrive at Council House, Mr Tran walked from his office at 197 St Georges Terrace and Ms Chen drove from her law firm's offices in James Street.<sup>434</sup>
53. Two days after this meeting, Mr Tran emailed Ms Chen at her City email address, stating *"Following my discussion I am more than happy to discuss with your [sic] the funding opportunity I can present to you"*.<sup>435</sup> The email then set out an arrangement whereby *"GB Asiatic Shd Bdn [sic Sdn Bhd]"*,<sup>ar</sup> a Malaysian company (with backing from China Machinery Engineering Corporation, a Chinese state-owned company), would partner with Australian companies on large infrastructure projects in Australia, with a minimum project value of \$300 million.<sup>436</sup>
54. Mr Tran had discussed the arrangement with Ms Chen at their meeting on 10 May 2016 at Council House.<sup>437</sup> Mr Tran's email noted the *"synergies"* that existed between himself and Ms Chen following the *"very enlightening conversation"* at their meeting.<sup>438</sup> Mr Tran agreed that, given the nature and size of the potential projects identified in the email, they would have to be built outside the City boundaries.<sup>439</sup> This further supports a view Ms Chen was acting in her private capacity in these interactions, and not in her capacity as a council member for the City.

### Ms Lily Chen had a direct financial interest in her dealings with Mr Anthony Tran

55. One of the requirements for the projects outlined in the email was that *"an introduction fee must be paid by the lendee"* (being the Australian project partner) for each successfully funded project.<sup>440</sup> Mr Tran gave evidence his company, as the intermediary between the Asian companies and potential Australian partners, would receive that introduction fee.<sup>441</sup>

ar An abbreviation of *"Sendirian Berhad"* which translates to *"Incorporated in Malay"*.

56. Initially, Mr Tran's evidence was that Ms Chen would not have received any part of an introduction fee.<sup>442</sup> He maintained that even after he was shown the contents of his email dated 12 May 2016 to Ms Chen<sup>443</sup> and was reminded by Counsel Assisting of his earlier evidence where he agreed that if he had mentioned an introduction fee to Ms Chen then he would have remunerated her for any assistance.<sup>444</sup> After the Commissioner reminded Mr Tran of his obligation to tell the truth,<sup>445</sup> Mr Tran admitted that if Ms Chen had assisted him to find a suitable project, his company would have paid her 30 per cent of the introduction fee.<sup>446</sup>
57. Ms Chen also initially gave inaccurate answers regarding the arrangement she had with Mr Tran. She eventually admitted she would have received some of the introduction fee if a project went ahead due to her assistance.<sup>447</sup> Ms Chen maintained, however, that she was not told by Mr Tran, nor did she ask him, what split of the introduction fee she was to receive.<sup>448</sup> The Inquiry does not accept this evidence. Given the many business dealings Ms Chen has been involved in, including arrangements based on the payment of commissions, the Inquiry finds she would not have entered this arrangement with Mr Tran without understanding how she would be paid.
58. The introduction fees for these infrastructure projects were determined on a casebycase basis and were generally between one per cent and five per cent.<sup>449</sup> Based on the initial minimum project cost of \$300 million<sup>as</sup> and a 30 per cent payment of the introduction fee, Ms Chen had a potential financial interest of between \$900,000.00 and \$4.5 million.<sup>450</sup>

**Ms Lily Chen used her councillor title when attending meetings to connect Mr Anthony Tran with potential investors**

59. Mr Tran agreed he approached Ms Chen for her assistance because she was a member of the Chinese community in Australia whose role as a council member gave her high status within the Chinese community.<sup>451</sup> He also agreed she had good communication and negotiating skills and had contacts with the State Government. It was for these reasons he was prepared to pay her such a substantial part of the introduction fee.<sup>452</sup> As it was a Liberal State Government at the time, Ms Chen also agreed she had contacts within that government.<sup>453</sup>
60. Ms Chen made concerted efforts to assist Mr Tran by attempting to set up meetings between Mr Tran and Ministers of the State Government to discuss potential funding partnerships for infrastructure projects.<sup>454</sup> One week after meeting Mr Tran, she had started communicating with Mr Alan Green, an economic and trade promotion agent specialising in Asia, for the purpose of setting up a meeting with the then State Treasurer, the Hon. Dr Michael (Mike) Nahan, MLA.<sup>455</sup> Dr Nahan's appointment secretary subsequently advised Ms Chen it was "*not appropriate*" for the Treasurer to have such a meeting.<sup>456</sup>

as This was later reduced to \$150 million: Transcript, A Tran, private hearing, 9 August 2019, p 61.



61. Two weeks later, Ms Chen tried to set up a meeting with the Minister for State Development and Finance, the Hon. William (Bill) Marmion, MLA.<sup>457</sup> Mr Marmion was unable to attend “*due to a highly overscheduled diary*” although his appointment secretary offered a meeting with the Minister’s policy advisors, Mr Cam Fraser and Mr Gary MacLean, for 1 July 2016.<sup>458</sup> Ms Chen attended that meeting with Mr Tran and Mr Leon Siew, another of Mr Tran’s business partners. At the meeting, they discussed potential infrastructure projects with a minimum value of \$100 million.<sup>459</sup> Even at this lower threshold amount, a successful \$100 million project would have resulted in a minimum introduction fee of \$1 million for Mr Tran’s company, of which Ms Chen would have received \$300,000.00.<sup>460</sup>
62. Mr Tran gave evidence that Ms Chen was the primary spokesperson at the meeting.<sup>461</sup> Ms Chen said, although she had spoken at the meeting, she was not the primary spokesperson and was mainly there “*connecting*” the others who were present. Ms Chen confirmed she was acting in her private capacity at this meeting. Despite this, at the end of the meeting she gave her City business cards to those who were present, even though she also had her private business cards, which listed her contact details for Lily Chen & Associates.<sup>462</sup>
63. Ms Chen provided various explanations for having handed out her City business card rather than her personal one. The explanations were: it was a mistake; both cards should have been given out; and she had run out of her private business cards.<sup>463</sup> The Inquiry rejects these explanations.
64. When asked whether her evidence outlined above made “*perfect sense*” Ms Chen answered, “*Not perfect*”.<sup>464</sup> When it was put to her the real reason was because her City business card “*would have more gravitas, more importance*”, Ms Chen answered, “*More recognisable, yes*”.<sup>465</sup> This was the closest Ms Chen came to giving an accurate account as to why she had handed out her City business cards at a meeting in which she appeared in her private capacity and in which she had a financial interest in the outcome.
65. There is nothing inherently improper about Ms Chen connecting Mr Tran with government officials for the purpose of attracting overseas funding for infrastructure projects. The improper conduct arises in relation to:
- Ms Chen’s ongoing use of her councillor title and Council House facilities to bolster an arrangement in which she had a personal financial interest; and
  - The potential for Ms Chen to obtain a financial interest from those introductions.
66. Whether or not Ms Chen led the meeting on 1 July 2016, it is clear she took an active role in connecting Mr Tran with government advisers, with a view to securing a successfully funded project in which she had a personal and lucrative financial interest. It is also clear Ms Chen used the dining room, her Council office, her City email address, and her City business cards in the course of these private dealings with Mr Tran. This was not a proper use of the office she held as an elected council member.

67. Ms Chen later advised Mr Tran of an opportunity to invest in a private hospital project outside the City boundaries and suggested his client companies may be interested in funding the project.<sup>466</sup> Nothing eventuated from this suggestion.<sup>467</sup> Mr Tran said Ms Chen was “*always pitching meeting Parliament staff and things like that*”.<sup>468</sup>
68. As the meetings with State Government officials did not result in any successfully funded projects, Ms Chen did not ultimately receive a commission or an introduction fee in respect of this relationship.<sup>469</sup> The Inquiry finds this was not due to any lack of effort on her behalf.
69. Nevertheless, the Inquiry finds Ms Chen may have used her position as a council member to try and obtain benefits for herself in her private business dealings with Mr Tran. This conduct may have been in breach of regulation 7 of the Conduct Regulations.

#### **Ms Lily Chen’s evidence on this issue lacked credibility**

70. It was clear Ms Chen was acting in a private capacity in the business arrangement she had with Mr Tran. If Ms Chen was genuine in her efforts to give accurate answers to the Inquiry, she would have made that admission when she was first questioned at her private hearing on 2 July 2019.
71. Instead, she gave two different explanations of her arrangement with Mr Tran. She initially maintained her contact with Mr Tran was only connected to her duties and functions as a council member as it involved “*international engagement*” and that she was not invited to be Mr Tran’s business partner.<sup>470</sup>
72. Only when it became apparent to Ms Chen that the Inquiry was aware of the true nature of the relationship she had with Mr Tran did she admit she would receive a portion of the introduction fee,<sup>471</sup> and her dealings with him were “*private business dealings*”.<sup>472</sup>
73. The Inquiry notes this was another example of an initial self-serving account from Ms Chen which was discarded when she was confronted with the contrasting evidence available to the Inquiry.

#### **Misuse of position in private business advertising**

74. Ms Chen’s councillor title appeared on an invitation for an event that related to her private interests, and which had no relationship to the City. This risked creating the erroneous impression the event was affiliated with or supported by the City.
75. This could have resulted in a benefit being improperly obtained for Ms Chen, and certainly for an organisation with which Ms Chen has had a longstanding involvement. If the use of the councillor title constituted improper use by Ms Chen, she may have breached regulation 7 of the Conduct Regulations.
76. On 27 September 2016, the Lord Mayor, Ms Lisa Scaffidi emailed Mr Martin Mileham, CEO, copying Mr Mark Ridgwell, Manager, Governance, stating the “*need to discuss CR [councillor] use of titles together*”.<sup>473, (at)</sup>

at In this context, “CR” is used as an abbreviation for “Councillor”.

77. Ms Scaffidi's email attached a letter inviting her to attend the 2016 Mrs Chinatown World Pageant Perth and World Outstanding Women Awards Ceremony. The letter identified Ms Chen as one of three members on the organising committee. The events were not affiliated with the City. Ms Chen's details appeared at the base of the letter in a format resembling a signature block, which identified her as "*Lawyer/Councillor of City of Perth*" and "*President, Australia Chinese Women's Council*".<sup>474</sup>
78. Ms Scaffidi said she was aware of the issue, because Ms Chen "*had been advised from the time of Mr Edwards being the CEO to be very mindful of*" the inappropriate use of her councillor title as "*it had occurred previously*".<sup>475</sup> If Ms Scaffidi is correct, and noting Mr Edwards completed his position as the CEO of the City in September 2012, Ms Chen would have been aware of the correct use of her councillor title for at least four years.
79. The Inquiry accepts Ms Scaffidi's evidence on this point. As Ms Scaffidi said "*... it was drawn to my attention during Mr Frank Edwards' time as the CEO that that was not appropriate and so when I saw it on this occasion, I clearly recognised it. Otherwise, I wouldn't have probably thought about it*".<sup>476</sup>
80. In response to Ms Scaffidi's email, Mr Ridgwell emailed Mr Mileham stating, "*Yes I too agree that placement of a Councillor title on an external parties [sic] letterhead is not appropriate*".<sup>477</sup>
81. Mr Ridgwell's email said that the Governance unit would "*prepare a respectful letter to Cr Chen requesting that she desist from future use of her Councillor title in such communication. Noting the intention is not to create a perception that this is a City of Perth sanctioned event*" and would make it clear this was "*a general request for this and future matters*".<sup>478</sup> The reference to a "*general request*" and "*future matters*" supports Ms Scaffidi's evidence and suggests this was not an isolated incident for Ms Chen.
82. Mr Mileham wrote a letter dated 29 September 2016 (Mr Mileham's Letter) to Ms Chen which read:

*"I am writing to you in respect of [a] letter dated 27 September 2016 (attached) from Swanlake Australia Pty Ltd. The letter was in relation to the upcoming 2016 Mrs. Chinatown World Pageant Perth and World Outstanding Women Awards Ceremony.*

*The letter was not signed by yourself but the signature line included your details and noted your position as a Councillor of the City of Perth.*

*I request that you avoid the use of your title in communications regarding events that are not related to the City of Perth. The use of your title in the signature line could give the incorrect impression that the event is officially sanctioned by, or jointly organised with, the City of Perth. Please ensure that Swanlake Australia Pty Ltd removes this reference from future correspondence. Please also avoid the use of your title in similar correspondence from any other party*".<sup>479</sup>

83. Despite Mr Ridgwell's email clearly stating that the use of Ms Chen's councillor title was not appropriate, at his hearing Mr Ridgwell clarified his views as to when it was appropriate for a council member to use the title of Councillor:

*"Given your position as manager of Governance at the time, it's not appropriate, is it, for a Councillor to use her title as Councillor on correspondence that has nothing to do with the City?---That is the status of what an Elected Member is titled. So in another instance, the Lord Mayor would have her title as Lord Mayor. I guess the conflicting part to this was where the focus was in this was the legitimacy of then supporting another event which was where probably the focus was, but a person can refer to themselves as a Councillor in any regard at any time.*

*Is that your view?---Yes.*

*So, for example, Councillor Chen in her occupation as a lawyer, could use [in] the signature block in corresponding with a client that she's a Councillor for the City of Perth?---Probably – I would say it wouldn't be appropriate. I mean, this is where I'm saying about the context of this, it's questionable. Someone could be in sense of explaining who they are, representing what they are, they could list themselves and identify themselves as a Councillor of the City of Perth. That would seem reasonable".<sup>480</sup>*

84. From the above answers, it is difficult to distil precisely what Mr Ridgwell's view was on the use by a council member of their councillor title. However, he later stated council members should ensure the use of their title is *"not creating an advantage or misrepresenting the City's position on anything"*, and the appropriateness of using a councillor title outside of City duties would be context-dependant. With respect to the letter of invitation received by Ms Scaffidi, Mr Ridgwell believed the use of the councillor title by Ms Chen *"sort of looked to be advocating a Council position potentially"*.<sup>481</sup>
85. The Inquiry must consider whether Ms Chen may have engaged in improper conduct in relation to the invitation. In her evidence, Ms Chen denied consenting to the use of her councillor title on the invitation. She said she did not see the letter before it was sent out, and the organiser must have drawn that information from *"the public domain"* and used it for the letter without her consent.<sup>482</sup>
86. The Inquiry has no evidence to the contrary. The letter was emailed to Ms Scaffidi directly and Ms Chen was not copied.<sup>483</sup> The letter was designed to be signed only by the Chairman of the Events (Chairman) and not by Ms Chen or the other committee member.<sup>484</sup> Ms Chen also asserted that although she was a participant she was not a member of the organising committee for these events.<sup>485</sup> However, she is identified as a member of the organising committee in the letter.<sup>486</sup> Although the Inquiry does not make a finding contrary to Ms Chen's explanations, what does concern the Inquiry is Ms Chen's failure to acknowledge that the use of her councillor title in the letter was inappropriate.

87. This was her evidence:

*“Do you agree with me that your name and description should not have appeared like that?---I disagree. Because that is true, is the fact situation and are positions I held at the time.*

...

*So you’re saying there’s no problem with that?---That’s correct.”<sup>487</sup>*

88. The Inquiry put to Ms Chen that the events in the invitation were not connected with her role as a council member. Ms Chen gave a number of disconnected justifications for why such a connection existed. She argued the event was connected to the City as the Chairman was a ratepayer of the City, and ratepayers were entitled to address her as Councillor. She also stated that as this was a community event, to which council members were often invited, it would be appropriate for her to send out the letter even under her own hand and refer to herself as a councillor in that letter.<sup>488</sup>
89. This view of Ms Chen is totally inconsistent with Mr Mileham’s Letter.<sup>489</sup> When asked whether she received a letter from the City advising her not to use her councillor title in communications not related to the City or her role as a council member, Ms Chen initially answered she *“cannot recall”*. After admitting that if she had received such advice it would be *“the total opposite”* to the earlier advice she says she had received (detailed below) Ms Chen’s recollection became firmer, because she then said she *“didn’t receive”* the subsequent advice contained in Mr Mileham’s Letter.<sup>490</sup>
90. The Inquiry obtained a hard copy of Mr Mileham’s Letter from the City. That letter was retrieved from Ms Chen’s own office at Council House, so it is clear she did receive it.

#### **Whether the City of Perth gave Ms Lily Chen inconsistent advice about using her councillor title in private communications**

91. Ms Chen said she had a verbal conversation with *“senior executives at Director level or Chief Executive Officer”*,<sup>491</sup> who informed her it was acceptable to use her councillor title for business not related to the City provided it appeared in a list with her other titles (such as *“lawyer”*, or her role in various associations).<sup>492</sup> She could not recall who that person was (although she thought it was probably someone in the Governance unit), when the conversation occurred, or whether it was by telephone or face-to-face. However, she said it occurred before Mr Ridgwell commenced at the City.<sup>493</sup> That meant it would have been before October 2013.<sup>494</sup>
92. Ms Chen said she took the initiative to seek this advice, that the City sought legal advice on the point, and then gave her the advice there were no limitations as to context or use of the councillor title.<sup>495</sup> Mr Ridgwell did not recall discussing the topic with Ms Chen. However, he agreed it would be *“odd”* for anyone in the Governance unit to condone unrestricted use of the councillor title. His personal view, which the Inquiry accepts as correct, was that it would not be appropriate for a council member to describe themselves as a Councillor on *“a business letter”* as *“it’s got no relation to the role of an Elected Member”*.<sup>496</sup>

93. It was directly put to Ms Chen she had never received the earlier advice permitting her to have unrestricted use of her councillor title, yet Ms Chen maintained that she had.<sup>497</sup>
94. The Inquiry has not found any evidence that the City sought the legal advice which Ms Chen refers, nor has it found any evidence that advice of this nature was delivered to Ms Chen. Ms Chen has not provided any information to assist the Inquiry to verify her evidence, if such evidence exists, despite being requested to do so by Counsel Assisting during her private hearing on 2 July 2019.<sup>498</sup>
95. As referred to earlier in this Section, Ms Scaffidi's evidence demonstrates that Ms Chen's misuse of her councillor title was a longstanding issue and she had been counselled on more than one occasion that it was improper to use her title in this way.<sup>499</sup>
96. There is a clear conflict in this evidence which requires resolution by the Inquiry.
97. Ms Chen's conduct throughout the Inquiry process has demonstrated an apparent unwillingness to comply with the directions of the Inquiry, including those issued using the coercive powers of the *Royal Commissions Act 1968*. The Inquiry has uncovered instances of Ms Chen withholding information, giving evasive and inconsistent answers, and giving inaccurate and incorrect evidence.
98. Those matters are properly dealt with elsewhere in this Report. However, their effect is that where there is conflicting evidence that is against Ms Chen's interests, it is appropriate for the Inquiry to afford substantially less weight to the evidence of Ms Chen. This is particularly so in this instance, where:
  - there is no apparent reason for Ms Scaffidi to give inaccurate evidence on this point and her evidence was partially supported by documents;
  - Ms Chen's evidence lacks consistency and specificity; and
  - the Inquiry has not been able to independently verify the formal governance processes Ms Chen said the City undertook, or find any record of legal advice the City may have obtained on this issue.
99. Nonetheless, it was evident Mr Ridgwell had some difficulty clearly articulating where and when a council member might legitimately use their councillor title. This suggests the City lacks clear guidance as to how to properly interpret and enforce regulation 7 of the Conduct Regulations in circumstances that suggest a council member is misusing their councillor title.
100. It appears the City and the Department of Local Government, Sport and Cultural Industries (Department) have provided no formal guidance as to when and how a council member may use his or her official title when they are not acting in their capacity as a councillor. The Code of Conduct provisions in the City's Council Policy Manual do not provide information on this issue.
101. In any event, as a council member Ms Chen was required to be familiar with and to comply with the Conduct Regulations.

102. In the Inquiry's view, it would be clearly improper for Ms Chen to use her councillor title, in an unrestricted way, in private business communications that are not connected with the City. As an elected public official, Ms Chen must maintain an appropriate separation between her civic duties and her private for-profit business dealings. If there is a risk the inclusion of the councillor title could mislead people into thinking the City endorses a private business dealing, or her holding the office would somehow advantage that dealing, then use of that title would be improper.

#### **General use by Ms Lily Chen of her councillor title in private business dealings**

103. Ms Chen repeatedly asserted that where her councillor title appears in a list with her other titles, it is "*a matter of fact*" rather than a promotion of herself as a council member.<sup>500</sup> Whilst that may have been the case in some circumstances, there were other occasions in which she used her councillor title to promote her own business interests.
104. Ms Chen knew only too well that her standing within the community, particularly the Chinese community, was greatly enhanced by her position as a City councillor. The Inquiry finds that she took many opportunities to promote herself in that capacity when it was to her advantage, even when she was acting in a private business capacity.
105. The Inquiry does not consider there is necessarily anything wrong with a council member listing their titles or qualifications, or membership of organisations, in correspondence or documents (including electronically). An obvious example would be a council member's profile on LinkedIn, as cited by Mr Ridgwell.<sup>501</sup>
106. What is of concern to the Inquiry, is if Ms Chen was advertising her position as a council member of the City to persuade people to use her services when applying to migrate to Australia, thereby enabling her to gain business as a migration agent. In providing these services, Ms Chen also had the opportunity of obtaining commission payments from property investments by people applying for migration. This would be a potential misuse of her council position to gain a personal advantage.
107. Ms Chen has included the title "*Councillor of City of Perth*" in her correspondence and advertising, including for her private businesses as a lawyer and registered migration agent. A brief check of the internet in December 2019 found numerous examples of this, including Facebook and LinkedIn pages, the website for Lily Chen & Associates (website), newspaper advertisements, and various websites relating to migration.
108. Frequently, the title "*Councillor of the City of Perth*" has been listed first among Ms Chen's positions.
109. During the period of the Inquiry's Terms of Reference, Ms Chen regularly used her Lily Chen & Associates email address for private business matters and migration work. The email signature block for that address included her councillor title under her name, along with other roles she held with community organisations.<sup>502</sup>



110. Ms Chen’s personal profile page on the website as at 27 May 2019 listed “*Councillor of the City of Perth*” as the first title in a list of six and is above her descriptions as “*Principal of Lily Chen & Associates*” and “*Solicitor*”.<sup>503</sup> Although Ms Chen asserted the website was “*outdated*” at her private hearing on 2 July 2019,<sup>504</sup> an examination of the website on 3 December 2019 and again on 26 February 2020 revealed that the same list of titles appeared in the exact same order on her personal profile page.<sup>505</sup> Ms Chen’s last term as a council member expired on 19 October 2019. However, the same paragraph that appeared on 27 May 2019 regarding her achievements as a council member still appeared in her personal profile in the website on 3 December 2019 and again on 26 February 2020:

*“In October 2011, Ms Lily Chen was elected to the City of Perth as a Councillor. She hopes that this opportunity will bring a positive influence and example to the Australian Chinese women [sic] community. At the City of Perth, Ms Lily Chen is tasked with chairing the Marketing, Sponsorship and International Relations Committee amidst other committee responsibilities. Her dedication and capabilities has [sic] won her the admiration and praise from her colleagues.”*<sup>506, (au)</sup>

111. As outlined above, Ms Chen also regularly handed out her City business card at events where she appeared in her private business capacity.<sup>507</sup>
112. The Inquiry finds Ms Chen did use her councillor title for private business purposes in circumstances when it was inappropriate to do so. This includes Ms Chen’s repeated inclusion of her councillor title in the signature blocks she used for her private business communications through Lily Chen & Associates. The Inquiry further finds that she ignored advice from the City regarding her misuse of her councillor title.
113. The Inquiry rejects Ms Chen’s evidence regarding the advice she says she received from the City at a time prior to October 2013. Considering the following answers she gave, it cannot be said Ms Chen was ignorant of the circumstances when her councillor title should not be used:<sup>508</sup>

*“In what context should you be referring to yourself as Councillor Chen?---  
When you conduct your civic duties.*

*That would be the only basis?---Yes.*

*Do you agree that an Elected Member of Council should not use their  
Councillor title to promote their own private interests?---Yes, not.*

*Have you ever done that?---No.”*<sup>509, (av)</sup>

114. It is of considerable concern to the Inquiry that Ms Chen has continued to describe herself as a “*Councillor of the City of Perth*” (in English and Chinese characters) on the website for Lily Chen & Associates several months after the Inquiry questioned the appropriateness of that description in an extract of the Inquiry’s draft Report which was provided to her legal representatives in December 2019.

au Ms Chen’s profile is also translated into Chinese characters.

av At the time Ms Chen gave this response she was not aware that the Inquiry possessed evidence that contradicted her answer.

## Findings

### Finding 2.2.3 – 10

The Inquiry makes the following findings:

- i. Ms Chen used her Councillor position to advance her own personal business interests. This conduct may be a breach of regulation 7 of the Conduct Regulations. This conduct was repeated on numerous occasions, including:
  - the use of the dining room to entertain officers from Devwest and potential investors to Devwest's property developments;
  - the use of the dining room to entertain Mr Tran;
  - the use of her council office to meet with Mr Tran regarding a private business proposition which she subsequently accepted; and
  - the deliberate use of her City business card and email address when carrying out private business matters.
- ii. The City has insufficient guidance material for the proper interpretation and enforcement of regulation 7 of the Conduct Regulations.

## Endnotes

- 1 *Local Government Act 1995*, s 5.60A, 5.60B, 5.61, 5.63; *Local Government (Administration) Regulations 1996*, reg 34C; *Local Government (Rules of Conduct) Regulations 2007*, reg 11.
- 2 *Criminal Code*, s 1.
- 3 *Local Government Act 1995*, s 5.98(1) and (2A); *Local Government (Administrative) Regulations 1996*, reg 30(3A).
- 4 Policy, City of Perth Council Policy Manual, CP10.5, Council Member Allowance and Meeting Attendance Fees, 30 April 2015.
- 5 *Local Government Act 1995*, s 5.100.
- 6 Policy, City of Perth Council Policy Manual, CP10.13, Reimbursement of Expenses for Non-Council Committee Members, 1 February 2011.
- 7 Document, Salaries and Allowances Tribunal, Determination of the Salaries and Allowances Tribunal – Local Government Chief Executive Officers and Elected Members, 17 June 2015, p 34, 37; Determination, 12 April 2016, p 27, 29; Determination, 11 April 2017, p 35, 27.
- 8 *Local Government Act 1995*, Part 5, Division 8.
- 9 Email, D Quinlivan to G Stevenson, 19 June 2015.
- 10 Report, City of Perth, Annual Report 2016/2017, p 40.
- 11 Report, City of Perth, Annual Report 2016/2017, p 37.
- 12 Report, City of Perth, Annual Report 2017/2018, p 41.
- 13 Document, City of Perth, Notice to Produce a Statement of Information No. 001 of 2018, 23 November 2018.
- 14 Report, Department of Local Government, Sport and Cultural Industries (Department), website, *Local Government Act 1995* Review, Phase 1: Consultation Paper, 8 November 2017.
- 15 Information sheet, Department, website, Gifts policy position, 31 July 2018.
- 16 Media Statement, Minister for Local Government; Heritage; Culture and the Arts, the Hon. David Templeman, City of Perth suspended, inquiry to determine fate, 2 March 2018.
- 17 Terms of Reference, Part A.3(vi).
- 18 Terms of Reference, Part A.3(v).
- 19 Terms of Reference, Part A.3(iv).
- 20 Terms of Reference, Part A.3(ii).
- 21 Terms of Reference, Part A.1.
- 22 *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222, p 17-18, [46]-[48].
- 23 *Royal Commissions Act 1968*, s 8A, 8B.
- 24 Transcript, X Chen, private hearing, 16 August 2019.
- 25 *Local Government Act 1995*, s 5.74-5.76.
- 26 *Local Government Act 1995*, s 5.80.
- 27 *Local Government Act 1995*, s 5.79, 5.86.
- 28 *Local Government Act 1995*, s 5.81.
- 29 *Local Government Act 1995*, s 5.84.
- 30 *Local Government Act 1995*, s 5.85.
- 31 *Local Government Act 1995*, s 5.87.
- 32 *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222.
- 33 *Local Government Act 1995*, s 5.78(2).
- 34 *Local Government Act 1995*, s 5.80(3), 5.85(2)(a); *Local Government (Administration) Regulations 1996*, reg 24, 27.
- 35 *Local Government Act 1995*, s 5.75 (lodging primary returns), 5.76 (lodging annual returns), 5.78 (information disclosed in returns).
- 36 *Local Government Act 1995*, s 5.76(1).
- 37 Email, M Sucur to N Mendoza, 31 July 2018.
- 38 Memorandum, M Mileham to Lord Mayor and Councillors, Request for 2017/18 Annual Return, 6 August 2018.
- 39 Transcript, L Chen, public hearing, 13 August 2019, p 37.
- 40 Transcript, L Chen, public hearing, 13 August 2019, p 37-38, 40.
- 41 *Local Government Act 1995*, s 8.29(1).
- 42 *Local Government Act 1995*, s 5.94(b).
- 43 *Local Government Act 1995*, s 5.79(1).
- 44 *Local Government Act 1995*, s 5.80.
- 45 Form, L Chen, Annual Return for 2013/2014, 11 July 2014.
- 46 Form, L Chen, Annual Return for 2014/2015, 28 July 2015.
- 47 Form, L Chen, Annual Return for 2015/2016, 30 August 2016.
- 48 Form, L Chen, Annual Return for 2013/2014, 11 July 2014.
- 49 Transcript, L Chen, public hearing, 13 August 2019, p 50-51.
- 50 Transcript, L Chen, public hearing, 13 August 2019, p 51.

- 51 Form, L Chen, Annual Return for 2015/2016, 30 August 2016; Transcript, L Chen, 13 August 2019, p 55.
- 52 *Local Government Act 1995*, s 5.60(d), 5.60B, 5.65, 5.67.
- 53 Form, R Harley, Primary Return, 3 December 2013.
- 54 Form, R Harley, Annual Return for 2013/2014.
- 55 *Local Government Act 1995*, 5.78(2)(a).
- 56 Form, R Harley, Annual Return for 2014/2015.
- 57 Notice to R Harley, Inquiry into the City of Perth, Notice to produce a statement of information, 1 March 2018 [sic 2019].
- 58 Letter, N Malone and A McDonald, Response to notice to produce a statement of information by R Harley, 15 March 2019, p 2.
- 59 Form, R Harley, Annual Return for 2014/2015; Form, R Harley, Annual Return for 2015/2016; Form, R Harley, Annual Return for 2016/2017; Form, R Harley, Annual Return for 2017/2018.
- 60 Notice to J Green, Inquiry into the City of Perth, Notice to produce a statement of information, 1 March 2018 [sic 2019].
- 61 Letter, Dr Green's solicitor to the Inquiry, Response to notice to produce a statement of information, 15 March 2019, p 2.
- 62 Form, J Green, Primary Return, 3 December 2015; Form, J Green, Annual Return for 2015/2016, 25 August 2016; Form, J Green, Annual Return for 2016/2017, 15 July 2017; Form, J Green, Annual Return for 2017/2018, 30 June 2018.
- 63 Form, L Chen, Annual Return for 2013/2014, 11 July 2014, p 2.
- 64 *Local Government Act 1995*, s 5.78(2)(a).
- 65 Form, L Chen, Annual Return for 2011/2012, dated 29 August 2012. It should be noted Ms Chen incorrectly wrote on this return it was for the period from "1/7/2012 to 30 June 2013"; Transcript, L Chen, Public hearing, 13 August 2019, p 45-46.
- 66 Form, L Chen, Annual Return for 2012/2013, 1 August 2013; Form, L Chen, Annual Return for 2013/2014, 11 July 2014.
- 67 Form, P Crosetta, Primary Return, 7 January 2016.
- 68 Form, P Crosetta, Annual Return for 2015/2016, 23 August 2016.
- 69 Form, P Crosetta, Annual Return for 2015/2016, 23 August 2016, p 3.
- 70 Form, P Crosetta, Annual Return for 2016/2017, 12 August 2017; Form, P Crosetta, Annual Return for 2017/2018, 9 August 2018.
- 71 *Local Government Act 1995*, s 5.84.
- 72 ASIC, Historical Company Extract for Limnios Superannuation Fund Pty Ltd, 28 August 2018; Form, J Limnios, Primary Return, 8 December 2009.
- 73 Form, K Yong, Annual Return for 2014/2015, 11 July 2014.
- 74 ASIC, Historical Company Extract for Yong Family Super Pty Ltd, 13 September 2018; ASIC, Historical Company Extract for Maxiwest Pty Ltd, 13 September 2018.
- 75 Form, K Yong, Primary Return, 8 November 2013.
- 76 Form, L Chen, Primary Return, 11 December 2011.
- 77 ASIC, Historical Company Extract for Wayon Pty Ltd, 10 August 2018.
- 78 Form, L Chen, Primary Return, 11 December 2011.
- 79 Transcript, L Chen, public hearing, 13 August 2019, p 43.
- 80 Form, L Chen, Annual Return for 2012/2013, 1 August 2013, p 3.
- 81 Transcript, L Chen, public hearing, 13 August 2019, p 49.
- 82 Form, L Chen, Annual Return for 2011/2012, 29 August 2012.
- 83 ASIC, Historical Company Extract for Global Australia Pty Ltd, 13 September 2018; Transcript, L Chen, public hearing, 13 August 2019, p 44-45.
- 84 Form, L Chen, Primary Return, 11 December 2011.
- 85 *Local Government Act 1995*, s 5.80(2)(b).
- 86 *Local Government Act 1995*, s 5.81.
- 87 Form, J Green, Primary Return, 3 December 2015, p 2.
- 88 Form, J Green, Annual Return for 2015/2016, 25 August 2016, p 2; Form, J Green, Annual Return for 2016/2017, 15 July 2017, p 2; Form, J Green, Annual Return for 2017/2018, 30 June 2018, p 2.
- 89 Super fund lookup on Australian Taxation Office website.
- 90 Letter, Dr Green legal representatives to the Inquiry, 19 December 2019.
- 91 *Local Government Act 1995*, s 5.80(3) and 5.80(4); *Local Government (Administration) Regulations 1996*, reg 24.
- 92 Document, Spreadsheet of income for L Scaffidi, Response to notice to produce a statement of information, undated.
- 93 Form, L Scaffidi, Annual Return for 2015/2016, 16 August 2016, p 2; Form, L Scaffidi, Annual Return for 2016/2017, 15 August 2017, p 2.
- 94 *Local Government Act 1995*, s 5.78(2).
- 95 Form, J Davidson, Primary Return, 24 February 1998.
- 96 Document, Statement of information by J Davidson, Response to notice to produce a statement of information, 12 March 2019.
- 97 Form, J Davidson, Annual Return for 2015/2016, 23 July 2016, p 2; Form, J Davidson, Annual Return for 2016/2017, 16 July 2017.
- 98 *Local Government Act 1995*, s 5.78(2).
- 99 Form, J Davidson, Annual Return for 2015/2016, 23 July 2016, p 1-2; Form, J Davidson, Annual Return for 2016/2017, 16 July 2017, p 1-2.
- 100 Transcript, L Chen, public hearing, 13 August 2019, p 38-39.
- 101 Transcript, L Chen, public hearing, 13 August 2019, p 39.

- 102 Transcript, L Chen, public hearing, 13 August 2019, p 58.
- 103 Form, L Chen, Primary Return, 11 December 2011, p 1.
- 104 Transcript, L Chen, public hearing, 13 August 2019, p 41, 46, 49, 51; Form, L Chen, Annual Return for 2013/2014, 11 July 2014.
- 105 Transcript, L Chen, public hearing, 13 August 2019, p 7-9.
- 106 Transcript, L Chen, public hearing, 13 August 2019, p 74.
- 107 Transcript, L Chen, public hearing, 13 August 2019, p 11.
- 108 Bank statement, L Chen, Bankwest Hero transaction account; Transcript, L Chen, public hearing, 14 August 2019, p 33.
- 109 Transcript, L Chen, public hearing, 13 August 2019, p 54.
- 110 Form, L Chen, Primary Return, 11 December 2011; Form, L Chen, Annual Return for 2011/2012, 29 August 2012.
- 111 Submissions on Behalf of L Chen, Disclosure of Financial Interests, 20 February 2020, Annexures 1 and 2.
- 112 Form, L Chen, Primary Return, 11 December 2011, p 1.
- 113 Form, L Chen, Annual Return for 2011/2012, 29 August 2012.
- 114 Transcript, L Chen, public hearing, 13 August 2019, p 52, 54, 74; Transcript, L Chen, public hearing, 14 August 2019, p 33.
- 115 *Local Government Act 1995*, s 5.80(2)(ii).
- 116 *Local Government Act 1995*, s 5.80(2)(i).
- 117 Transcript, L Chen, public hearing, 13 August 2019, p 68-69.
- 118 Contract, L Chen and Devwest, Consulting agreement, 10 April 2013; Contract, L Chen and Devwest, Fund raising agreement; Transcript, L Chen, public hearing, 13 August 2019, p 84-86.
- 119 Transcript, L Chen, public hearing, 13 August 2019, p 68; Contract, L Chen and Devwest, Fund raising agreement
- 120 Contract, L Chen and Devwest, Consulting agreement, 10 April 2013; Contract, L Chen and Devwest, Fund raising agreement; Transcript, L Chen, public hearing, 13 August 2019, p 89.
- 121 Transcript, L Chen, public hearing, 13 August 2019, p 93, 95-96, 100-101, 103-104.
- 122 Bank deposit transaction details, Westpac, Hay 263 Pty Ltd or Barker 3 Pty Ltd to L Chen.
- 123 ASIC, Historical Company Extract for Hay 263 Pty Ltd, 17 October 2018; ASIC, Historical Company Extract for Barker 3 Pty Ltd, 6 December 2018.
- 124 Transcript, D Ow, private hearing, 9 August 2019, p 3-4.
- 125 Transcript, L Chen, public hearing, 13 August 2019, p 104.
- 126 Bank deposit transaction details, Westpac, Hay 263 Pty Ltd or Barker 3 Pty Ltd to L Chen.
- 127 Transcript, L Chen, public hearing, 13 August 2019, p 87-88; Transcript, L Chen, public hearing, 27 August 2019, p 8.
- 128 Notice to L Chen, Inquiry into the City of Perth, Notice to produce a statement of information, 1 March 2018 [sic 2019], p 4.
- 129 Notice to L Chen, Inquiry into the City of Perth, Notice to produce a statement of information, 1 March 2018 [sic 2019], p 4.
- 130 Notice to L Chen, Inquiry into the City of Perth, Notice to produce a statement of information, 1 March 2018 [sic 2019], p 3.
- 131 Transcript, L Chen, public hearing, 13 August 2019, p 60, 62; Letter with annexure, HWL Ebsworth Lawyers to the Inquiry, 15 March 2019.
- 132 Transcript, L Chen, public hearing, 13 August 2019, p 64-65.
- 133 Transcript, L Chen, public hearing, 13 August 2019, p 65, 69-71.
- 134 Transcript, L Chen, public hearing, 13 August 2019, p 65-66.
- 135 Transcript, L Chen, public hearing, 13 August 2019, p 65-67.
- 136 Transcript, X Chen, private hearing, 16 August 2019, p 2-18; Mr Chen is not related to Ms Chen: Transcript, X Chen, private hearing, 16 August 2019, p 10.
- 137 Individual tax returns, L Chen, 2011/2012, 2012/2013, 2013/2014, 2014/2015, 2015/2016, 2016/2017, 2017/2018.
- 138 Individual tax returns, L Chen, 2012/2013, 2015/2016; Bank deposit records, Westpac, Hay 263 Pty Ltd or Barker 3 Pty Ltd to L Chen.
- 139 Transcript, X Chen, private hearing, 16 August 2019, p 4-5, 13.
- 140 Transcript, X Chen, private hearing, 16 August 2019, p 9.
- 141 Transcript, X Chen, private hearing, 16 August 2019, p 5.
- 142 Transcript, L Chen, public hearing, 27 August 2019, p 2-4.
- 143 Transcript, L Chen, public hearing, 27 August 2019, p 5.
- 144 Transcript, L Chen, public hearing, 13 August 2019, p 62-63, 67-68, 88; Transcript, L Chen, public hearing, 27 August 2019, p 6, 8-9, 11-12.
- 145 Transcript, L Chen, public hearing, 13 August 2019, p 68, Transcript, L Chen, public hearing, 27 August 2019, p 8.
- 146 Transcript, L Chen, public hearing, 13 August 2019, p 89-90, 94; Agreement, Hay 263 Pty Ltd and Wayon Pty Ltd, Investment agreement – Hay 263 trust, 11 April 2013
- 147 Transcript, L Chen, public hearing, 13 August 2019, p 99.
- 148 Bank statements, NAB, Hay 263 Pty Ltd ATFT Hay 263 Trust account.
- 149 Transcript, L Chen, public hearing, 13 August 2019, p 99-100, Transcript, C Ferguson, private hearing, 9 August 2019, p 29-31; Agreement, Hay 263 Pty Ltd and Wayon Pty Ltd, Loan agreement, 26 June 2015.
- 150 Bank statements, NAB, Hay 263 Pty Ltd ATFT Hay 263 Trust account.
- 151 Transcript, L Chen, public hearing, 13 August 2019, p 99-100, Transcript, C Ferguson, private hearing, 9 August 2019, p 29-31; Agreement, Hay 263 Pty Ltd and Wayon Pty Ltd, Loan agreement, 26 June 2015.

- 152 Transcript, L Chen, public hearing, 27 August 2019, p 8-10 and 13.
- 153 Transcript, L Chen, public hearing, 27 August 2019, p 8-9.
- 154 *Local Government (Rules of Conduct) Regulations 2007*, reg 3(1)(a)-(e).
- 155 Transcript, L Chen, public hearing, 12 August 2019, p 44-45, 47.
- 156 Transcript, L Chen, public hearing, 12 August 2019, p 48.
- 157 Transcript, L Chen, public hearing, 12 August 2019, p 47.
- 158 Transcript, L Chen, public hearing, 12 August 2019, p 43.
- 159 Circular, Director General, Department of Local Government, Sport and Cultural Industries, No. 12-2017, AASB 124 Related Party Disclosures Fact Sheet, 27 July 2017.
- 160 Form, J Limnios, AASB 124 Related Party Disclosures Declaration year ending 30 June 2018, 12 September 2018; Australian Securities and Investments Commission (ASIC) database extract, Iraklion Group Pty Ltd, Australian Company Number (ACN) 069216922; ASIC database extract, Limnios & Johns Pty Ltd, ACN 608921384; ASIC database extract, Limnios Superannuation Fund Pty Ltd, ACN 114279604; ASIC database extract, Olympic Group Pty Ltd, ACN 126122870; ASIC database extract, Saint Dimitrios Pty Ltd, ACN 113478498: All ASIC database entries extracted 28 August/September 2018.
- 161 *Scaffidi v Chief Executive Officer, Department of Communities and Local Government* [2017] WASCA 222, p 18, [48].
- 162 Transcript, M Ridgwell, private hearing, 24 July 2019, p 54.
- 163 Transcript, M Ridgwell, private hearing, 24 July 2019, p 53- 54.
- 164 Transcript, M Ridgwell, private hearing, 24 July 2019, p 53-54.
- 165 Transcript, M Ridgwell, private hearing, 24 July 2019, p 54; Form, J Limnios, Annual Return for 2012/2013, 31 July 2013, p 1.
- 166 *Local Government Act 1995*, s 5.78(2)(a).
- 167 Guide, Department of Local Government and Communities, Local Government Operational Guidelines: Disclosure of financial interests in returns, Number 20 – July 2011.
- 168 *Local Government Act 1995*, s 5.88(1), 5.88(2)(a), 5.94(b).
- 169 Transcript, M Ridgwell, private hearing, 24 July 2019, p 55.
- 170 *Local Government Act 1995*, s 5.82 has been deleted by *Local Government Legislation Amendment Act 2019*, s 37 and replaced with *Local Government Act 1995*, s 5.87A titled “Council members to disclose gifts” and 5.87B titled “CEOs to disclose gifts”.
- 171 *Local Government Act 1995*, s .5.82(2)(b).
- 172 *Local Government Act 1995*, s .5.82(4).
- 173 As defined in *Local Government (Rules of Conduct) Regulations 2007*, reg 12(1).
- 174 Regulation 12 of *Local Government (Rules of Conduct) Regulations 2007* has been deleted by *Local Government Regulations Amendment (Gifts) Regulations 2019*, cl 19, Government Gazette, 18 October 2019, p 3684. Regulations relating to the disclosure of financial interests and gifts are now contained in *Local Government (Administration) Regulations 1996*, Part 6.
- 175 As defined in *Local Government (Rules of Conduct) Regulations 2007*, reg 12(1).
- 176 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(4).
- 177 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(5).
- 178 Policy, City of Perth Council Policy Manual, CP10.1, Code of Conduct, 1 October 2015; This version of CP10.1 *Code of Conduct* was applicable between 27 January 2010 and 6 June 2017.
- 179 *Local Government Act 1995*, s 5.89B has been deleted by *Local Government Legislation Amendment Act 2019*, s 41 and replaced with *Local Government Act 1995*, s 5.87A titled “Council members to disclose gifts” and s 5.87B titled “CEOs to disclose gifts”.
- 180 *Local Government Act 1995*, s 5.89.
- 181 Transcript, L Chen, private hearing, 1 July 2019, p 60-61.
- 182 Transcript, L Chen, private hearing, 2 July 2019, p 32; Transcript, L Scaffidi, private hearing, 8 July 2019, p 71.
- 183 Email, G Hansen to M Ridgwell and City Governance Team, 12.52 pm 11 October 2016, p 2-3.
- 184 Email, M Ridgwell to L Chen and L Scaffidi, 1.31 pm 11 October 2016, p 2.
- 185 Email, L Chen to M Ridgwell, L Scaffidi, M Mileham and C Clayton, 1.50 pm 11 October 2016, p 2.
- 186 Transcript, L Chen, private hearing, 2 July 2019, p 40.
- 187 Email, M Ridgwell to L Chen, 4.31 pm 11 October 2016, p 1.
- 188 Minutes, Ordinary Council Meeting, 11 October 2016, p 1.
- 189 Form, Elected Member Gift Declaration, L Chen, 10 October 2016.
- 190 Transcript, L Chen, private hearing, 2 July 2019, p 38.
- 191 Transcript, L Chen, private hearing, 2 July 2019, p 38-39.
- 192 *Local Government Act 1995*, s 5.76(1).
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## 2.2.4 Grants and sponsorship

The purpose of this Chapter is to describe how the City of Perth (City) made decisions about, and administered, sponsorships, grants and donations during the period of the Inquiry's Terms of Reference, 1 October 2015 to 1 March 2018.

Partnerships with other organisations through grants and sponsorships can provide positive and tangible benefits to the community. The best use of public funds should be a key consideration of City of Perth Council (Council), its committees and staff of a local government, when making decisions about which initiatives and events to support. Accountability of the outcomes delivered, and acquittal of those funds should be the responsibility of the local government.



**\$4m+**

Spent each year on grants, sponsorship and donation to more than 100 organisations and events.

The community expects high standards of ethical behaviour and fair dealing in decision-making related to partnerships, sponsorships, grants and donations. This includes:

- disclosure and management of interests, especially conflicts between private interests and public duties;
- refusal of personal gifts, invitations to events and functions (other than when performing an official role), or other favours;
- maintenance of high standards of accountability and transparency in decision-making; and
- receiving approaches from organisations which might be interpreted as attempts to obtain influence or advantage.

At the City, funds were allocated through a process in which organisations applied for sponsorships, grants and donations from the City. The applications were considered by City employees, who made reports and recommendations to a Council committee called the Marketing, Sponsorship and International Engagement Committee (MSIE Committee or Committee).

The Committee consisted of three council members. They considered each application for funding and either approved or declined applications for small amounts of funding,<sup>a</sup> or made a recommendation to the Council in respect of larger funding amounts. These recommendations went to a Council meeting for decision.

<sup>a</sup> Up to \$10,000.00 before 13 December 2016 and up to \$15,000.00 after that date.

Some council members had close relationships with some organisations and events which received funding from the City. Examples are provided in this Section.

Tickets were often provided by funded organisations to the City and were accepted by some council members. These tickets were gifts under the definition in the *Local Government Act 1995* (LG Act). Examples of this are examined in this Chapter. Tickets were provided for, among others, the following events:

- Perth Fashion Festival;
- Hopman Cup;
- WA Business News 40under40 Awards; and
- Perth International Arts Festival.

The Inquiry also considered decision-making and the governance related to specific grants, sponsorships and donations at the City.

Elements examined included:

- tickets or benefits connected to funding of this nature;
- connections or relationships of some council members to funded organisations, including declaration of interests;
- authorisation and approval of grant and sponsorship funding agreements; and
- financial and grant practices related to acquittal of City funds for activities outcomes delivered by grant and sponsorship agreements.

Other grant matters examined in this Report are:

- **Chapter 2.2.2: Decision-making**, Section: *Sponsorship Proposal to rejuvenate the Piccadilly Theatre*; and
- **Chapter 2.3.3: Financial management and planning**, Section: *Perth Public Art Foundation and the 2016 CowParade*.

## Terms of Reference

The Terms of Reference for the Inquiry require that it determine whether there has been “good government” by the City.

“Good government” requires that government bodies meet their legitimate objectives in a manner that is honest, fair, accountable and transparent. This means that decisions made by the Council and actions taken by employees must be in the community’s interest and for the good of the community, and not motivated by personal interest.

If council members or employees do not act in accord with the objectives of the City or to the benefit of the community; if they act from self-interest, with bias, with a conflict of interest, or outside their authority, then their actions are not good government.



In this context part 3 of the Inquiry's Terms of Reference states:

*"The Inquiry Panel is ... to give due consideration to, and inquire into and report on, the following matters:*

- i. whether there was improper or undue influence by any member ... of the Council of the City of Perth in administrative tasks, such as ... grants administration;*
- ...*
- iv. sponsorship arrangements between organisations and the City and the acceptance of gifts in the form of tickets to events by members from those organisations".*

### Issues considered by the Inquiry

In examining the allocation of funding by the City through sponsorships, grants and donations the Inquiry has:

- obtained and analysed records of the City and other information;
- engaged the services of Crowe (formerly Crowe Horwath) to audit processes followed by the City and examine specific sponsorships, grants and donations;
- examined relationships between council members and organisations and events which were allocated funds; and
- considered the involvement by individual council members in decision-making and administrative processes relating to funding.

### Investigation by the Inquiry

#### Background

On 5 October 2015, the Corruption and Crime Commission provided Parliament with its *"Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth"*.

This report noted that two companies which had provided the Lord Mayor, Ms Lisa Scaffidi, with gifts of travel, and which she had not declared, later applied for a sponsorship or grant from the City.

On 8 January 2018, the Department of Local Government, Sport and Cultural Industries (Department) commenced an Authorised Inquiry under Part 8, Division 1 of the *Local Government Act 1995* into gifts received by council members in the form of tickets. It was to encompass *"... operations and affairs surrounding the acceptance of tickets to events and the accompanying sponsorship arrangements between organisations and the City from 1 January 2008 to the present day"*.<sup>1</sup>

The Department obtained details of some sponsorship agreements and tickets provided to the City and conducted interviews with some senior officers of the City. The Department provided its files to this Inquiry on 10 May 2018. The Department's Authorised Inquiry was not completed.

### Initial investigation

The Inquiry conducted initial “discovery” interviews with a number of people, including senior employees of the City. Arising from the information obtained, the Inquiry became concerned that the allocation of funds for sponsorships, grants and donations by the Council may not always have been performed in a disinterested manner by council members. Some council members may have had personal associations with organisations or events which they supported, to the detriment of other applications. Some council members may have benefited personally through their receipt of tickets and other gifts.

By way of example, in her discovery interview by the Inquiry, Ms Annaliese Battista, former Director Economic Development and Activation with the City, was asked:

*“do you think that the potential for tickets and benefits and so on flowing from sponsorship arrangements could have influenced the types of sponsorship the Elected Members were interested in pursuing?”*

She said “Yes” and explained:

*“I think it would not be an understatement to say it was mandatory for VIP hospitality and tickets to be included and implied that that was, um, necessary to secure funding. And the events that the Elected Members were most partial to were the ones where they received the greatest benefit”.<sup>2</sup>*

### Sponsorship, grants and donations

According to the City’s website:

*“The City of Perth offers a wide range of grants and sponsorships to event organisers, community organisations and businesses in the arts, recreation, community, events and business sectors. Grants and sponsorships help recipients to deliver quality programs, events and services which are of great benefit to Perth and our community, bringing a wide range of social and economic returns to the city”.<sup>3</sup>*

Crowe, in its report to the Inquiry, based on the City’s policies, explained and defined sponsorships, grants and donations in the following way:

*“The City ... provides grants, sponsorships and donations to individuals and organisations within the community to:*

- Stimulate inner city cultural development, through support of cultural events and activities;*
- Provide philanthropic support to community groups, whilst enhancing the delivery of services to the community of, and visitors to, the City;*
- Exploit opportunities to advance the corporate image of the City; and*
- Empower the community to develop and deliver a wide range of projects and initiatives that build upon the social, cultural, environmental and economic life within the City.*

*Grants, sponsorships and donations are provided by the City in the form of cash and/or in-kind contributions (provision of goods and services including venue hire, waiving City fees and charges, etc).<sup>4</sup>*

### Legislation and policy

The LG Act and associated regulations do not refer to sponsorships, grants and donations. However, the City has policies and guidelines to provide guidance and governance arrangements.

Until 13 December 2016, the City had six separate Council policies relating to sponsorship, grants and donations. These included:

- CP6.1 Heritage Grants;
- CP6.18 Small Business Grants;
- CP6.19 Matched Funding Grants;
- CP8.3 Environment Grants;
- CP8.4 Environment Sponsorship; and
- CP18.8 Provision of Sponsorship and Donations.<sup>5</sup>

At the Council Meeting on 19 December 2017, a simplified sponsorship and grant policy was developed, supported by a policy in respect of donations.<sup>6</sup> The two umbrella policies at that time were:

- CP18.13 – Sponsorship and Grants; and
- CP18.14 – Donations.<sup>7</sup>

No policy was developed, for partnership grant policies. The following extracts are taken from these two policies.

#### Council Policy CP18.13 – Sponsorship and grants

Section 1 of this policy defined sponsorship and grants:

*“Sponsorship is a commercial, negotiated arrangement in which the City provides cash and/or in-kind contributions to an entity in return for commercial leverage, promotion, activation or exposure to achieve defined outcomes from the City’s Strategic Community Plan. Sponsorship is not philanthropic in nature and the Council expects to receive a reciprocal benefit beyond a modest acknowledgement. The sponsorship will provide tangible and mutual compensation for all parties in the arrangement*

...

*Grants mean cash and/or in-kind contributions provided to a recipient for a specific, eligible purpose. This is as part of an approved grant program which ties into the City’s Community Strategic Plan, with the understanding that there will be a defined outcome that directly or indirectly benefits the public, but with no expectation of a commercial return to the City. Grants are subject to conditions including reporting, accountability and a requirement for the funds to be expended for the direct purpose for which they were granted”.*

Section 2 of the policy stated:

*“The sponsorship and grants portfolios will consist of a number of programs as determined from time to time by Council and subject to regular review and budgetary considerations. Each program has its own guideline document that specifies application time frames, funding limits, categories, eligibility and assessment criteria. Applicants will be required to address the criteria within the relevant guideline”.*

Section 8 of the policy provided criteria for assessment of applications for sponsorship and grants:

*“All applications will be assessed against the following criteria as a minimum:*

- 8.1 the extent to which the proposal contributes towards the achievement of the Strategic Community Plan and the Corporate Business Plan;*
- 8.2 the extent to which the project plan and budget is realistic and provides value for money;*
- 8.3 a demonstrated capacity of the applicant to undertake all aspects of the project; and*
- 8.4 anticipated community benefit.*

*Additional assessment criteria may apply and will be detailed within the guideline document for the program.*

*Individual applications for funding of less than \$15,000 will be assessed by a minimum of two persons.*

*Individual applications for funding in excess of \$15,000 or applications as part of a Round will be assessed by a minimum three person assessment panel”.*

Section 9 stated:

*“All successful applicants will be required to enter into a written funding agreement with the City which includes terms and conditions pertaining to the approved funding”.*

Section 10 stated:

*“All sponsorships and grants must be acquitted within four months of the completion of the project or prior to subsequent application of further funding, whichever comes first”.*

### Council Policy CP18.14 – Donations

Section 1 of this policy defined donations:

*“Donations by the City of Perth reflect its commitment to improve the wellbeing of the community within the City of Perth and the residents of Western Australia and Australia as a whole. The provision of a donation by the City of Perth is of a philanthropic nature to an organisation and the City does not seek a direct cost benefit to be returned”.*

This policy stated that to be eligible for donations the recipient must be a Deductible Gift Recipient (DGR) in accordance with Australian Tax Office requirements and an incorporated non-profit organisation.

Before December 2016, there was no requirement for the recipient of a donation to have DGR status. At that time, to be eligible for a donation, the applicant needed to be an Association incorporated under the *Associations Incorporation Act 1987*.<sup>b</sup>

Section 3 of the policy set the maximum limit for donations at \$100,000.00.

Section 4 of the policy stated that there was no application process for a donation and donations were only considered following a direction to do so by the Chief Executive Officer (CEO) and were subject to approval by the Council.

### Process

#### Marketing, Sponsorship and International Engagement Committee

Throughout the period of the Inquiry’s Terms of Reference, sponsorships, grants and donations were considered by the MSIE Committee. The Committee consisted of three council members and was supported by City employees who provided reports to the Committee for each application considered. Meetings of the Committee were held monthly.

The terms of reference for the MSIE Committee varied during the relevant period, but from 13 December 2016 they included the following:

*“1. To oversee and make recommendations to the Council on matters related to:*

*...*

- b. sponsorship of business, events and festivals ...;*
- c. the provision of and grants to individuals or organisations;*
- d. the provision of donations to eligible organisations”.*<sup>8</sup>

The MSIE Committee had a delegation to approve or decline requests of up to \$10,000.00. At the same time as the policies relating to sponsorship, grants and donations were changed on 13 December 2016, the Council amended the delegations for funding decisions to increase the delegated limits, as follows.
















- The MSIE Committee to *“approve or decline requests for donations, grants or sponsorships or up to \$15,000”.*
- The CEO to *“determine the allocation”* of sponsorships and grants up to a value of \$5,000.00.<sup>9</sup>

<sup>b</sup> Replaced by the *Associations Incorporation Act 2015*.

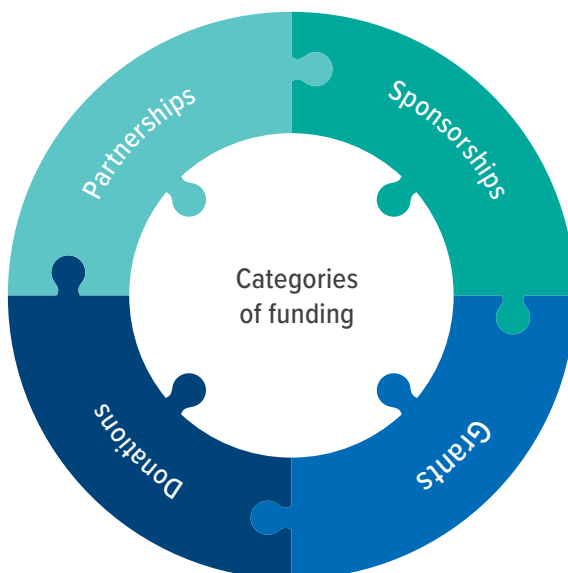
Membership of the Committee was for two years from the date of Council elections in October 2013, 2015 and 2017.

Council members who were members of the Committee are provided in Table 2.9. Ms Lily Chen and Mr James Limnios were members of the Committee for the entire period, although Mr Limnios was a deputy member from October 2017.

**Table 2.9: Marketing, Sponsorship and International Engagement Committee membership 2013 to 2018.**

October 2011 – October 2013	October 2015 – October 2017	October 2017 – October 2019 <sup>c</sup>
 <b>Ms Chen</b> Presiding member	 <b>Ms Chen</b> Presiding member	 <b>Ms Chen</b> Presiding member
 <b>Mr Adamos</b> Member	 <b>Mr Limnios</b> Member	 <b>Ms Barton</b> Member
 <b>Mr Limnios</b> Member	 <b>Mr Yong</b> Member	 <b>Mr Hasluck</b> Member
 <b>Mr Harley</b> Deputy member (1)	 <b>Ms Davidson</b> Deputy member (1)	 <b>Mr Adamos</b> Deputy member (1)
 <b>Ms McEvoy</b> Deputy member (2)	 <b>Dr Green</b> Deputy member (2)	 <b>Mr Limnios</b> Deputy member (2)

The City provided funding in four ways:



### Categories of sponsorships and grants

The categories used by the City to describe organisations and events which received sponsorships, grants and donations varied during the period of the Inquiry's Terms of Reference. The categories included:

	Arts and culture
	Events
	Community
	Heritage
	Corporate
	Business

<sup>c</sup> The City of Perth Council was suspended on 2 March 2018.

### Facilitation and evaluation

The City developed tools and resources to assist with the facilitation and evaluation of the sponsorship and grants programme. These were explained at the Ordinary Council Meeting of 13 December 2016.<sup>10</sup> They included:

- **SmartyGrants:** An online management system which allows the City to receive online applications and manage the entire sponsorship and grants cycle from application to evaluation. The City began using this programme in early 2017.
- **Culture Counts:** A subscription-based measurement tool used to measure the impacts of events against defined social, cultural and economic outcomes. These could be benchmarked against similar events or projects elsewhere in Australia or internationally. According to the City, the use of Culture Counts would enable the City to “*objectively measure our return on objectives and our return on investment in order to make informed future funding decisions*”.
- **Legal agreement:** The City’s lawyers developed a legal agreement for sponsorship and grant funding arrangements. A letter of agreement containing a simple agreement was used for sponsorships or grants of less than \$20,000.00, and a more detailed agreement for funding over \$20,000.00.

### Return on investment

In dealing with applications for funding for events, the City attempted to estimate the economic impact or return on investment using a range of data sources and methodologies designed to calculate or project the economic impact.<sup>11</sup> These included:

- estimated attendance numbers (including actual attendance numbers from previous years);
- analysis of visitor expenditure;
- REMPLAN – an established economic impact modelling tool, which provided economic and demographic data and modelling;<sup>12</sup> and
- impact assessments or equivalent reports.

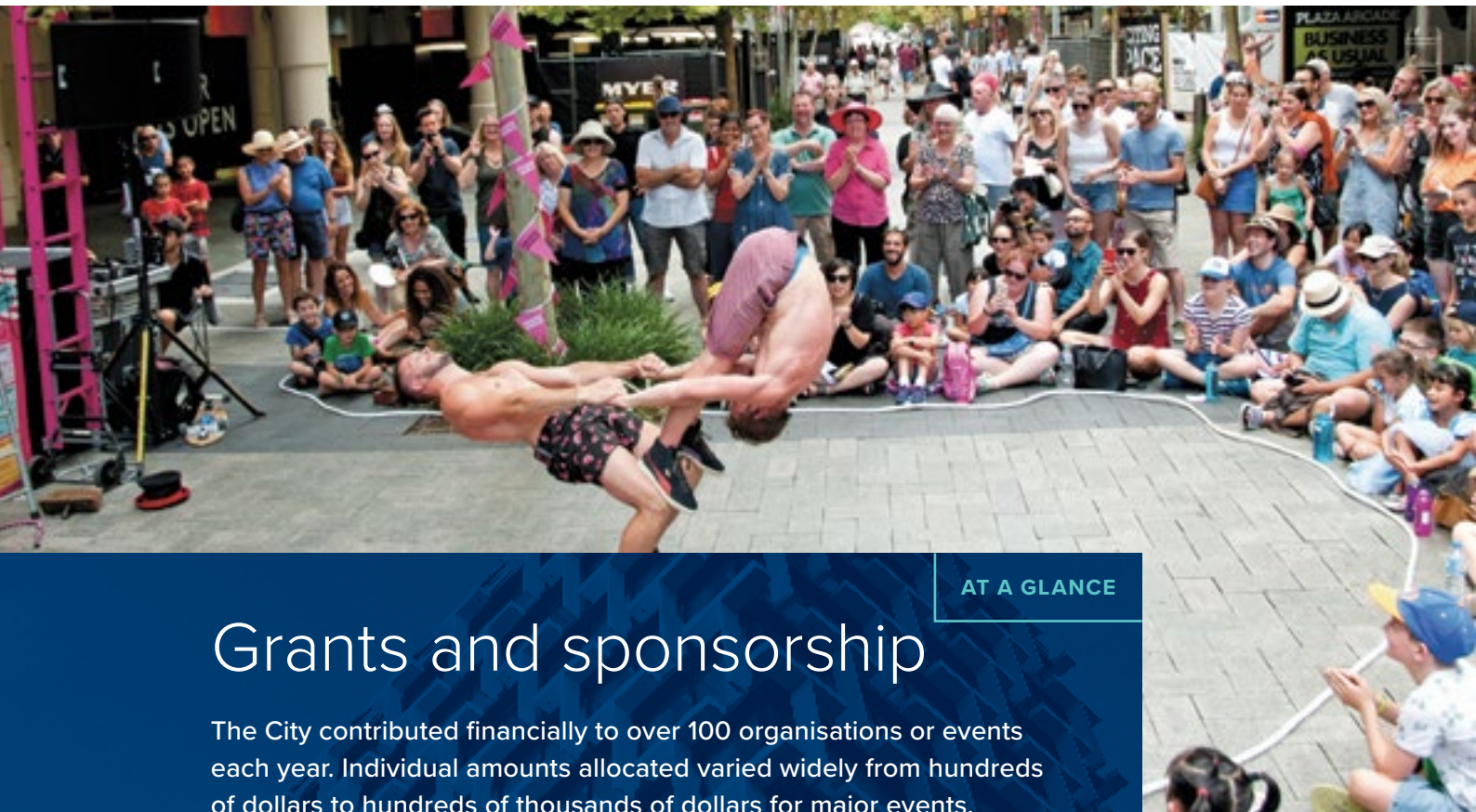


Photo: Pawonike\_Gallery/Shutterstock.com

Five recipients accounted for 25 per cent of the total value of all sponsorships, grants and donations administered by the City during the Inquiry period.

- 1 **Perth Convention Bureau**
- 2 **Perth International Arts Festival**
- 3 **Perth Theatre Trust**
- 4 **Heritage Perth Incorporated**
- 5 **West Australian Symphony Orchestra**





AT A GLANCE

## Grants and sponsorship

The City contributed financially to over 100 organisations or events each year. Individual amounts allocated varied widely from hundreds of dollars to hundreds of thousands of dollars for major events.

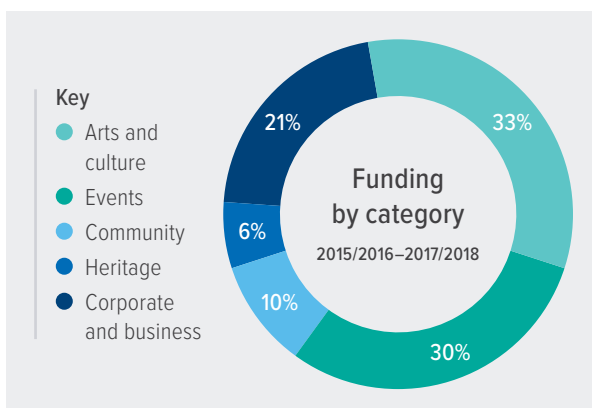
Photo: Adwo/Shutterstock.com

### City spend on grants, sponsorship and donation<sup>13</sup>

2015/2016  
**\$4.5m** ↓

2016/2017  
**\$4.7m** ↑

2017/2018  
**\$4.2m** ↓



#### Funded initiatives

2015/2016–2017/2018

Applications received – initiatives	568
Applications received – entities	367
Funded – initiatives	477
Funded – entities	311

#### Funding trends

Average funded amount per initiative



2015/2016

\$24,900



2017/2018

\$32,300

**29%**

Reduction in the number of funded initiatives

**26%**

Reduction in the number of funded entities



Two categories of grants and sponsorship examined by the Inquiry are:

- Arts and cultural support sponsorship; and
- Events sponsorship.

The top 10 organisations or events funded for each category are provided in Table 2.9 and Table 2.10. Annually, these 20 sponsorships accounted for nearly 50 per cent of the City's total grants and sponsorship spend. On average amounting to nearly \$2.1 million each year.

### Arts and culture

The City supported a range of arts and cultural organisations, as well as independent artists, through the Arts and Cultural Sponsorship programme. This programme partnered with the major arts and culture organisations to present annual events including the Perth International Arts Festival, the Black Swan Prize for Portraiture, Awesome Festival and Fringe World.

These sponsorships accounted for approximately 26 per cent of the annual amount funded and more than \$3.4 million over the three years.

**Table 2.9: Top 10 Council funded culture and arts sponsorships between 2015/2016 to 2017/2018.**

Top funded organisations <sup>14</sup>	2015/2016	2016/2017	2017/2018	Total funding
<b>Perth International Arts Festival</b> City estimated total economic impact \$89 million in 2016/2017 and \$60 million in 2017/2018.	\$365,000.00	\$360,000.00	\$300,000.00	\$1,025,000.00
<b>West Australian Symphony Orchestra</b> City estimated total economic impact \$3 million in 2016/2017 and \$1.7 million in 2017/2018.	\$195,000.00	\$195,000.00	\$150,000.00	\$540,000.00
<b>Artrage (Fringe World Festival)</b> City estimated total economic impact \$84 million in 2016/2017 and \$98 million in 2017/2018.	\$75,000.00	\$100,000.00	\$300,000.00	\$475,000.00
<b>West Australian Opera</b> City estimated total economic impact \$2.3 million in 2016/2017 and in 2017/2018.	\$165,000.00	\$160,000.00	\$120,000.00	\$445,000.00
<b>Awesome Arts Australia</b> City estimated total economic impact \$27.6 million in 2016/2017 and \$1.2 million in 2017/2018.	\$100,000.00	\$100,000.00	\$100,000.00	\$300,000.00
<b>Blue Room Theatre (Performing Arts Centre Society)</b> City estimated total economic impact \$6.9 million in 2016/2017 and \$2.5 million in 2017/2018.	\$62,531.00	\$72,351.00	\$55,000.00	\$189,882.00
<b>Artrinsic (Black Swan Prize for Portraiture)</b> City estimated total economic impact \$2.5 million in 2016/2017 and \$0.46 million in 2017/2018.	\$41,000.00	\$41,000.00	\$60,000.00	\$142,000.00
<b>Revelation Perth International Film Festival</b> City estimated total economic impact \$0.68 million in 2016/2017 and \$4.1 million in 2017/2018.	\$11,000.00	\$20,000.00	\$90,240.00	\$121,240.00
<b>West Music Industry Association (WAM Festival)</b> City estimated total economic impact \$1.7 million in 2016/2017 and \$4.8 million in 2017/2018.	\$40,000.00	\$40,000.00	\$40,000.00	\$120,000.00
<b>West Australian Ballet</b> City estimated total economic impact not recorded.	\$50,000.00	\$55,000.00	N/A	\$105,000.00

## Event sponsorship

The City also provided event specific sponsorship, with the 10 largest event sponsorships by the City for the financial years 2015/2016 to 2017/2018, including the estimated total economic impact of each event, provided in Table 2.10.

**Table 2.10: Top 10 Council funded event sponsorships between 2015/2016 to 2017/2018.**

Top funded events <sup>15</sup>	Organisation funded	2015/2016	2016/2017	2017/2018	Total funding
<b>Telstra Perth Fashion Festival</b> City estimated total economic impact \$5.1 million in 2016/2017 and \$7.4 million in 2017/2018.	2015–2017: Perth Fashion Concepts Incorporated; 2017–2018: WA Fashion Council Ltd.	\$313,000.00	\$269,314.00	\$255,000.00	<b>\$837,314.00</b>
<b>Perth Heritage Days</b> City estimated total economic impact \$5.4 million in 2016/2017 and \$4.2 million in 2017/2018.	Heritage Perth Incorporated	\$200,000.00 <sup>d</sup>	\$100,000.00	\$62,100.00	<b>\$362,100.00</b>
<b>Channel 7 Christmas Pageant</b> City estimated total economic impact \$39 million in 2016/2017 and \$4.3 million in 2017/2018.	Seven Network Ltd	\$72,000.00	\$150,000.00	\$120,000.00	<b>\$342,000.00</b>
<b>Hopman Cup</b> City estimated total economic impact \$29 million in 2016/2017 and \$57.7 million in 2017/2018.	Tennis Australia Ltd	\$100,000.00	\$95,380.00	\$100,000.00	<b>\$295,380.00</b>
<b>West Coast Fever 2017 and 2018 Seasons</b> City estimated total economic impact \$4.8 million in 2016/2017 and \$5.5 million in 2017/2018.	Netball WA (Incorporated)	Nil.	\$85,000.00	\$120,000.00	<b>\$205,000.00</b>
<b>Perth Chinese New Year Fair</b> City estimated total economic impact \$11 million in 2016/2017 and \$2.4 million in 2017/2018.	Chung Wah Association	\$60,000.00	\$70,000.00	\$60,000.00	<b>\$190,000.00</b>
<b>IGA Carols by Candlelight</b> City estimated total economic impact \$0.98 million in 2017–18).	Variety WA Incorporated	\$36,015.00	\$60,000.00	\$60,000.00	<b>\$156,015.00</b>
<b>Pride Festival</b> City estimated total economic impact \$7.8 million in 2016/2017 and \$3.8 million in 2017/2018.	Pride Western Australia Incorporated	\$45,000.00	\$55,000.00	\$50,000.00 <sup>e</sup>	<b>\$150,000.00</b>
<b>Quit Targa West Tarmac Rally</b> City estimated total economic impact \$7.3 million in 2016/2017 and \$0.5 million in 2017/2018.	Targa West Pty Ltd	\$50,000.00	\$47,500.00	\$48,000.00	<b>\$145,500.00</b>
<b>Open House Perth</b> City estimated total economic impact \$11.8 million in 2016/2017 and \$9.7 million in 2017/2018	Open House Perth	\$45,000.00	\$40,000.00	\$30,000.00	<b>\$115,000.00</b>

Note: Not all entities funded through partnership funding agreements, grants and sponsorships are listed in the City's Annual Report (for which the data was sourced for Table 2.10 and 2.11).

<sup>d</sup> The initiative received funding through an arts and culture sponsorship (\$200,000), rather than an events sponsorship.

<sup>e</sup> The initiative received funding through an arts and culture sponsorship (\$50,000), rather than an events sponsorship.

## Role of council members

### Disclosure of interests

Council members who are making decisions on funding organisations or events must act impartially and in the interests of the community. If they act in their own personal interests, or in the interests of a person or organisation with whom they are associated, then they may be acting corruptly.

Part 5, Division 6 of the LG Act is headed “*Disclosure of financial interests and gifts*”.

Sections 5.59 to 5.69 describe what financial interests of council members are and how they must be addressed. These sections apply to direct or indirect financial interests and proximity interests for a relevant person (which includes a council member) and any “*closely associated*” person.

Financial interest is defined in section 5.60A as follows:

*“For the purposes of this Subdivision, a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person”.*

An indirect financial interest is defined in section 5.61 as follows:

*“A reference in this Subdivision to an indirect financial interest of a person in a matter includes a reference to a financial relationship between that person and another person who requires a local government decision in relation to the matter”.*

Failure to declare a financial interest, as required by these sections, is a serious offence with a penalty of up to a \$10,000.00 fine or imprisonment for two years.

There are exceptions. Section 5.63 sets out some interests which do not need to be disclosed, including:

*“(f) an interest arising only because the relevant person is, or intends to become, a member or office bearer of a body with non-profit making objects”.*

Regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* requires that a council member discloses any impartiality interest he or she has in a matter to be discussed at a council or committee meeting:

*“interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association”.*

A council member who has such an “impartiality interest” must disclose it either in a written notice to the CEO before the meeting or at the meeting immediately before the matter is discussed. The nature of the interest is to be recorded in the minutes of the meeting. However, a council member who has declared an impartiality interest (rather than a financial interest) is not prevented from participating in the meeting and voting.

In January 2011, the Department released *“Operational Guideline 1: Disclosure of Interests Affecting Impartiality”*.<sup>f</sup> This Guideline poses the following questions for consideration by council members in deciding whether to disclose an interest:

*“If you were to participate in assessment or decision making without disclosing, would you be comfortable if the public or your colleagues became aware of your association or connection with an individual or organisation?”*

*Do you think there would be a later criticism of perceived undisclosed partiality if you were not to disclose?”*

Operational Guideline 1 asked:

*“What Types of Associations may give rise to a Perception of Partiality?”*

*There are two major categories of associations that members or employees may have which in certain circumstances may give rise to interests that affect impartiality. These are associations with people and associations with organisations”.*

In relation to “associations with organisations” the Guideline states:

*“Subject to the person considering the extent of their involvement in an association or organisation, disclosure is warranted when matters are discussed at council or committee meetings which directly relate to groups with which members and employees are affiliated. These include sporting clubs, resident groups and associations, business groups and associations, professional associations and so on”.*

The Guideline makes it clear that the onus is on a council member to consider the extent of his or her involvement in an association or organisation.

<sup>f</sup> Updated in 2019.



The City's *"Code of Conduct"*, although it was amended during the period of the Inquiry's Terms of Reference, was clear at all times about the requirement for council members and employees to ensure that there was *"... no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their public duties and functions"*.

The Inquiry has identified a number of instances in which council members have been involved in making decisions on allocation of funds through sponsorships, grants and donations despite having a personal connection with an organisation or event applying for funding.

This Chapter deals with issues relating to the receipt of gifts by council members, particularly in the form of tickets to events.

However, the Inquiry has noted several other situations which could give rise to a concern about the impartiality of council members involved in decision-making on funding, and the integrity of the process.

In the course of its investigations, the Inquiry has obtained information about personal links between the following council members and community organisations or events funded by the City:

- Ms Chen and Mr Keith Yong had links to the Chung Wah Association (Chung Wah).
- Mr Limnios had links to the Hellenic Community of Western Australia (HCWA).
- Ms Scaffidi and Ms Janet Davidson had links to the Perth Fashion Festival.  
This is considered in a later Section in this Chapter.
- Ms Scaffidi had links to Open House Perth.

### Chung Wah Association

The Chung Wah Association is based in Northbridge and states on its website:

*"Founded in 1909, the Chung Wah Association is the largest and most established Chinese organisation in Western Australia. We are recognised by the Federal, State and local governments as the spokesperson for the Chinese community in Western Australia, which numbers around 140,000.*

- *Our Vision – Through promoting Harmony, preserving our Heritage and practising Humanity, we serve as the bridge between the Chinese community and mainstream society.*
- *Our Mission – To service and uphold the interests and welfare of the Chinese community in Western Australia by promoting our culture, speaking up on our views, and dealing with social issues affecting our community".*

Since 2004, Chung Wah applied regularly for sponsorship and support from the City for festivals, including the Chinese New Year Festival. The City provided funding on some occasions and declined on others.

Ms Chen was elected to the Council on 15 October 2011. She was appointed to the MSIE Committee at that time and remained a member until the Council was suspended on 2 March 2018.

Ms Chen appears to have been involved with Chung Wah before and throughout her term as a councillor. She appears to have been at least a member of Chung Wah and an honorary legal counsel for it.

On 3 August 2011, before she was elected to the Council, Ms Chen sent an email from her legal firm email address to the International Relations Co-ordinator at the City, to request a meeting about the proposed Chinese New Year Festival 2012.<sup>16</sup>

She and several officials of Chung Wah attended the City to discuss plans for the festival with City officers.<sup>17</sup>

On 22 November 2011, after she was elected and appointed to the MSIE Committee, which was to make a decision on sponsorship, Ms Chen was notified by the Governance Officer at the City that:

*“As you are a member of the Chung Wah Association, you will need to declare a non-financial interest for Item 4 (Event sponsorship – 2012 Perth Chinese New Year Fair). Please note that, in accordance with the Elected members Code of Conduct and the Local Government (Rules of Conduct) Regulations 2007, you can still discuss and vote on the actual item.”<sup>18</sup>*

Ms Chen disclosed a financial interest with respect to Chung Wah at the meeting on 22 November 2011. She left the room and did not vote on the item and the other two members recommended sponsorship of \$40,000.00 for the event.<sup>19</sup> This was approved by the Council.<sup>20</sup>

In November 2012, Chung Wah received sponsorship of \$50,000.00 from the City for the Chinese New Year event. In November 2013 and November 2014, the sponsorship was \$60,000.00 for each year. For all of these sponsorship decisions, Ms Chen appears to have been present and voted in the Committee and Council Meetings.



During the period of the Inquiry's Terms of Reference, nearly \$2 million was provided by the City to Chung Wah for specific events (Table 2.11).<sup>21</sup>

**Table 2.11: Grants and sponsorship funding provided to Chung Wah Association between 1 October 2015 and 1 March 2018.**

Date	Event	Amount (excl. GST)
<b>2015</b>		
8 December	Sponsorship – Chinese New Year	\$30,000.00
8 December	Sponsorship – Chinese New Year	\$30,000.00
<b>2016</b>		
24 February	RFD Bond-Hire Northbridge Piazza Comm	\$2,250.00
8 April	Hire of Chinese Lanterns for Yum Cha in the Park	\$200.00
11 April	Lion Dancers for Yum Cha in the Park	\$1,350.00
19 December	Sponsorship 2016–2017	\$35,000.00
<b>2017</b>		
6 February	Sponsorship 2016–2017	\$35,000.00
21 February	RFD Bond-Reserve Hire Chinese New Year	\$650.59
4 December	Chinese New Year Fair 2018 Sponsorship	\$30,000.00
<b>2018</b>		
12 January	Chung Wah Chinese New Year Performance	\$59.90
12 January	Chung Wah Chinese New Year Performance	\$599.00
28 February	Chinese New Year Fair 2018 Sponsorship	\$30,000.00
<b>Total</b>		<b>\$195,109.49</b>

Council elections were held in October 2015. Following the elections, the MSIE Committee consisted of Ms Chen, Mr Yong and Mr Limnios, with Ms Davidson and Dr Jemma Green as deputies.

At an MSIE Committee meeting on 10 November 2015, Ms Chen and Mr Yong both disclosed an impartiality interest, as non-financial members of Chung Wah. Chung Wah applied for event funding of \$70,000.00. The Committee recommended \$60,000.00 as part of the total funding approved for all sponsored events of \$315,070.00. Ms Chen and Mr Yong voted on the funding.<sup>22</sup>

At the subsequent Council Meeting of 24 November 2015, Ms Chen and Mr Yong again disclosed an impartiality interest. Funding for the sponsorship of Chung Wah was approved as part of the Northbridge Festival budget. Dr Green and Mr Limnios voted against the motion (although Mr Limnios had voted in favour at the MSIE Committee meeting). The remaining council members voted in favour, including Ms Chen and Mr Yong.<sup>23</sup>

At an MSIE Committee meeting on 29 November 2016, 17 applications requested a total event sponsorship of \$373,100.00, with an available budget of \$284,000.00. This included a request from Chung Wah for sponsorship of \$80,000.00. The Committee recommended sponsorship for Chung Wah of \$70,000.00. Four applications were refused funding.<sup>24</sup>

At the meeting, the Committee *“expressed a desire to explore options for increasing the proposed sponsorship of the Chung Wah Association’s 2017 Chinese New Year event to \$80,000”*.<sup>25</sup>

Council considered this item on 13 December 2016. At that meeting, Ms Chen declared that she was a financial member and an honorary legal adviser for Chung Wah.<sup>26</sup> She remained at the meeting and moved the motion to approve the event sponsorship funding, which included \$70,000.00 for Chung Wah. All council members voted for the motion.<sup>27</sup>

Council elections were held in October 2017. Following the elections, the members of the MSIE Committee were Ms Chen, Ms Lexi Barton and Mr Steve Hasluck. Deputies were Mr Adamos and Mr Limnios.

The MSIE Committee met on 7 November 2017. Ms Chen disclosed an impartiality interest as a member of Chung Wah.

The Committee approved total event sponsorships for 2017/2018 of \$200,000.00. It considered an officer recommendation for funding of \$50,000.00 for Chung Wah, but increased this to \$60,000.00. The Committee declined funding for five events.<sup>28</sup>

Council considered this sponsorship at its meeting on 21 November 2017 and voted to sponsor Chung Wah for \$60,000.00. Ms Chen declared an impartiality interest as a member of Chung Wah. She moved the motion to approve the list of sponsorships, including the increased amount to Chung Wah, and she voted on the item.<sup>29</sup>

Throughout the period of the Inquiry’s Terms of Reference, Ms Chen was associated with Chung Wah. Throughout that period, she was a member of the three person MSIE Committee which made recommendations about sponsorships. She disclosed an impartiality interest at Committee and Council Meetings she attended where decisions were made on sponsorship of Chung Wah. This meant that she was able to remain, participate in the discussion, and vote. She did not declare a financial interest, if she had she would not have been able to remain in the meeting.

To a lesser extent the same issues also applied to Mr Yong. He was a member of the MSIE Committee for two years and declared he was a non-financial member of Chung Wah. He remained in the meetings and voted on sponsorship of Chung Wah.

The Inquiry makes no findings in relation to the associations of Ms Chen and Mr Yong with Chung Wah. However, the facts relating to their involvement do suggest possible shortcomings in the disclosure regime in that they, and particularly Ms Chen, were able to participate in decision-making despite a conflict of interest.

### Hellenic Community of Western Australia

The City provided sponsorship and donations to organisations and events associated with the HCWA, including the Perth Glendi Greek Festival (Glendi Festival), Greek Orthodox Easter Services (Easter Services), and the Hellenic Women's Association.

Mr Limnios was a council member for the City from 2009 until the Council was suspended. He was Deputy Lord Mayor from 22 October 2015 to 23 October 2017. He was a member of the MSIE Committee throughout the period of the Inquiry's Terms of Reference.

Mr Limnios was also a member of the HCWA.

During the term of the Inquiry's Terms of Reference, funding of \$76,500.00 was provided by the City to events and organisations associated with the HCWA (Table 2.12).

**Table 2.12: Grants and sponsorship funding provided to Hellenic Community of Western Australia between 1 October 2015 and 1 March 2018.<sup>30</sup>**

Event sponsored	2015/2016	2016/2017	2017/2018
Perth Greek Glendi Festival (Sponsorship)	\$25,000.00	\$25,000.00	Nil (declined)
HCWA for Greek Orthodox Easter Services (Donation)	\$15,000.00	\$10,000.00	Nil (declined)
Hellenic Women's Association (Donation)	\$1,500.00	N/A	N/A
<b>Total</b>	<b>\$41,500.00</b>	<b>\$35,000.00</b>	<b>N/A</b>

The sponsorships for the Glendi Festival were recommended by the MSIE Committee. At the meetings at which sponsorship was recommended Mr Limnios declared an impartiality interest as a member of the HCWA. He then voted for the sponsorship.<sup>31</sup>

Similarly, at the Council Meetings which approved the sponsorships for the Glendi Festival, Mr Limnios declared an impartiality interest and then voted for the sponsorships.<sup>32</sup>

Similarly, in relation to donations by the City to the HCWA for annual Easter Services, Mr Limnios declared an impartiality interest in these matters, but then voted for them at MSIE Committee meetings and subsequent Council Meetings.<sup>33</sup>

There were also instances in which Mr Limnios appeared to have involved himself in administrative or decision-making processes relating to applications by the HCWA.

On 4 November 2014, council member Ms Judy McEvoy emailed Ms Scaffidi about a meeting of the MSIE Committee earlier that evening. Ms McEvoy said:

*“Just between you and I James made a big song and dance about the Glendi Festival only receiving \$20,000 instead of the requested \$40,000, we gave in and added an extra \$5,000, Don’t know how you feel but I thought it was very inappropriate for him to make such an issue about it, he had declared an interest as a member of the Greek Community!”<sup>34</sup>*

This comment was put to Mr Limnios at an Inquiry hearing and he said *“I just don’t remember making a song and dance about it. I don’t remember that”*.<sup>35</sup>

The minutes of the Committee meeting for that date show that the HCWA requested \$40,000.00 in sponsorship for the 2015 Glendi Festival. City officers recommended \$20,000.00 be approved. However, the minutes record the following:

*“The Marketing and Administration Committee agreed to amend Part 1.1 (a) of the Officer Recommendation as follows:*

*a. Hellenic Community of WA Inc. (\$20,000 \$25,000)”*.<sup>36</sup>

Several years later, in November 2017, City officers recommended to the MSIE Committee that sponsorship applications for the 2018 Glendi Festival and Easter Services be declined. On 5 November 2017, Mr Limnios emailed Ms Battista, Director, Economic Development and Activation for the City. He referred to this recommendation and said:

*“Hi Annaliese I note that they are both declined? May I have information as to why? James Limnios Councillor”*.

Ms Battista replied the following day:

*“Of course, Councillor Limnios.*

*There were 16 applications received requesting a total of \$472,500. The available budget is \$200,000.*

*With such a strong field of applicants, the three-member assessment panel recommended 11 only for sponsorship, with a minimum mark of 54%.*

#### ***Perth Glendi Festival***

*This event scored **51%**, so did not make the cut-off. Some of the lowest scoring areas were:*

*Economic outcomes (five separate measurements): 10/20*

*Environmental and place outcomes (two separate measurements): 2.67/8 Organisational competency (four separate measures): 8/16*

### **Greek Orthodox Easter Celebration**

*This has previously been provided a donation by the City. The City advised the Hellenic Community in 2016 that under Council's new Sponsorships, Partnerships and Grants Policy, this event would no longer be eligible for a donation. The group applied for a sponsorship though we had provided this advice in 2016. To be as fair as we could, we assessed it alongside the other proposed sponsorships and it scored lowest of the 16 at 40%.*

*Some of the lowest scoring areas were:*

*Economic outcomes (five separate measurements): 5.34/20*

*Environmental and place outcomes (two separate measurements): 3.76/8*

*Civic outcomes (two separate measures): 2.67/8*

*Organisational competency (four separate measures): 6.33/16*

*The full assessment of all Round 2 Event applications is available online and the full officer's reports for each event are included so the relevant applicants can better understand the determinations.*

*I have attached them here in case you would like to review or send them on.*

*Regards,  
Annaliese"*

Shortly afterwards, Mr Limnios responded by email with the comment, "Lets have a chat".<sup>37</sup>

This email chain was put to Mr Limnios at an Inquiry hearing. He was asked if he had spoken to Ms Battista about this matter. He said

*"I spoke very regularly with Ms Battista because of her role in the activation and economic development. I could have and it wouldn't surprise me if I did, but I don't remember specifically.*

*Did that chat involve a conversation of maybe persuading her or one of her officers to endorse or support the sponsorship?---No, I would not do that.*

*You shouldn't do that, a Councillor shouldn't do that, should they?---I agree with you.*

*Yes. So therefore I'm just asking you as to what it was that you wanted to have a chat with her about?---Just to give clarity.*

*Given the rather this rather detailed email she provided to you?---Probably to get clarity and to see how we could communicate that, because we were quite big in communicating and making sure that there was no---*

*What required clarity for her---?---For me, for me to understand how the new processes worked, the new assessments, but I don't recall specifically having a conversation.*

*That's what I meant by, 'Let's have a chat' but not to influence Ms Battista in any way".<sup>38</sup>*

On 7 November 2017, the MSIE Committee declined funding for the 2018 Glendi Festival and the HCWA for the Easter Celebration.

Mr Limnios attended the meeting as an observer. He declared an impartiality interest and left the meeting while a decision was made on those items. The minutes state:

*“Cr Limnios requested the administration contact the Hellenic Community of WA Inc. to advise they are ineligible for this program, however they can apply for a donation”.*<sup>39</sup>

On 18 January 2018, the HCWA requested a \$15,000.00 donation from the City to support the Easter Celebrations. This was declined by the City on 8 February 2018 due to the policy for donations, which required an organisation to be a registered DGR. The HCWA did not have that status at the time and was ineligible.<sup>40</sup>

### Open House Perth

Open House Perth is an international architectural initiative which, on one weekend in November each year, provides the public with an opportunity to access a diversity of structures in the City including residential, civic and commercial buildings and studios.

Ms Scaffidi was a member of the Open House Perth Board from 2012 until at least May 2017. The inaugural Open House Perth event was held in November 2012, with the official launch being conducted by Ms Scaffidi.

The City funded the Open House Perth event from 2012.

For the Open House Perth events in the years covered by the Inquiry’s Terms of Reference, the City provided \$115,000.00 in sponsorship (Table 2.13).

**Table 2.13: Grants and sponsorship funding provided to Open House Perth in 2015/2016 to 2017/2018.**

2015/2016	2016/2017	2017/2018
\$45,000.00	\$40,000.00	\$30,000.00

On 27 February 2017, a City Sponsorship and Grants Officer emailed the Director of Open House Perth attaching a letter advising her that the application for sponsorship of Open House Perth was preliminarily recommended for funding of \$20,000.00. This was half the amount which had been funded the previous year. The letter explained that the City had received 14 applications for Round 1 of Event Sponsorship 2017/2018, requesting a total of \$507,000.00 from an available budget of \$195,000.00.<sup>41</sup>

Shortly after receiving this letter the Director of Open House Perth forwarded a copy to Ms Scaffidi, who forwarded it to council members on her “team”, stating:

*“FYI*

*Pls note letter*

*I am very concerned about this letter on a number of fronts*

- 1. 14 applications could include new and annual events – not fair to assess all in one lump basket*
- 2. Open House brings in huge visitation for little cost and there should have been at least the same funding but not less.*

*Be mindful of this pls*

*Lisa”.*<sup>42</sup>

On 2 March 2017, Ms Scaffidi emailed Ms Battista, Director Economic Development and Activation and, among other things, wrote:

*“Why are less of the other sponsorships now coming to Cte or Council. Did the delegated authority change? Please remind me.*

*I’m not happy as shared with Martin [Mileham] on the huge drop in support for Open House Perth which I’ve asked him to re-assess”.*

Ms Battista replied:

*“Yes, Lord Mayor.*

*MSIE Committee’s delegated authority is now \$15,000 – \$5,000 for CEO (or DEDA by delegation).*

*Fully agree re: Open House. Our clear advice to them was there was duplication with Heritage Perth Days and that they should combine. They have been unable to agree terms and our recommendation will reflect at the very least, a much reduced contribution”.*

Ms Scaffidi said:

*“What funding are we giving Heritage Perth?*

*I thought intention was to encourage them to combine over the next year or two. To cut the funding as [sic] put this event into complete jeopardy. This event brought over 200,000 people into the city and their economic reporting shows huge flow on economic benefit.*

*Ben’s letter lumped them in with 14 other submissions probably some of which are one off small events and should not be compared to open house at all”.*<sup>43</sup>



Ms Battista forwarded this email chain to Mr Mark Ridgwell, Manager Governance, stating:

*"Hello Mark,*

*Please see below.*

*The Lord Mayor is on the Board of Open House – I'm concerned she has a clear impartiality issue in terms of the nature of these questions and direction being given.*

*The process she is referring to is actually our Rounds Process, which is the way we process all applications under the new Policy, adopted by Council.*

*I'm happy to respond – can you provide me words around her potential conflict and likewise, I'm not keen to stand for her taking aim at one of my team members (again)".*

Later the same day, Ms Battista sent another email to Mr Ridgwell stating:

*"Hello Mark,*

*An update on this matter.*

*The Lord Mayor had an elevator conversation today with [name omitted] (Heritage Perth) advising (words to the effect of) Open House have had their 2017 budget slashed in half and that Heritage Perth should be warned their event – Heritage Perth Days – will be next. I understand some derogatory comments were also made about [a manager] ...*

*Heritage Perth have not yet submitted any application for 2017 Heritage Perth Day funding, nor an assessment been made. This is pre-empting two Council decisions that have not yet been made. It also pre-empts an Officer's recommendation that is yet to take place.*

*I am fine to respond, though will await your advice as discussed".*

The following day, on 3 March 2017, Ms Battista forwarded this email chain to Ms Barbara Moyser, Senior Employment Relations Adviser with the City, with the comment:

*"FYI – example of the type of interaction with the Lord Mayor and issues arising as discussed yesterday. I probably get three to five of these a week.*

*A lot of concern for staff involved".<sup>44</sup>*

Also, on 3 March 2017, Ms Scaffidi emailed Mr Martin Mileham and Ms Battista stating:

*"As discussed with Martin and Annaliese separately this week I'm very concerned that revised delegated authority aside in regards to event sponsorships decision-making has effectively been taken away from the Council on many sponsorship matters.*

*This is inappropriate and leaves us no ability to discuss the merits or otherwise of an event ahead of (as it seems) organisers being informed without our knowledge.*

*Case in point which triggered my questions is Open House which has been advised of significantly reduced funding as it found it self in a pool of 14 other applications. I do not know if those other applications were similar or one off events and it is unfair to compare Open House to 14 generic "other" events.*

*Given there is a track record of almost double the funding for the past three years of Open House I have to ask why Crs [councillors] are not being asked to refuse or approve such changes? Not even coming to us for information purposes? In effect, the decision making process has seemingly been stripped from us.*

*This would clearly apply to many other events. I'm ccing Chair of Mktg / Sponsorship & Chair of Budget Ctr as Janet was with me when it was discussed with the CEO.*

*Thanks*

*Lisa".*

Ms Battista replied to Ms Scaffidi stating:

*"Can I suggest we meet to go through this in detail with all of the relevant documentation It seems there have been some misunderstandings that may best (and most efficiently) be cleared-up in person.*

*In short summary:*

- The Rounds process where Council consider all applications received twice per year against the available budget was approved by Committee and Council (Dec 16).*
- The delegation adjustments – 15K for Committee and 5K for the CEO – were approved by Committee and Council (Dec 16).*
- The approach to combining Open House and Heritage Perth Days was endorsed by Committee and Council (Sep 16).*
- Open House and Heritage Perth held a facilitated workshop to try and reach agreement on this (Jan 17). They were unable to reach an agreement and this matter remains unresolved.*
- The Report and Recommendation/s into Open House's 2017 proposal has not yet been finalised. However, Officers have assessed all applications received in the Round and have been in touch with proponents to optimise terms.*
- Committee and Council have every opportunity and right to change the Officer's Recommendation when the Report does come to Committee, then Council.*
- No funding application has been received for Heritage Perth Days for 2017. It is therefore not possible to pre-empt either the panel's assessment, Officer's Recommendation or Report to Council.*
- There needs to be a reduction in the City's Sponsorship, Partnership and Grants budget in 2017/18 for reasons Martin will likely have briefed you on. This will be in the order of \$1 million (ie. from around \$6 million). This will impact all applications as the budget is now 17% less.*

*I trust and hope this information clears a few issues. However, as mentioned, perhaps Martin, Mark you and I should meet to discuss further? I would like to address your concerns at the earliest opportunity".*

Ms Scaffidi replied:

*"Happy to Annaliese*

*Very easy to throw policy at us but it's not working and the devil is always in the operational detail which we don't see until examples like this arise.*

*It's not ok to slash good events who deliver the activation we seek.*

*It's not appropriate to tell 2 events to combine – who do we think we are. We can suggest but as you may not know Open House is a international event.*

*Let's meet asap – Tue if possible. I will ask Ang to create a mutually suitable time & hope Cr Davidson can join us too. Lily of course is on a LOA [leave of absence]*

*Bring Ben if you wish and the full list of 14 he referred to in his letter to Open House for full discussion".<sup>45</sup>*

Mr Mileham then emailed Ms Scaffidi to advise that he recalled *"the suggestion to combine certain events was canvassed at Council and met with Council support"*.

Ms Scaffidi replied, *"It was discussed as something that would be good but Open House is an international event".<sup>46</sup>*

On 10 March 2017, Ms Battista sent an email to Ms Scaffidi advising her that she and the relevant manager had reviewed applications for several events. This included *"Open House amount to be increased from \$20,000 to \$30,000".<sup>47</sup>*

On 26 April 2017, the MSIE Committee, with Ms Davidson acting as presiding member, recommended sponsorship of \$189,000.00 to eight organisations, including \$30,000.00 for Open House Perth. Sponsorship was declined for six organisations.<sup>48</sup>

On 9 May 2017, Council approved event sponsorships including \$30,000.00 for Open House Perth. Ms Scaffidi presided at the meeting and declared an impartiality interest in this matter due to being on the board of Open House Perth. She remained in the Council Meeting and voted on the item.<sup>49</sup>

## Conclusion

In the Inquiry's view it is clear, that some council members, although they generally disclosed impartiality interests, were prepared to actively promote organisations and events they had a personal interest in to assist them to receive funding from the City. This active promotion included voting, in Committee and Council Meetings.

## Tickets associated with sponsorship and grants

### Introduction

#### Tickets and gifts associated with the City of Perth's sponsorship and grant arrangements

1. Conflicts of interest represent a significant threat to the impartiality of any decision-making process and strike at the heart of good governance. Ratepayers should be able to expect council members to always perform their duties in a fair and impartial way, placing the public interest first.
2. Although conflicts of interest are not wrong in themselves, public officials are also private individuals and there will be occasions when their private interests come into conflict with their duty to put the public interest first. Such conflicts must be identified and disclosed. They must also be effectively managed.
3. The use by the City of Perth (City) council members of free tickets to events that the City sponsored is relevant to their disclosure obligations under the *Local Government Act 1995* (LG Act) with respect to the receipt of gifts.
4. It also has a bearing on their obligations to disclose the relevant interest they have in any matter which is before the City of Perth Council (Council) and requires a decision. In this context, section 5.65 of the LG Act requires a council member who has an interest in any matter to be discussed at a Council or committee meeting that will be attended by that council member to disclose the nature of that interest. The disclosure must be made in a written notice given to the Chief Executive Officer (CEO) before the meeting, or at the meeting immediately before the matter is discussed.
5. Under section 5.67 of the LG Act, a council member who makes such a disclosure must not preside at that part of the meeting relating to the matter or participate in, or even be present during, any discussion or decision-making procedure relating to the matter. The disclosure is also to be recorded in the minutes of the meeting. Limited exceptions to this requirement are contained in sections 5.68 and 5.69 of the LG Act. A failure to comply with these requirements is an offence punishable by a maximum penalty of a fine of \$10,000.00 or two years imprisonment.<sup>50</sup>

### Notifiable and prohibited gifts

6. During the period of the Inquiry's Terms of Reference, the legislation divided gifts given to council members from persons undertaking, or who were seeking to undertake, or who it was reasonable to believe were intending to undertake an activity involving a local government discretion into categories including notifiable gifts and prohibited gifts. A gift that was worth less than \$50.00 was not, by itself, a notifiable or prohibited gift and did not require, on its own, disclosure. A gift worth between \$50.00 and \$300.00, or multiple gifts given by the same person to the same council member within six months with a combined worth of \$50.00 to \$300.00, would be a notifiable gift.<sup>51</sup> A gift worth \$300.00 or more, or multiple gifts given by the same person to the same council member within a six month period and totalling \$300.00 or more, would be a prohibited gift.<sup>52</sup>
7. An activity involving a local government discretion means an activity that cannot be undertaken without an authorisation from the local government, or by way of a commercial dealing with the local government.<sup>53</sup>
8. A council member must not accept a prohibited gift from a person who is undertaking, who is seeking to undertake or who it is reasonable to believe is intending to undertake, an activity involving a local government discretion.<sup>54</sup>
9. If a council member accepts a notifiable gift from a person who is undertaking, who is seeking to undertake, or who it is reasonable to believe is intending to undertake, an activity involving a local government discretion, the council member must notify the CEO within 10 days of accepting the gift.<sup>55</sup> The council member must notify the CEO in writing and must include:
  - a. the name of the person who gave the gift;
  - b. the date on which the gift was accepted;
  - c. a description, and the estimated value, of the gift; and
  - d. the nature of the relationship between the council member and the person giving the gift.<sup>56</sup>
10. The CEO must record and maintain these details in a register of gifts that is to be available for public inspection.<sup>57</sup>

### Closely associated persons

11. Under section 5.60 of the LG Act a council member has a financial interest in a matter if he or she, or a person with whom the council member is closely associated, has either a direct or indirect financial interest in the matter. For these purposes, section 5.60A of the LG Act provides that:

*“... a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government, or member of the council of the local government in a particular way, result in a financial gain, loss, benefit or detriment for the person”.*

12. Section 5.61 of the LG Act states that:

*“... an indirect financial interest of a person in a matter includes a reference to a financial relationship between that person and another person who requires a local government decision in a matter”.*

13. A closely associated person, as defined in section 5.62(1) of the LG Act, includes a person who:
- gave the council member a “*notifiable gift*” (as defined by section 5.62(2) of the LG Act) in relation to the election at which that council member was last elected;<sup>58</sup> or
  - since the council member was last elected, gave the council member a notifiable gift<sup>59</sup> or a gift that section 5.82 of the LG Act required the council member to disclose.<sup>60, (g)</sup>
14. During the period of the Inquiry’s Terms of Reference, the relevant prescribed amount for these gifts was \$200.00.<sup>61</sup>

g Although section 5.82 of the *Local Government Act 1995* existed during the period of the Inquiry’s Terms of Reference, it has since been repealed.

## Responsibilities of council members and the City of Perth's Administration in relation to receipt of gifts

15. It is apparent, from what is set out above, that the statutory framework relating to the acceptance and disclosure of gifts by council members was complex. The receipt of a gift by a council member could, depending on the circumstances, trigger different obligations at different times that carried different consequences.
16. It was the role of the City's Administration (in particular, the CEO and the Manager, Governance) to ensure that advice was available to council members in relation to their obligations.
17. However, it remained the responsibility of council members to ensure they complied with their statutory obligations regarding the acceptance and disclosure of gifts. It was not for the City's Administration to ensure that council members complied with their obligations, for example, by identifying when council members were required to make a disclosure or remove themselves from a Council or committee meeting.

## Timeline

2015	January	Investigation report <i>"Acquisition and use of hospitality resources by Healthway"</i> issued by the Public Sector Commissioner.
	1 July	Commencement date for declarations of gifts.
	21 August	Telstra Perth Fashion Festival (TPFF) programme launch. The Lord Mayor, Ms Lisa Scaffidi, gave a speech.
	15–20 September	TPFF events held each day.
	17 October	Local government elections held. Ms Scaffidi and Ms Lily Chen re-elected.
	22 October	Ms Chen, Mr Keith Yong and Mr James Limnios appointed as members of the Council's Marketing, Sponsorship and International Engagement Committee (MSIE Committee).
2016	January	Four council members received up to 12 tickets each for the Hopman Cup. They each took up to five guests at a time and were in a corporate box, with food and drink provided.
	17 February	Investigation report <i>"Ticket use for sponsored or financially supported events"</i> presented to Parliament by the Public Sector Commissioner
	4 March	The <i>City of Perth Act 2016</i> came into operation. Transitional provisions allowed 28 days for council members to disclose gift and travel contributions received since 1 July 2015.
	March	Mr Martin Mileham, Acting CEO, requested all council members to retrospectively complete gift declaration forms for events that the City had sponsored since 1 July 2015 and for which the council member had received free tickets.
	22 March	TPFF WA Fashion Awards held.
	23 March	Council members briefed on changes to gift and travel declarations. They were advised <i>"Sponsorship Tickets/Invitations are 'Gifts' "</i> and <i>"All Elected Members who attended events with tickets/invitations from Sponsorship arrangements during the transition period (1 July 2015 to now) must complete a gift declaration"</i> .



2016	7 June	Letter from Mr Mileham to the Department asking for Ministerial approval for council members who had disclosed financial interests to participate in meetings. The letter cited 49 financial interests involving all nine council members.
	26 July	MSIE Committee meeting. Sponsorship application for the 2016 TPFF considered.
	9 August	Special Council Briefing Session, council members briefed on when a gift declaration was required in relation to tickets.
	9 August	Ordinary Council Meeting. TPFF sponsorship increased by \$30,000.00.
	22 and 23 September	Two TPFF events held <i>“International Runway: Whole9Yards Event”</i> and <i>“Future Runway Event”</i> .
	10 October	Mr Yong emailed Mr Ridgwell asking, <i>“For clarification purposes, please advise if all EMr [Elected Members] previously attended city’s sponsored event must declare interest for the rest of their terms as Councillors”</i> . Mr Ridgwell replied, <i>“On [sic – Only] those Elected Members who have received a gift over \$200 in value in the past 12 month period”</i> .
	24 October	Ms Annaliese Battista, Acting Director, Economic Development and Activation, refused a TPFF request for sponsorship for an event.
	9 or 10 November	Ms Scaffidi emailed Ms Battista saying her response to TPFF was not acceptable.
	14 November	Meeting in Ms Scaffidi’s office with TPFF officers and Ms Battista.
2017	6 June	Ordinary Council Meeting voted to reduce sponsorship for the Hopman Cup by \$25,000.00 and increase sponsorship for TPFF by \$25,000.00.

## Issues considered by the Inquiry

18. The Inquiry examined:

- whether council members identified and disclosed their financial interests to the CEO, and whether those disclosures were complete and accurate;
- whether council members identified and disclosed their financial interests to the Council or a committee when the law required them to do so;
- whether council members appropriately left Council or committee meetings while matters in which they had a financial interest were considered;
- whether decisions by Council or a committee on certain sponsorship applications from 2016 onwards involved the participation of council members who should have excluded themselves from the decision-making process due to their interests in the matters being considered; and
- if in fact gift declarations were not accurately made by council members, whether there was a sufficient degree of governance being exercised at the time by those who bore that responsibility.

## Investigation by the Inquiry

19. Part A.3(iv) of the Inquiry's Terms of Reference states: *"The Inquiry Panel is ... to give due consideration to, and inquire into and report on, ... sponsorship arrangements between organisations and the City and the acceptance of gifts in the form of tickets to events by members from those organisations"*.<sup>62</sup>
20. Part A.3(ii) of the Terms of Reference also provides that the Inquiry is to give due consideration to, and inquire into and report on, *"whether any member engaged in improper or unlawful conduct in relation to the performance by the Council or the members of any of their functions or obligations"*.<sup>63</sup>
21. The Inquiry held public hearings between 24 September 2019 and 1 October 2019 with a number of people, and a private hearing on 24 June 2019, in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section:

- Council members Ms Lisa Scaffidi, Mr Keith Yong, Ms Lily Chen, Mr James Limnios, Ms Janet Davidson, Mr Jim Adamos and Mr Reece Harley;
- Mr Mark Ridgwell, Manager, Governance;
- Mr Martin Mileham, CEO; and
- Ms Annaliese Battista, Director, Economic Development and Activation.

## Evidence obtained by the Inquiry

### Public Sector Commission reports

22. The arrangement of providing free tickets to public servants by organisations which had received sponsorships from government agencies was the subject of two reports conducted by the Public Sector Commission (PSC) in 2015 and 2016. The first was titled *Acquisition and use of hospitality resources by Healthway*.<sup>64</sup> This investigation found there were a number of factors which contributed to governance and oversight deficiencies in the systems and practices at Healthway regarding sponsorships.
23. In that context, it was found that Healthway officers derived significant private benefits in the form of tickets or seats for themselves and their families in corporate boxes for events that Healthway had sponsored. In 2015, as a result of the findings of that report, the State Government requested a further report from the PSC that addressed the acquisition and provision by all public sector agencies of ticket and corporate box access for sporting and cultural events that they had sponsored or financially supported.

24. This report, which was titled *“Ticket use for sponsored or financially supported events”* (PSC Report) found that the arrangements and practices that existed in Healthway were not confined to that public sector agency. The PSC Report was submitted to the Parliament of Western Australia on 17 February 2016.
25. Relevantly, it stated:

*“Sponsorship or financial support for an event may be closely aligned to a government body’s core business, however it does not follow that all tickets received by that government body for the event would always meet public expectations that the tickets are used in an appropriate manner, i.e. for a public purpose.*

*In general, attendance by board members or employees at events without a specific ‘public purpose’ or ‘business focussed’ role should not occur. Staff or board members should ask themselves, is there any essential benefit to business in me attending the event? If not, then they should strongly consider whether it would be appropriate for them to attend the event”.*<sup>65</sup>
26. As a result of these two reports, government bodies had their attention clearly drawn to what was an inappropriate use of tickets and/or corporate box access to events, which they had sponsored or financially supported.
27. The City fell within this group. It was responsible for funding, through sponsorship arrangements, various events within its precincts totalling around \$4 million every year. Prior to the two reports by the PSC, the supply of free tickets to the City was written into many of these sponsorship agreements and were frequently accessed by council members. Such tickets were not regarded by the City as gifts, as defined by the LG Act.

### Communication of the changes to council members

28. On the evening of 23 March 2016, Mr Ridgwell, Manager, Governance, conducted a briefing session with council members that addressed recent legislative changes to gift and travel declarations arising from the enactment of the *City of Perth Act 2016*. Following that briefing session, he emailed all council members (with the exception of Ms Scaffidi the Lord Mayor) attaching a PDF copy of his PowerPoint presentation at that briefing session. Part of that presentation advised that *“Sponsorship Tickets/Invitations are ‘Gifts’ ”* and *“All Elected Members who attended events with tickets/invitations from Sponsorship arrangements during the transition period (1 July 2015 to now) must complete a gift declaration”*.<sup>66</sup> From communications that followed (outlined below), between Ms Scaffidi and her then six aligned council members, it was clear that council members were well aware of the circumstances in which a council member would be forbidden from considering sponsorship applications by entities that had previously offered, or were likely to offer, council members free tickets to their events.<sup>67</sup>

29. On 24 March 2016, Ms Davidson wrote a message to the WhatsApp message group titled “Team”, which had been created by Ms Scaffidi on 22 October 2015,<sup>68</sup> and included Ms Davidson, Mr Adamos, Ms Chen, Ms Judy McEvoy, Mr Yong and Mr Limnios, stating:

**Ms Davidson**



*“All was said and presented at the meeting yesterday by Governance and lawyer there also. Copy sent out today. Affects all EMr – not JG – serious implications re gifts that we’ve had in the past. Hopefully not but we have to declare all from 1 July 2015. It was clearly laid out yesterday – how much more does she want to put it in the public arena. City is working hard on this so that we can be an exemplar Council – does not need to get any more stringent nor trigger stuff going to CCC or Department but it is obvious thinking now that what has been done in the past – EMr and officers doesn’t cut the mustard now. Let the admin get on with getting it right. Surely she can’t want anymore rigidity. Please hold tight – looking for splintering people. Janet”.*<sup>69</sup>

30. Ms Scaffidi then wrote:

**Ms Scaffidi**



*“Yes Janet is right  
Gifts = hospitality & tickets and in case some of you still don’t get that ...  
if you’ve voted on events & attended them in the past you well could have voted with a financial conflict.  
This is no joke ... ”.*<sup>70</sup>

31. Ms Scaffidi followed shortly after with:

**Ms Scaffidi**



*"Good example*

*You all voted to support Christmas Pageant – then attend party & pageant with your family*

*You voted with a conflict*

*Same with Ballet, Opera, PIAF – the list goes on and on ...".<sup>71</sup>*

32. Messages from Mr Adamos then included the following passages:

**Mr Adamos**



*"This is a huge issue and as Lisa said we have voted and accepted tickets. We have been conflicted hundreds of times".*

*"You need to understand James that we could all lose our jobs".*

*"Are you ready for that".<sup>72</sup>*

33. Despite this awareness by council members from 23 March 2016, the Inquiry identified significant deficiencies in the following areas after this date:

- council members' disclosure of tickets as gifts in accordance with the legislation;
- council members' disclosure of conflicts of interest at Council and committee meetings, including participation in decisions in which the council member had an interest that should have prevented him or her from doing so; and
- governance of the disclosure regime by the CEO and the Manager, Governance.

34. In March 2016, following the receipt of legal advice,<sup>73</sup> the then Acting CEO, Mr Mileham, requested all council members retrospectively complete gift declaration forms for any events that the City had sponsored since 1 July 2015 and for which the council member had received free tickets. These forms were to be submitted by 31 March 2016. The relevant context to this request was that the *City of Perth Act 2016* (which had received royal assent on 3 March 2016) amended the provisions of the LG Act and its regulations relating to the disclosure of gifts and travel.<sup>74</sup>

The amendments to sections 5.82 and 5.83 of the LG Act meant that disclosures of the acceptance of gifts and contributions to travel were to be made within 10 days of the acceptance rather than annually. The transitional provisions allowed for 28 days from 4 March 2016 for council members to disclose gift and travel contributions they had received during the transition period of 1 July 2015 to 3 March 2016.<sup>75</sup> With respect to any free tickets received by council members for City sponsored events during the transition period, the additional objective of the retrospective gift declaration forms was to rectify any previous inadvertent failure by council members to declare such tickets as gifts and to prevent those failures from impacting on the decision-making functions of the Council in the future.<sup>76</sup> However, this objective to “*right the record*” with respect to tickets could only be achieved if these forms were completed accurately and with the necessary details.

35. The Inquiry has considered the following four events as case studies:

- Perth Fashion Festival (2015–2017);
- Hopman Cup (2016–2017);
- WA Business News “40under40” Awards (2016); and
- Perth International Arts Festival (PIAF) (2016–2017).

#### **Tickets given to council members in association with sponsored events:**

##### **Perth Fashion Festival**

##### **Mr Keith Yong**

36. On 22 October 2015, Mr Yong was appointed as a member of the Marketing, Sponsorship and International Engagement Committee (MSIE Committee). He remained a member of the MSIE Committee until his defeat in the 21 October 2017 elections.<sup>77</sup>
37. Mr Yong always voted in favour of the sponsorship applications made by the Perth Fashion Festival.<sup>78</sup>
38. Mr Yong made two gift declarations with respect to Perth Fashion Festival events he attended in 2015. One was the launch, for which he retrospectively completed a gift declaration form on 24 March 2016. He gave an estimated value of this ticket as being “\$40.00”.<sup>79</sup> The Inquiry has no evidence that this was an inaccurate estimated value.<sup>80</sup>
39. The other function Mr Yong attended was the Perth Fashion Festival’s “*Phuong My*” event on 18 September 2015. He was provided with two tickets by Singapore Airlines valued at \$140.70. Mr Yong declared this interest on 2 October 2015.<sup>81</sup>

40. At the MSIE Committee meeting on 26 July 2016, the sponsorship application for the 2016 Perth Fashion Festival was considered. As he had attended the Perth Fashion Festival the previous year, Mr Yong declared a direct financial interest that was for “*less than prescribed amount*”.<sup>82</sup> When the Perth Fashion Festival matter was called, Mr Yong left the meeting. There was no legal requirement for Mr Yong to declare a financial interest and leave the meeting. He had correctly stated the extent of his interest as being “*less than prescribed amount*”. He was only required to leave the meeting if he had received a gift (or gifts during a year) from the Perth Fashion Festival since he was last elected amounting to a total value of \$200.00 or more.<sup>83</sup> The Inquiry accepts the estimated value of \$40.00 declared by Mr Yong for his ticket to the launch. The other two tickets he had received did not give rise to a financial interest as:
  - their combined sum was less than \$200.00; and
  - Singapore Airlines was not a closely associated person with respect to the sponsorship application by the Perth Fashion Festival.
41. The irony in Mr Yong leaving this MSIE Committee meeting in the circumstances in which he did is that the other two council members in attendance (Ms Davidson and Ms Chen) had each received tickets with a total value that significantly exceeded \$200.00, yet they remained.<sup>h</sup>
42. Mr Yong repeated this conduct at the Ordinary Council Meeting on 9 August 2016, by leaving the meeting when the sponsorship application made by the Perth Fashion Festival was considered.<sup>84</sup> No other council member declared a financial interest for this item, although some may have been required to do so. Mr Yong gave evidence that he declared the financial interest with respect to all three tickets he had received in 2015 and it was his recollection the “*Governance team*” advised him to leave.<sup>85</sup>
43. Council members next considered a sponsorship application by the Perth Fashion Festival at the MSIE Committee meeting on 23 May 2017. Mr Yong was in attendance. On that occasion, he did not disclose a financial interest with respect to the Perth Fashion Festival sponsorship application. Mr Yong’s explanation for not disclosing a financial interest was that he had been advised by Mr Ridgwell in 2016, either verbally or in an email, that the Governance unit had sought legal advice and had obtained the approval of the then Department of Local Government and Communities (Department) for him to sit in the meeting.<sup>86</sup>
44. Mr Yong was essentially accurate in his recollection of the advice he had received from Mr Ridgwell. On 10 October 2016, Mr Yong sent an email to Mr Ridgwell asking, “*For clarification purposes, please advise if all EMr [Elected Members] previously attended city’s sponsored event must declare interest for the rest of their terms as Councillors*”.<sup>87</sup> The correct answer to that question, with respect to any financial interest arising from the receipt of free tickets, is “yes”. Mr Ridgwell, however, responded as follows:

*“On [sic – Only] those Elected Members who have received a gift over \$200 in value in the past 12 month period”.*<sup>88</sup>

<sup>h</sup> The tickets received by Ms Davidson and Ms Chen in relation to the Perth Fashion Festival are addressed later in this Section.



45. As already noted, Mr Yong was not required to declare a financial interest regarding sponsorship applications by the Perth Fashion Festival after March 2016. However, the ambiguous advice inadvertently provided to him by Mr Ridgwell may have caused council members who did have financial interests in sponsorship applications to not declare them after 10 October 2016.

#### Ms Lily Chen

46. Ms Chen made no disclosures of a financial interest she may have had with respect to sponsorship applications made by the Perth Fashion Festival from 2016 onwards. In addition, Ms Chen did not make any disclosures of an impartiality interest she may have had. A question requiring the Inquiry's determination is whether Ms Chen may have had a reasonable excuse for not making these disclosures.
47. Ms Chen was a member of the MSIE Committee from October 2013 through to when the Council was suspended.<sup>89</sup>
48. Ms Chen was of the view that if the amount of a gift to a council member which gave rise to a financial interest was below \$300.00, the council member could still participate in the decision-making process and vote.<sup>90</sup> Ms Chen, however, did not know what it meant when someone was a "*closely associated person*" with a council member.<sup>91</sup>
49. Ms Chen always voted in favour of sponsoring the Perth Fashion Festival and she considered herself as a council member who regarded the sponsorship more favourably; together with Mr Yong, Ms Davidson, Mr Limnios, Mr Rob Butler and Ms Scaffidi. Of these six council members, she nominated Ms Davidson and Ms Scaffidi as the strongest supporters.<sup>92</sup>
50. Ms Chen was questioned about her relationship with Ms Mariella Harvey-Hanrahan, an organiser of the Perth Fashion Festival. When asked how she would describe her relationship with Ms Harvey-Hanrahan as of 2016, Ms Chen responded "*Facebook friends*" and maintained that was the extent of it.<sup>93</sup> After denying that as of 2016 Ms Harvey-Hanrahan was a "*very good friend*" of hers and was just an "*ordinary*" friend, Ms Chen was asked by Counsel Assisting:
- "Let me put it this way then, Ms Chen: if a Councillor describes themselves as being a very good friend of someone who is responsible for organising an event that a sponsorship application is being made to the City of Perth for, if those circumstances existed, would you agree with me that the Councillor would have to, at the very least, declare an impartiality interest?---Correct".<sup>94</sup>*
51. Ms Chen attended four Perth Fashion Festival functions in 2015. She retrospectively completed four gift declaration forms for those functions on 27 March 2016.<sup>95</sup> Ms Chen provided estimated values for each of these tickets. Evidence before the Inquiry establishes that three of those tickets had significantly under-estimated values.

52. Ms Chen's handwritten entry on the gift declaration form for the estimated value of her ticket to the Perth Fashion Festival opening night on 15 September 2015 was "*less than \$50.00*".<sup>96</sup> Another handwritten entry in the same section gives an amount of "*\$49.00*". Ms Chen stated that was not her handwriting and that someone else had made that entry.<sup>97</sup> The actual value of this ticket was \$200.00.<sup>i</sup> Ms Chen's estimated value on the gift declaration form for her attendance at the Perth Fashion Festival Myer Fashion lunch on 17 September 2015 was \$100.00.<sup>98</sup> The actual value of this ticket was \$170.00.<sup>99</sup> Ms Chen estimated on her third gift declaration form that the value of the ticket for her attendance at the Perth Fashion Festival closing night on 20 September 2015 was \$100.00.<sup>100</sup> The actual value of this ticket was \$200.00.<sup>101</sup>
53. As to her attendance at the Perth Fashion Festival opening night on 15 September 2015, Ms Chen conceded she had a very good seat that may have been front row, that she was provided with drinks and food beforehand (which was invite only) and that she received a bag with promotional materials.<sup>102</sup> She conceded she "*maybe*" had a "*VIP ticket*" and she did not know how much it was worth.<sup>103, (j)</sup> Ms Chen admitted she wrote "*less than \$50.00*" so that the stated value of the ticket would make it an exempted gift that did not require disclosure.<sup>104</sup>
54. In her evidence, Ms Chen's justification for giving an estimated value of \$100.00 to the ticket she received for the closing night event, instead of its actual value of \$200.00, was because it was her "*personal view that is only worth that much*".<sup>105</sup> Ms Chen was questioned as to the appropriateness of that explanation for the tickets she had received:
- "I want to ask you this: so you maintain that the value, the total value of these tickets that you received was \$298 because that's the value you put on them?---Yes.*
- And if in fact those tickets cost somewhere in the region of \$600 if you were to buy them, you nevertheless were still entitled to give a value of half that amount, is that right?---Maybe not right.*
- Sorry?---Maybe not right.*
- No, it's not right, is it?---Yes".<sup>106</sup>*
55. Even accepting the accuracy of the actual value of the remaining ticket for the Perth Fashion Festival programme launch in August 2015 in the other gift declaration form ("*\$49.00*"),<sup>107</sup> the actual total value of these four tickets was \$619.00. When it was put to Ms Chen that the total amount of her estimates came to \$298.00 and that she "*gave those values to make sure that the total amount came under \$300*", she replied, "*not intentionally*". Ms Chen gave evidence it was a coincidence that the total value of her estimates was just under \$300.00.<sup>108</sup>

i In an email dated 16 February 2018, Ms Harvey-Hanrahan provided a number of documents regarding the Perth Fashion Festival that had been requested by letter dated 1 February 2018 from the Department of Local Government, Sport and Cultural Industries. Two of those documents were PDF and Excel spreadsheets (which were identical) containing a list of all tickets and their individual prices that had been allocated to the City for Perth Fashion Festival events (which were identified by name) from 2009 to 2017. The Inquiry has identified the actual value of tickets provided to council members who attended various events of the 2015 Perth Fashion Festival from this spreadsheet. As Ms Harvey-Hanrahan was a principal organiser of the Perth Fashion Festival since its inception, the Inquiry is satisfied that the ticket prices she provided in the spreadsheet with respect to the events in the 2015 Perth Fashion Festival were the retail prices of those tickets provided to council members. Email, M Harvey-Hanrahan to A Smith, 16 February 2018.

j The Inquiry notes that clause 7.1 of the sponsorship agreement between the City of Perth and Perth Fashion Concepts Inc. for the 2015 Perth Fashion Festival stipulated that the City was to receive, among other tickets, 12 tickets to the VIP Opening Night and 12 tickets to the VIP Closing Night: Contract, Agreement of Sponsorship between Perth Fashion Concepts Inc. and the City of Perth, 9 July 2015.

56. By the end of March 2016, the evidence establishes that Ms Chen (like other council members) was aware tickets to sponsored events were now regarded as gifts. Ms Chen did not notify the CEO within 10 days of her acceptance of the tickets to the 2015 Perth Fashion Festival, notwithstanding that under the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations) they were a notifiable gift<sup>k</sup> from a person who it was reasonable to believe was intending to undertake an activity involving a local government discretion.<sup>109</sup> However, no finding is made against her for this breach (or any other council members who also failed to notify the CEO of their acceptance of tickets to City sponsored events) as, prior to March 2016, the City had adopted the policy the use of free tickets by council members that were part of the sponsorship contractual arrangements did not have to be declared as gifts.<sup>110</sup>
57. However, the Inquiry does find that on 27 March 2016, Ms Chen under-valued her tickets to the 2015 Perth Fashion Festival on three of her four gift declaration forms. Notwithstanding her denial,<sup>111</sup> Ms Chen may have done that intentionally, so that the combined total value of the tickets fell within the range of a notifiable gift under regulation 12(2)(b) of the Conduct Regulations by being less than \$300.00. The Inquiry considers it highly improbable that it was merely a coincidence that the total of the values given by Ms Chen came to \$298.00, a mere \$2.00 less than \$300.00. As a result of under-valuing her tickets in this manner, Ms Chen believed she was allowed to vote in future sponsorship applications by Perth Fashion Festival. However, as outlined below, that belief may have been mistaken.
58. Even with Ms Chen's under-estimated valuations, she still may have been required to declare a financial interest in relation to the Perth Fashion Festival if her receipt of tickets with a total value exceeding \$200.00 meant the Perth Fashion Festival became closely associated with Ms Chen. That would not be as a result of section 5.62(1)(eb)(i) of the LG Act, because these tickets were not given to Ms Chen since she was last elected on 17 October 2015. Instead, that may be because of section 5.62(1)(ea)(i) or (ii) of the LG Act. That provision provides that a person is to be treated as being closely associated with a Relevant Person if "*the relevant person is a council member*" and the person has given "*the relevant person a notifiable gift*".
59. Confusingly, a "*notifiable gift*" as defined in section 5.62(2) of the LG Act is different to the definition of a "*notifiable gift*" in regulation 12(1) of the Conduct Regulations. It "*means a gift about which the relevant person was or is required by regulations under section 4.59(a) [of the LG Act] to provide information in relation to an election*".<sup>112</sup> Section 4.59(a) of the LG Act states that regulations may provide for the provision of information as to gifts made to, or for the benefit of, candidates.

k Based on the values L Chen subsequently provided in her retrospective gift declaration forms.

60. These regulations are the *Local Government (Elections) Regulations 1997* (Elections Regulations). Regulation 30A(4) of the Elections Regulations states that a gift is only relevant if the value of the gift is \$200.00 or more or the gift is one of two or more gifts with a total value of \$200.00 or more made by one person at any time during the period set out in regulation 30C of the Elections Regulations. Regulation 30C(1) of the Elections Regulations, which is titled “*Disclosure Period*”, states:

*“For the purposes of regulation 30B(1)<sup>I</sup> ..., the period commences 6 months before the relevant election day, and concludes –*

*...*

*(b) on the start day for financial interest returns for successful candidates under section 5.74 of the [LG] Act”.*

61. These gifts were provided to Ms Chen in July and September 2015 and before she was re-elected on 17 October 2015 and therefore fell within the six-month period before the relevant election day.
62. As can be seen from what is set out above, it is a complicated process to navigate the various legislative provisions to determine whether a person is closely associated with a council member pursuant to section 5.62(1) of the LG Act. It requires a council member, among other things, to consider gifts they have received prior to and since the election at which they were last elected.
63. As Ms Chen did not know what “*a closely associated person*” was,<sup>113</sup> it is highly unlikely she would have considered section 5.62 of the LG Act when determining what amounts she would disclose as to the values of these tickets. It is readily apparent from her evidence that she believed the threshold when a council member had a financial interest was \$300.00. This was a popular misconception – no council member who was examined by the Inquiry about gifts gave \$200.00 as being the value of a gift or the combined value of gifts triggering a financial interest.
64. On 26 July 2016, the MSIE Committee considered the sponsorship application by the Perth Fashion Festival.<sup>114</sup> Ms Chen was the presiding member of this MSIE Committee meeting. Ms Chen agreed she did not make a declaration of a financial interest with respect to the Perth Fashion Festival sponsorship application. Her explanation was, “*we are not required at a committee level*”. When asked where she got that information from, Ms Chen answered:

*“Because when I’m chairing the committee meeting, I got all the Directors and all from the Governance and also from the CEO, they all surrounding me ... And then no-one told me I should make a disclosure as to financial or impartiality interest for declaration”.*<sup>115</sup>

I This regulation states: “A candidate must disclose to the CEO a gift promised or received during the period set out in regulation 30C”.

65. Ms Chen then agreed it was her responsibility to disclose whether she had a financial interest. Although she also agreed she knew the reason why Mr Yong excused himself at the meeting from the Perth Fashion Festival item was because he had a financial interest, Ms Chen stated she remained because she was “*not advised*” and that she “*didn’t know at a committee level I should disclose*”.<sup>116</sup> Ms Davidson had also declared a financial interest that she had with respect to another item at this meeting.<sup>117</sup> Yet Ms Chen sought to justify remaining in the meeting on the basis that if she did leave, the meeting would have had to stop due to the lack of a quorum.<sup>118</sup> If Ms Chen did have a financial interest in the application, that would not be proper justification for not complying with obligation to depart the meeting under the LG Act.
66. Having earlier admitted she knew at the meeting that she did have a financial interest regarding the Perth Fashion Festival,<sup>119</sup> Ms Chen was questioned:
- “It being the Perth Fashion Festival sponsorship application. The only interest that could be that required him [Mr Yong] to leave would be a financial one, would it not?---Yes.*
- ...*
- You would have realised it was only because he had a financial interest in the matter. You knew you had a financial interest in the matter, yet you remained?---I didn’t realise as Chair I also should declare and leave.*
- Why didn’t you confer with Governance regarding this before the matter proceeded any further?---I probably more concentrate on the job to be done.*
- It’s a rather serious error you’ve made, isn’t it?---Yes.*
- So did you at least realise that after this meeting, you had to declare a financial interest with anything to do with the Perth Fashion Festival?---Yes, should be.”<sup>120</sup>*
67. Notwithstanding this final answer, Ms Chen repeated her conduct just two weeks later at the Ordinary Council Meeting on 9 August 2016. Although there were disclosures of financial interests, proximity interests and an impartiality interest for various items by six of the other seven council members present, Ms Chen did not disclose a financial interest when the sponsorship application for Perth Fashion Festival was considered.<sup>121</sup> After being shown the Council minutes recording the other council members declaring interests, Ms Chen was asked the following questions:
- “Your name’s not there?---I think I made a mistake. 2016 – I’m thinking, 2016, I probably didn’t attend anything. Then I thought I did not have to declare but I forgot about the year before, 2015. That’s a possibility I just guess.*
- But Ms Chen, you have been reminded?---Yes, did.*
- You’ve been reminded by all these people making their declarations?---I should have.*
- Yes, I know you should have. You see, I would like to know why you did not? Is the answer, you forgot?---Not intentionally, not forgot.*

*You knew you had a financial interest that you should have declared but you didn't?  
---Yes, I didn't.*

*So again, I don't know how if you knew something, then you then forget it?---  
This one, should be.*

*Yes, I know you should have, but you did not?---No, I didn't.*

*All the alarms bells should have been ringing for you?---Yes, correct.*

*With all these other members walking out?---They have done better than me.*

*For items – yes?---Most of the time I did, I don't know this one I didn't do it.*

*Might it be because the organiser of the Perth Fashion Festival was a very good friend of yours?---No.*

*Ms Harvey-Hanrahan, might that be the reason?---No”.<sup>122</sup>*

68. During the debate at this Council Meeting regarding Ms Davidson's alternate motion to increase the sponsorship to the Perth Fashion Festival, Ms Chen stated that she had called *“Mariella, because she's a very good friend of mine”* to discuss the sponsorship needs for the Perth Fashion Festival and the timing of its sponsorship application to the City. After Ms Chen had finished speaking, Ms Scaffidi interrupted the debate stating she had been conferring with *“the CEO and the officer”* and the officer was concerned that Ms Chen had mentioned a friendship. Ms Scaffidi then said to Ms Chen, *“I think I understand you mean a work association but you better just clarify it because you did say a friendship”*. Notwithstanding that suggestion from Ms Scaffidi as to how Ms Chen could describe her relationship with Ms Harvey-Hanrahan,<sup>m</sup> Ms Chen's initial response simply confirmed her friendship with Ms Harvey-Hanrahan: *“I just want to say because normally you have a conflict of interest if you consider she, you know, if you consider a friendship and you should support the motion. However I didn't keep, you know, keep my [indistinct] in support of the motion and so this is no conflict of interest in this instance”*.<sup>n</sup> There is a pause in the audio recording before Ms Chen adds, *“Yes, it is a working relationship. Yes, of course”*. An unidentified officer then clarifies that the *“good relationship”* is with a stakeholder, which Ms Chen confirms.<sup>123</sup>
69. Ms Chen could not recall describing Ms Harvey-Hanrahan at this Council Meeting as *“a very good friend”*, maintaining she was *“just an ordinary friend, not very good friend. Maybe good friend”*.<sup>124</sup> Ms Chen then agreed if Ms Harvey-Hanrahan was her good friend she should have disclosed an impartiality interest<sup>o</sup> as well, which she did not do. Ms Chen denied the mistakes she made in not declaring financial and impartiality interests were deliberate mistakes; rather they were careless.<sup>125</sup>

<sup>m</sup> Such a description would not likely give rise to an impartiality interest requiring disclosure.

<sup>n</sup> Ms Chen voted against the alternate motion put forward by Ms Davidson.

<sup>o</sup> An impartiality interest is defined as *“an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association”*: *Local Government (Rules of Conduct) Regulations 2007*, reg 11(1); A council member with such an interest must disclose the nature of the interest to the Chief Executive Officer before the meeting or at the meeting immediately before the matter is discussed: *Local Government (Rules of Conduct) Regulations 2007*, reg 11(2).

70. The Inquiry considers that Ms Chen's non-disclosure of a financial interest and an impartiality interest (if these interests existed) at the MSIE Committee meeting on 26 July 2016 and at the Council Meeting on 9 August 2016 regarding the considerations of the sponsorship application by the Perth Fashion Festival may have been intentional, rather than careless. It would have been abundantly clear to Ms Chen that she may have had those interests given the disclosures other council members made at these meetings. Ms Chen had also attended a Special Council Briefing Session immediately before the Ordinary Council Meeting on 9 August 2016. At that session council members were briefed on the offering of tickets and when a gift declaration was required.<sup>126</sup> Although the briefing notes from this session indicate that Ms Chen arrived at 4.26 pm (which was 17 minutes after it had commenced), these notes also record that included in the documents handed out was an *"Offer of Tickets for Elected Members – Process Flowchart and Notes"*.<sup>127</sup> Furthermore, the notes record that at 5.40 pm *"Manager Governance returned to the meeting and provided a brief overview about the Disclosures of Interest required at the Council Meeting"*.<sup>128</sup>
71. These briefing notes also recorded the names of individual attendees who either entered after the session had commenced or left the session before it concluded. There is no record of Ms Chen leaving prior to the conclusion of the session at 5.50 pm. Although Mr Yong is recorded as not entering the session until 4.45 pm,<sup>129</sup> he declared a financial interest at the subsequent Council Meeting on the basis he had *"attended event"* and left the meeting when the sponsorship application by the Perth Fashion Festival was considered.<sup>130</sup>
72. Ms Chen was absent from the MSIE Committee meeting which considered the sponsorship application by the Perth Fashion Festival on 23 May 2017. She was, however, at the Ordinary Council Meeting which considered the matter on 6 June 2017. She disclosed no financial or impartiality interests when the sponsorship application was considered by the Council.<sup>131</sup> On this occasion, Ms Chen voted for a motion to amend the officer and MSIE Committee recommendation to increase the sponsorship for the Perth Fashion Festival by \$25,000.00 to \$255,000.00.<sup>132</sup> That motion was carried five votes to three votes and the amended primary motion was then carried six votes to two votes, with Ms Chen again voting in favour of it.<sup>133</sup>
73. The Inquiry notes that this meeting took place nearly eight months after the email exchanges between Mr Yong and Mr Ridgwell described above, in which Mr Ridgwell inadvertently advised that council members need only declare a financial interest for a 12-month period from the receipt of the gift(s).<sup>134</sup>
74. Although Ms Chen stated that by failing to declare an interest at this Council Meeting, she had *"made the same mistake as to 2016"*, she had been copied into the email exchanges between Mr Yong and Mr Ridgwell on 10 October 2016. However, in her evidence Ms Chen stated that she did not have any recollection of these emails and maintained that she *"didn't see before"* and *"I didn't pay attention to that email"*.<sup>135</sup>



75. The question that requires resolution by the Inquiry is whether, notwithstanding her denials, Ms Chen's decision not to disclose a financial interest at the Council Meeting on 6 June 2017 may have been due to Mr Ridgwell's email the previous October. Ms Chen was a recipient of Mr Ridgwell's email and her non-disclosure of a financial interest at the 2017 Council Meeting was consistent with one interpretation of the advice contained in that email. It is possible that Ms Chen, either from reading the email or having been advised by another council member, had formed a reasonable belief by 6 June 2017 she no longer had a financial interest with respect to sponsorship applications by the Perth Fashion Festival. If Ms Chen had reasonably formed that belief by reading that email or due to advice received from another council member, the Inquiry considers that would explain her conduct and that only limited criticism could be made of Ms Chen.
76. However, there is no evidence that the relationship Ms Chen had with Ms Harvey-Hanrahan had changed since the previous year when she described Ms Harvey-Hanrahan as a very close friend. The Inquiry notes that Ms Chen's description of her relationship with Ms Harvey-Hanrahan at the meeting on 9 August 2016 was unprompted and spontaneous. It was made in an environment that sharply contrasts with the circumstances of an examination at a public hearing. As there was no reason to conceal the extent of her relationship with Ms Harvey-Hanrahan at that meeting, the Inquiry is of the view it was an accurate description. In any event, Ms Chen's own evidence at the Inquiry included a description that Ms Harvey-Hanrahan was "*maybe good friend*".<sup>136</sup> In those circumstances, and regardless of how good a friend Ms Chen was of Ms Harvey-Hanrahan, Ms Chen may have been required to declare an impartiality interest at the Council Meeting on 6 June 2017.<sup>p</sup> The Inquiry finds that she should have done so and, unlike her failure to declare a financial interest at that meeting, there was no reasonable excuse for her not to.

### Ms Lisa Scaffidi

77. Of all the council members who gave evidence regarding their knowledge of gifts and financial interests, Ms Scaffidi appeared to have the best understanding, although she mistakenly thought the time-frame for a financial interest of a council member arising from the receipt of gifts was 12 months.<sup>137</sup> Such an interest remains for the duration of the council member's term.<sup>138</sup> However, the Inquiry notes Ms Scaffidi's mistaken recollection was of the same length of time cited in Mr Ridgwell's response to Mr Yong's email on 10 October 2016.<sup>139</sup>
78. Ms Scaffidi was also aware of the circumstances where a ticket or other item would not actually be defined as a gift requiring disclosure under the LG Act if the council member had provided consideration in return.<sup>140</sup> In Ms Scaffidi's opinion, it was ultimately the responsibility of a council member to determine whether he or she had a financial interest in a matter, although it could be checked with the Governance unit. She did not agree with the proposition that it was solely up to the Governance unit, the CEO or anyone else within the Administration to advise a council member that they had a financial interest.<sup>141</sup>

<sup>p</sup> The relevant legislative provision includes an impartiality interest arising simply from a "*friendship*": *Local Government (Rules of Conduct) Regulations 2007*, reg 11(1).

79. Ms Scaffidi had been an ambassador for the Perth Fashion Festival since 2008 and remained in that position until about 2015. She then became a committee member of the incorporated body of Perth Fashion Concepts (Inc.), trading as the Fashion Council of WA. When that incorporated association was deregistered on 9 December 2016, she became a board member of the newly incorporated Fashion Council WA Ltd,<sup>142</sup> an association under the *Associations Incorporation Act 1987*.<sup>143</sup> Unsurprisingly, Ms Scaffidi agreed she was a “strong supporter” of the Perth Fashion Festival.<sup>144</sup>

#### Gift declarations: 2015 Perth Fashion Festival

80. On 23 March 2016, Ms Scaffidi completed and submitted seven gift declaration forms retrospectively declaring tickets she had received to attend the 2015 Perth Fashion Festival. Six of these forms specified actual values which made them notifiable gifts under regulation 12(1) of the Conduct Regulations. All seven forms did not have completed answers to the following three questions:
- “Is this the first gift you have been offered by this person/organisation?”
  - “Who will benefit from acceptance of the gift?”
  - “Are they [the organisation/person offering the gift] likely to be the subject of a future decision of the City?”<sup>145</sup>
81. Although answering these questions does not appear to be an explicit requirement of the disclosure requirements in section 5.82(1) of the LG Act or regulation 12(4) of the Conduct Regulations, they were relevant questions to whether a financial interest arose or may arise from the provision of the tickets. Ms Scaffidi agreed that these questions should have been answered and said it was an oversight she did not do so.<sup>146</sup> The Inquiry finds Ms Scaffidi should have answered these questions.
82. Ms Scaffidi gave speeches at some of these functions. It is therefore necessary to determine whether Ms Scaffidi’s speeches may have been “fully adequate” consideration for receiving the tickets to those functions.<sup>147</sup> As stated by the Court of Appeal in *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222 at [146]:
- “In order to avoid the conferral of a financial benefit constituting a gift, the consideration passing from the council member must be ‘fully adequate’. This invites a comparison between the value of the financial benefit and the value of the consideration in money or money’s worth which is given in return.”*<sup>148</sup>
83. If Ms Scaffidi did give fully adequate consideration for the tickets she received, the tickets were not gifts as defined in section 5.82(4) of the LG Act and Ms Scaffidi was not required to disclose them. If Ms Scaffidi did not give fully adequate consideration for the tickets, she may have been required to disclose them.
84. Ms Scaffidi accepted that if a gift declaration form relating to her attendance at a function of the 2015 Perth Fashion Festival did not state she had given a speech then it was likely she did not give one.<sup>149</sup> Only two forms stated she gave a speech: at the launch and at the opening night.

85. The decision of the Court of Appeal in *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222 can be used to assess whether any consideration passing from Ms Scaffidi for the other five functions may be regarded as “*fully adequate*”. However, even on an assessment of the evidence most favourable to Ms Scaffidi, it is evident that following the 17 October 2015 election, the Perth Fashion Festival may have met the criteria requiring it “*to be treated as being closely associated*” with her for the duration of her term pursuant to section 5.62(1)(ea)(i) or (ii) of the LG Act. Therefore, she may have had a financial interest that should have been disclosed whenever a sponsorship application by the Perth Fashion Festival was before the Council, on the completion of her seven gift declaration forms on 23 March 2016.<sup>150</sup>
86. The first Perth Fashion Festival function Ms Scaffidi attended in 2015 was its launch on 21 August 2015. In her gift declaration form dated 23 March 2016, the estimated value of the gift was \$40.00. The form also stated Ms Scaffidi gave a speech.<sup>151</sup> The Inquiry accepts this speech could have been consideration given by Ms Scaffidi for this function, which would mean her ticket was not a “*gift*” as defined by section 5.82(4) of the LG Act.
87. The second function Ms Scaffidi attended was the opening night of the Perth Fashion Festival on 15 September 2015. The gift declaration form she completed on 23 March 2016 indicated that she gave a speech and went with a guest.<sup>152</sup> The actual value of the gift was typewritten as “*Tickets \$201.86*”.<sup>q</sup> However, the value of a single ticket was \$200.00.<sup>153</sup> As Ms Scaffidi was provided with two tickets, the Inquiry finds that the actual value of the gift was \$403.72. This amount should have been written as the declared value of the gift or, alternatively, it would have been acceptable to write “*two tickets \$201.86 each*”.
88. Ms Scaffidi gave evidence that her speech at this function “*might have gone for 5 or 6 minutes*” and the time it took for her to prepare the speech was “*probably a good hour to two*”.<sup>154</sup> In those circumstances, the Inquiry is prepared to accept that there may have been “*actual consideration*” provided by Ms Scaffidi for her ticket. However, Ms Scaffidi admitted that none of the guests she invited to Perth Fashion Festival functions did “*any duties per se*”.<sup>155</sup> In those circumstances, there does not appear to be any factual basis on which it could be said that consideration passed from Ms Scaffidi to the Perth Fashion Festival for this additional ticket. The additional ticket may therefore have been a gift, as defined by section 5.82(4) of the LG Act.
89. The third function Ms Scaffidi attended was on 16 September 2015 where, again, she took a guest.<sup>156</sup> This event was described on the gift declaration form as “*WA Designer Runway 1*”. The declared value of the gift was typewritten as “*Tickets \$140.70*”. The evidence before the Inquiry establishes that the value of a single ticket provided to Ms Scaffidi was \$180.00.<sup>157</sup> The Inquiry finds that the total ticket value should have been declared as \$360.00, rather than \$140.70. The Inquiry also considers that if Ms Scaffidi did not give a speech at this function, there does not appear to be any factual basis on which it could be said that “*adequate consideration*” passed from Ms Scaffidi to the Perth Fashion Festival on this occasion. Therefore, these tickets may have been a gift, as defined by section 5.82(4) of the LG Act.

q The additional \$1.86 specified in the gift declaration form is consistent with the amount of an online booking fee.

90. Although Ms Scaffidi may not have given a speech at this function, she was most likely (as with the previous function), “*working the room during those pre-reception and post-reception time periods*”.<sup>158</sup> The Inquiry considers that Ms Scaffidi “*working the room*” may not be “*fully adequate*” consideration. It is not apparent, and there is no evidence before the Inquiry about what benefit (if any) the Perth Fashion Festival might have obtained by Ms Scaffidi working the room. This is consistent with the following passage in *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222 at [165]:

*“As to the breaches the subject of grounds 4 and 5, the conference organisers gained the benefit of having the appellant prepare for, speak at, or otherwise actively participate in, their conferences. While merely attending the conference, networking and giving media interviews may not have given any benefit to the conference organisers, the activities which the Tribunal found the appellant undertook went beyond that.”*<sup>159</sup>

91. Given the passage described above, the Inquiry finds that even if Ms Scaffidi was attending as the Perth Fashion Festival’s “*Ambassador*” (which is stated in all seven gift declaration forms she completed for tickets to the 2015 Perth Fashion Festival), this may not suffice as adequate consideration if what she did was confined to “*networking*”.
92. The fourth function Ms Scaffidi attended was the Perth Fashion Festival Myer lunch on 17 September 2015, which she attended with a guest. The stated value of the gift on the gift declaration form she signed was “*Tickets \$346.64*”.<sup>160</sup> The Inquiry accepts this was the actual value of the two tickets, inclusive of a booking fee.<sup>161</sup> There is no suggestion Ms Scaffidi gave a speech at this event.<sup>162</sup> Ms Scaffidi does not appear to have undertaken activities at this event that would be sufficient to show “*adequate consideration*” passed from Ms Scaffidi to the Perth Fashion Festival. Therefore, these tickets may have been a gift, as defined by section 5.82(4) of the LG Act.
93. The fifth function Ms Scaffidi attended was on 19 September 2015 which was the “*WA Designer Runway 2*”. She had an additional ticket for a guest. The declared value of the gift on the gift declaration form Ms Scaffidi signed was “*Tickets \$140.70*”.<sup>163</sup> The individual value for each of these tickets was not \$140.70, it was \$180.00.<sup>164</sup> Therefore, the actual value of the gift was \$360.00. The Inquiry finds that Ms Scaffidi incorrectly declared the actual value of this gift. It is apparent Ms Scaffidi did not give a speech at this event which would have been capable of showing “*adequate consideration*” passing from her to the Perth Fashion Festival on this occasion. Therefore, these tickets may have been a gift, as defined by section 5.82(4) of the LG Act.

94. The sixth function Ms Scaffidi attended was on 20 September 2015, which was described in her gift declaration form as *“Ae’lkemi & Steph Audino”*. Once again, Ms Scaffidi took a guest.<sup>165</sup> Ms Scaffidi gave an incorrect price for the tickets. The actual value of the gift is recorded on the form as *“Tickets \$140.70”*. The evidence before the Inquiry is that these tickets were \$180.00 each.<sup>166</sup> The Inquiry finds the correct actual value of this gift was \$360.00 and further finds that Ms Scaffidi incorrectly declared the value of this gift. There is no evidence that Ms Scaffidi gave a speech at this event which would constitute *“adequate consideration”* passing from her to the Perth Fashion Festival on this occasion. Therefore, these tickets may have been a gift, as defined by section 5.82(4) of the LG Act.
95. The final event Ms Scaffidi attended was the *“Closing Night: Wheels and Dollbaby”* on 20 September 2015. She was also provided a ticket for a guest. The actual value of the gift in the gift declaration form was described as *“Tickets \$201.86”*.<sup>167</sup> It seems no speech was given by Ms Scaffidi on this occasion. The evidence before the Inquiry is that the value of a single ticket to this event was \$200.00.<sup>r</sup> The Inquiry finds the correct actual value of this gift, inclusive of a booking fee, was \$403.72 and further finds that Ms Scaffidi incorrectly declared the value of this gift. The amount of \$403.72 should have been written as the declared value of the gift or, alternatively, it would have been acceptable to write *“two tickets \$201.86 each”*. Ms Scaffidi did not give a speech at this event. There does not appear to be any factual basis on which it could be shown *“adequate consideration”* passed from Ms Scaffidi to the Perth Fashion Festival on this occasion. Therefore, these tickets may have been a gift, as defined by section 5.82(4) of the LG Act.
96. The Inquiry finds that a more accurate value of the tickets Ms Scaffidi received for the 2015 Perth Fashion Festival was in excess of \$2,260.00. The Inquiry finds that, notwithstanding those functions where Ms Scaffidi gave speeches (and thereby may have provided adequate consideration for her tickets to those functions), the Perth Fashion Festival may have become a closely associated person to her following her re-election as Lord Mayor on 17 October 2015.<sup>168</sup> If so, she may have been required to declare a financial interest for matters involving sponsorship applications by the Perth Fashion Festival for the duration of her term. Although Ms Scaffidi had a reasonable excuse for not being aware of this financial interest or that she had accepted prohibited gifts when she received the tickets in 2015, by 23 March 2016 she knew that the acceptance of tickets to City sponsored events by council members could give rise to a *“financial conflict”*.<sup>169</sup>
97. The Inquiry also finds Ms Scaffidi did not pay sufficient attention to ensuring that the actual value of the tickets she received was accurately and unambiguously declared on five of her gift declaration forms relating to the 2015 Perth Fashion Festival. As to the values on those forms, Ms Scaffidi accepted there had been *“carelessness”* and that she *“should have been more diligent”*.<sup>170</sup>

<sup>r</sup> Email, M Harvey-Hanrahan to A Smith, 16 February 2018; the additional \$1.86 specified in the gift declaration form is consistent with the amount of an online booking fee.

### Ordinary Council Meeting: 9 August 2016

98. On 9 August 2016, at the Ordinary Council Meeting which dealt with the Perth Fashion Festival's sponsorship application, Ms Scaffidi declared an impartiality interest as she was "*a Board member*" for the Perth Fashion Festival.<sup>171</sup> As she only declared an impartiality interest, Ms Scaffidi did not exclude herself from the Council's consideration of the sponsorship application. Ms Scaffidi proceeded to vote for an alternative motion that increased the officer and MSIE Committee recommended sponsorship of the Perth Fashion Festival for that year by \$30,000.00.<sup>172</sup> The Inquiry notes this was the Council Meeting in which there were eight disclosures of direct financial interests by five council members due to their receipt of free tickets to various events.<sup>173</sup> In those circumstances, it should have been readily apparent to Ms Scaffidi that she may have had a financial interest with respect to the Perth Fashion Festival which she did not declare.
99. Ms Scaffidi agreed with Counsel Assisting that she should have declared a financial interest. Ms Scaffidi also admitted this was "*a very bad oversight*" and that it was "*a careless error*". She denied, however, that it was a "*deliberate error*".<sup>174</sup> The alternate motion to increase the sponsorship to the Perth Fashion Festival by \$30,000.00 was moved by Ms Davidson.<sup>175</sup> She, too, may have had a financial interest which she did not declare. This alternate motion was only carried by four votes to three. If Ms Scaffidi and Ms Davidson (both very strong supporters of the Perth Fashion Festival) had not participated, then it is highly unlikely there would have been any increase to the recommended amount.
100. The Inquiry notes that Ms Scaffidi transparently declared her status as a board member of Perth Fashion Festival at the Council Meeting. While it remained Ms Scaffidi's responsibility to comply with her obligation to disclose a financial interest under the LG Act, if she had such an interest, it does not appear from the minutes of the Council Meeting that any of the other attendees at the meeting (including Mr Mileham and Mr Ridgwell) questioned whether Ms Scaffidi's role as a Board member might give rise to a financial interest.
101. Given her warning to her "*Team*" in her WhatsApp message on 24 March 2016,<sup>176</sup> her attendance at the Special Council Briefing Session immediately before the Council Meeting in which council members were briefed on the offering of tickets and when a gift declaration was required<sup>177</sup> and the fact that she did not seek advice from the Governance unit regarding her potential financial interests, the Inquiry considers that Ms Scaffidi's non-disclosure of a financial interest (if one existed) at the Ordinary Council Meeting on 9 August 2016 may have been deliberate, or at least not unintentional. By only declaring an impartiality interest, Ms Scaffidi was aware she could remain and participate in the Council's consideration of the Perth Fashion Festival's sponsorship application.<sup>178</sup>



102. Even if Ms Scaffidi had a mistaken belief that the timeframe for a financial interest declaration was 12 months from the receipt of the gift, this would not give her a reasonable excuse for not declaring financial interests she may have had at the meeting on 9 August 2016. The date of the meeting was within 12 months of the dates of the functions Ms Scaffidi had attended.

#### Gift declarations: 2016 Perth Fashion Festival

103. The month after the Council Meeting on 9 August 2016, Ms Scaffidi attended two events of the 2016 Perth Fashion Festival. Again, in her gift declaration forms dated 11 August 2016, she under-valued the price of tickets she had received to these events.
104. On 22 September 2016, Ms Scaffidi attended the *“International Runway: Whole9Yards Event”*. For the gift declaration form she completed for this event, the declared actual value of the gift was typed as, *“\$70.27 ea”*. Underneath that entry was typed, *“Ticket value on Ticketmaster as \$70.27 per adult ticket”*.<sup>179</sup> The form did not record that Ms Scaffidi had given a speech. The actual value of the ticket given to Ms Scaffidi was \$180.00.<sup>180</sup> Ms Scaffidi should have been aware of that actual value, because she had received an email to her City email address from Ms Melissa Brennan, a manager with the Fashion Council WA, inviting her to this event and others. Attached to that email was a ticket allocation form which listed the price for any extra tickets the invitee might want to purchase in addition to the offered complimentary tickets.<sup>181, (s)</sup> Two tickets were offered to Ms Scaffidi. She could not recall whether she took a guest and did not think she had. She agreed that in all likelihood the ticket she had received was valued at \$180.00.<sup>182</sup>
105. On 23 September 2016, Ms Scaffidi attended the *“Future Runway Event”*. For the gift declaration form she completed for this event, the declared actual value of the gift was typed as *“\$49.88 ea”*. Underneath that entry was typed *“Ticket value on Ticketmaster as \$49.88 per adult ticket”*. The form did not record that Ms Scaffidi had given a speech. The actual value of the ticket given to Ms Scaffidi was \$160.00.<sup>183</sup> Again, Ms Scaffidi should have been aware of that actual value, because Ms Brennan had sent her an email inviting her to that event and had offered additional tickets at that price.<sup>184</sup> Again, Ms Scaffidi was not certain whether she received one or two tickets to this event, although she felt she went on her own. Ms Scaffidi accepted that the ticket she had received appeared to be valued at \$160.00 and the amount of \$49.88 may well have been the price of the lowest valued ticket.<sup>185</sup>
106. The under-valuing of these tickets in Ms Scaffidi’s declarations is of significance. The total amount of the values declared on the two gift declaration forms came to \$120.15. This was within the notifiable gift range set out in regulation 12(1) of the Conduct Regulations. Even accepting Ms Scaffidi’s recollection that she attended these events by herself, the actual combined value of her two tickets was \$340.00.

s Form, Fashion Council WA ticket allocation. This form stated that if additional tickets were purchased then *“Best efforts will be made to seat your guests next to you”*.



There is no evidence that Ms Scaffidi undertook activities at these events that could amount to fully adequate consideration for either ticket. The ticket to the second event may have become a prohibited gift from a person who it was reasonable to believe was intending to undertake an activity involving a local government discretion.<sup>186</sup> If the ticket was a prohibited gift, Ms Scaffidi should not have accepted it.

107. Ms Scaffidi admitted it was careless of her to accept the “*Ticketek* [sic – Ticketmaster] *price*” that had been entered on the forms by her Personal Assistant. She agreed that, as the Perth Fashion Festival might be the subject of a future decision by the City, she had accepted a prohibited gift and she had failed to comply with her legal obligations.<sup>187</sup> She maintained, however, the fact that the combined value of the tickets on her declaration forms fell within the notifiable gift range was not intentional.
108. The Inquiry considered whether these under-valuations were carelessness on Ms Scaffidi’s behalf or whether they were intentionally under-valued, so they only remained in the notifiable gift range. There is circumstantial evidence to suggest that Ms Scaffidi was exercising considerable care as to precisely when she accepted the offer of these tickets. The email offering these complimentary tickets was sent to Ms Scaffidi on 2 August 2016 to her City email address.<sup>188</sup> This email had an attached ticket order form which set out the prices for additional ticket purchases.<sup>189</sup> As described above, the Council Meeting that determined the sponsorship application for the Perth Fashion Festival took place on 9 August 2016. On the afternoon of the following day, 10 August 2016, Ms Scaffidi’s Personal Assistant sent two emails to Ms Brennan advising that Ms Scaffidi was “*delighted to accept and attend*” the two events that she subsequently attended.<sup>190</sup>
109. On 10 February 2016, exactly six months earlier, Ms Scaffidi accepted an invitation by the Perth Fashion Festival to attend its WA Fashion Awards on 22 March 2016. For the gift declaration form Ms Scaffidi completed for this event, the declared actual value of the gift was typed “*\$180.00*”.<sup>191</sup> The Inquiry does not dispute this value for Ms Scaffidi’s ticket. Although the form did not record that Ms Scaffidi had given a speech, her evidence was she “*was presenting awards and speaking*”.<sup>192</sup>
110. When the declared values of the tickets to the two events Ms Scaffidi accepted on 10 August 2016 are added to the amount of \$180.00, a figure of \$300.15 is reached. However, this would not make one of the tickets a prohibited gift as such a gift must be “*one of 2 or more gifts given to the council member by the same person **within a period of 6 months** that are in total worth \$300 or more*”.<sup>193</sup> [emphasis added]
111. Notwithstanding the timing of the emails which accepted the tickets to the September 2016 events and considering Ms Scaffidi’s denial that the invitations were intentionally accepted after the Council Meeting,<sup>194</sup> the Inquiry does not find Ms Scaffidi intentionally under-valued the tickets to only make them a notifiable gift, as defined by regulation 12(1) of the Conduct Regulations. The Inquiry does not find that Ms Scaffidi intentionally delayed her acceptance of these tickets so that one of them did not potentially become a prohibited gift that was accepted within six months of 10 February 2016.

112. The Inquiry does find, however, that Ms Scaffidi made declarations that were incorrect. She did so by ticking the box on each of her two gift declaration forms dated 11 August 2016, declaring that the information on the form was “*accurate*” and “*will not create a future conflict of interest*” for her in fulfilling her responsibilities as a council member.

#### Ordinary Council Meeting: 6 June 2017

113. On 6 June 2017, an Ordinary Council Meeting determined the sponsorship application by the Perth Fashion Festival for its September 2017 event. At that meeting, Ms Scaffidi appropriately declared a direct financial interest with respect to the Perth Fashion Festival, stating she was “*on the Board of the Telstra Perth Fashion Festival and received tickets to attend the event last year*”.<sup>195</sup> Ms Scaffidi’s evidence was she conferred with Mr Ridgwell and Mr Mileham, CEO, just before the meeting and was advised that she would need to declare a financial interest and vacate the meeting.<sup>196</sup>
114. When Ms Scaffidi was questioned as to whether she expected other council members to declare a financial interest for the Perth Fashion Festival, she responded “*I don’t know. How would I know?*” Her evidence was she did not “*turn my mind*” to raising with Mr Mileham or Mr Ridgwell before the item was called, whether other council members might have a financial interest. Ms Scaffidi could not offer an explanation as to why she did not do so.<sup>197</sup> The Council minutes record no other council member declaring any type of interest with respect to the Perth Fashion Festival item.<sup>198</sup> However, from the audio of the meeting, and after Ms Scaffidi had declared her financial interest in the Perth Fashion Festival, Ms Davidson can be heard asking, “*Could we just check with Governance in terms of TPFF [Telstra Perth Fashion Festival]?*” Mr Ridgwell responds, “*Through the Chair, the only individual assessed is the Lord Mayor in her capacity as a patron*”.<sup>199</sup> Although Ms Scaffidi could not offer an explanation when asked, this response from Mr Ridgwell provides a reasonable explanation for why she did not raise the matter.
115. At this meeting Ms Davidson moved a motion to amend, seeking an increase in the sponsorship that had been recommended by the officer and the MSIE Committee for the Perth Fashion Festival; on this occasion in the amount of \$25,000.00. This was after she had moved a motion at the meeting to amend the recommended Triennial Event sponsorship amount for the Hopman Cup by reducing it by \$25,000.00 annually. Both of these motions were successful.<sup>200</sup>
116. Ms Scaffidi admitted she may have had prior knowledge of Ms Davidson’s intention to seek a reduction in the sponsorship for the Hopman Cup.<sup>201</sup> However, she did not admit she had prior knowledge of Ms Davidson’s intention to increase the amount of sponsorship for the Perth Fashion Festival. However, from all of the evidence before the Inquiry, it was clear Ms Scaffidi and Ms Davidson were very close. They had served on Council together for 18 consecutive years. Ms Davidson agreed that Ms Scaffidi was her “*closest confidante*” of all the council members she had served with and if Ms Scaffidi expressed a view, she followed that view “*on just about every single ... matter*” before Council.<sup>202</sup>

In light of that evidence from Ms Davidson, the Inquiry accepts Mr Mileham's observation that, "*Councillor Davidson was virtually a proxy for the Lord Mayor*".<sup>203</sup> As both were very strong supporters of the Perth Fashion Festival and given their close relationship, the Inquiry considers it highly probable that Ms Davidson did advise Ms Scaffidi of her intentions prior to this meeting. After Ms Davidson professed a failure to recall whether she did discuss her intentions with Ms Scaffidi, she was asked:

*"There's no reason to keep her [Ms Scaffidi] out of the loop, as it were, as to what you intended to do, is there?---No reason to speak to her either.*

*There's every reason to speak to her, Mrs Davidson, because she's firstly, your closest confidante, and secondly, she has a vested interest in these matters, and thirdly, she's a Lord Mayor. There you go, there's three pretty good reasons, isn't it? ---Sorry, I honestly don't recall.*

*Do you agree with me, they are three very good reasons?---They are probably three very good reasons".*<sup>204</sup>

#### Regulation 10(1) of the Conduct Regulations

117. Regulation 10(1)(a) of the Conduct Regulations states: "*A person who is a council member must not direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee*". Regulation 10(2) of the Conduct Regulations states the above provision does not apply to anything that a council member does as part of the deliberations at a Council or committee meeting.
118. By her own admission, Ms Scaffidi had a financial interest with respect to the Perth Fashion Festival. If so, that interest would have remained for the duration of her term following her election on 17 October 2015. Ms Scaffidi may also have had an impartiality interest when she became a committee member of the incorporated bodies associated with the organisation of the Perth Fashion Festival from about 2015 onwards.<sup>205</sup>
119. On 13 October 2016, Ms Battista, the City's then Acting Director, Economic Development and Activation, had a meeting with Ms Harvey-Hanrahan. The purpose of this meeting was for the City to consider sponsoring a Perth Fashion Festival event during the Chinese New Year of 2017 called Windows on the Lunar New Year (event).<sup>206</sup> The event was separate from the Perth Fashion Festival, which was sponsored by the City.<sup>207</sup> The amount that was being sought was \$40,000.00.<sup>208</sup> In her subsequent email to Ms Harvey-Hanrahan dated 24 October 2016, Ms Battista stated that although "*the team here are very supportive of the initiative in principal*", the amount sought was "*un-budgeted for 2016/17*" and "*to deliver it effectively, we simply don't have the time or resources for 2017*". Nevertheless, Ms Battista suggested that the Perth Fashion Festival and the City "*work together*" on a proposal for the event in 2018.<sup>209</sup>

120. Notwithstanding that response, Ms Ragen Haythorpe, the Partnerships Manager for the Fashion Council WA, sent an email to Ms Battista on 2 November 2016 seeking the City’s support for the event to be held in 2017.<sup>210</sup> Ms Battista responded by email dated 10 November 2016, advising that *“the challenges”* for the City sponsoring the event remain: namely, *“timing, (lack of) budget and lack of digital strategy”*. Ms Battista also referred to a meeting that would be taking place on Monday, 14 November 2016 with Ms Harvey-Hanrahan, Ms Scaffidi and herself in which she *“will go through these matters in detail”*.<sup>211</sup>

121. In an earlier email, on 10 November 2016, that Ms Battista sent to Ms Angela Purnat, Ms Scaffidi’s Personal Assistant, she wrote:

*“I am meeting with Mariella Harvey Hanrahan and Kate O’Hara from TPFF this coming Monday, 14 November from 2.00–2.45pm.*

*I suggested – and the Lord Mayor yesterday expressed an interest – in her attending the meeting. Though it is scheduled for my office (and I’m very happy for this to be the case), I expect the Lord Mayor would prefer to have it in her office”*.<sup>212</sup>

122. Shortly before 10 November 2016 (and most likely on 9 November 2016), Ms Battista had received a WhatsApp message from Ms Scaffidi which read:

Ms Scaffidi



*“Update me on where TPFF CNY is please*

*You left off advising me they were asked to finalise a digital strategy*

*Am I hearing correctly no funding?*

*If so no [sic – not] acceptable*

*given your very positive dialogues in meetings*

*I’m thoroughly confused about the mixed messages”*.<sup>213</sup>

123. Regarding this message, Ms Battista gave the following evidence:

*“... if you can explain to the Inquiry, to your understanding, what the purpose of this message was if this was a proposal that the Lord Mayor would ultimately vote on?--- To influence my officers’ recommendation or my recommendation to committee and Council.*

*Why do you say that?---I can’t see any other reason for sending the message. There’s no other outcomes that the Lord Mayor would expect to achieve, I guess except to tell me off. That was my interpretation of it.*

*Had the Lord Mayor sent to you similar messages or communicated in a similar way to you previously in matters that were the responsibility of the Administration?---Yes.*

*And on those occasions when you received similar messages, what was your understanding of the Lord Mayor’s purpose?---To try and have an increased say in what the recommendation to Council would be”*.<sup>214</sup>

124. Ms Scaffidi denied that the purpose of her WhatsApp message to Ms Battista was to influence Ms Battista and her officers' recommendations to Council. Ms Scaffidi also denied that she was in breach of regulation 10(1) of the Conduct Regulations by sending that message. She also maintained it was entirely appropriate for her to have the meeting in the Lord Mayor's office and support the City's sponsoring of the event, notwithstanding she was a committee member of the incorporated association responsible for organising Perth Fashion Festival events and may have had (with the benefit of hindsight) a financial interest at the time.<sup>215</sup>
125. The meeting on 14 November 2016 did take place in Ms Scaffidi's office.<sup>216</sup> In light of Ms Battista's email to Ms Purnat (described above), the Inquiry is of the view that was an appropriate venue. The representatives from the Perth Fashion Festival in attendance were Ms Kate O'Hara, Ms Haythorpe and Ms Margie Tannock (who attended in place of Ms Harvey-Hanrahan<sup>217</sup>). Ms Battista had also asked Mr Ridgwell to attend.<sup>218</sup>
126. Although Ms Battista gave evidence that Ms Scaffidi contributed to the meeting and indicated her support for the City to sponsor the event, she also said there were no discussions which applied pressure to her to provide any support for it.<sup>219</sup> A file note was prepared by Mr Ridgwell which summarised the contents of the meeting. That file note included the following:
- "Discussion was set around 'Windows of the Lunar New Year' (Chinese New Year) a new initiative of Perth Fashion Festival. Annaliese confirmed no budget & limited officer capacity for such an initiative was available. I stated that in its current form a report by Officers was likely to be a recommendation of rejecting the request based on the above capacity constraints, which would not be a good look for either party".<sup>220</sup>*
127. Ms Scaffidi denied that she was attempting to influence the City's officers in their decision-making by her conduct in sending the WhatsApp message to Ms Battista. Instead, she maintained she was *"dialoguing"*. The Inquiry considers that explanation to be unsatisfactory. The Inquiry does not accept Ms Scaffidi's explanation that, even if she had financial and impartiality interests in the matter, her conduct was appropriate because she was *"looking out for the best interests of the City"* and *"advocating for the activation of the City"*.<sup>221</sup>
128. The Inquiry finds it was inappropriate for Ms Scaffidi to canvass support for the sponsorship of the Perth Fashion Festival event at the meeting on 14 November 2016. It was also inappropriate for Ms Scaffidi to send the WhatsApp message to Ms Battista that the decision by the Administration not to fund the event was *"not acceptable"*. Ms Battista had already provided sound reasons to Ms Harvey-Hanrahan why the City would not be able to fund the event in 2017.<sup>222</sup> Ms Scaffidi's behaviour was more serious given that she was the Lord Mayor, she had declared an impartiality interest in the matter in August 2016, and she admitted to having had a financial interest in the matter.

### Mr James Limnios

129. Mr Limnios became a member of the MSIE Committee on 22 October 2015, after he had nominated himself.<sup>223</sup> He held that position for two years and although he re-nominated himself as a member on 24 October 2017, he subsequently withdrew and nominated as a second deputy instead.<sup>224</sup>
130. Mr Limnios was another council member who professed a very limited understanding of when the receipt of gifts gave rise to a financial interest. He said he was not aware a prohibited gift could be a gift if it was one of two or more gifts given to a council member by the same person within a period of six months that were in total worth \$300.00 or more.<sup>225</sup> Mr Limnios said he was not aware of the circumstances in which the receipt of gifts would give rise to a financial interest until he had received legal advice to that effect in the week before he gave evidence to the Inquiry. Nor, he said, was he aware during his time on Council from 2015 to 2018 of the circumstances in which a person could become a closely associated person by giving gifts to a council member. Notwithstanding his professed lack of knowledge of the circumstances giving rise to a financial interest, Mr Limnios agreed that the responsibility of a council member to disclose a financial interest rested with the council member, with assistance from the Governance unit.<sup>226</sup>
131. What is of concern to the Inquiry was the under-valuing by Mr Limnios of tickets he had received to attend functions at the 2015 Perth Fashion Festival.
132. Mr Limnios attended two functions at the Perth Fashion Festival in 2015, for which he received free tickets. One was the opening night on 15 September 2015 and the other was the closing night on 20 September 2015. Gift declaration forms for these functions were retrospectively completed by Mr Limnios on 30 March 2016. For each function, the estimated value of the gift was handwritten as “\$45.00”.<sup>227</sup> The actual value of each ticket was \$200.00.<sup>228</sup> This meant that the combined actual value of the tickets would have made one of them a prohibited gift. The combined total of the declared estimated values, however, meant that one of them only fell within the threshold of a notifiable gift under regulation 12 of the Conduct Regulations.<sup>229</sup>
133. Mr Limnios gave evidence that he arranged for the City’s Administrative Assistant, Ms Cecilia Firth, to ascertain the value of the tickets.<sup>230</sup>
134. If Mr Limnios did not understand when gifts gave rise to a financial interest, it is not surprising that he did not disclose the financial interest he had when Perth Fashion Festival sponsorship applications were subsequently considered at the meetings of the MSIE Committee and the Council that he attended.
135. Mr Limnios did not disclose a financial interest at the Council Meeting on 9 August 2016 or at the MSIE Committee meeting on 23 May 2017. On both occasions his explanation for not making a disclosure was that he did not think it was necessary. At the Council Meeting on 6 June 2017, Mr Limnios did not disclose a financial interest, again agreeing that he did not do so because he did not think he was required to make a disclosure of any interest.<sup>231</sup>

136. The Inquiry finds that if Mr Limnios's second ticket to the Perth Fashion Festival in 2015 was a prohibited gift, he should not have accepted it. The Inquiry notes that the City's policy at the time did not consider such free tickets to be gifts and the Inquiry is therefore not too critical of Mr Limnios for accepting the second ticket. However, as outlined above, that policy changed in March 2016 and council members were required to retrospectively complete gift declaration forms by the end of that month for the receipt of tickets since 1 July 2015.
137. The professed lack of knowledge by Mr Limnios of when gifts created a financial interest is inconsistent with the WhatsApp dialogue between the "Team" on 24 March 2016.<sup>232</sup> It is also inconsistent with his attendance at a Special Council Briefing Session on 9 August 2016, in which council members were briefed on the offering of tickets and when a gift declaration was required.<sup>233</sup> However, the Inquiry is not satisfied to the requisite standard that Mr Limnios did know that he was required to, and deliberately chose not to, disclose a financial interest at the Council Meetings on 9 August 2016 and 6 June 2017 or the MSIE Committee meeting on 23 May 2017.
138. The Inquiry does find Mr Limnios may have had a financial interest with respect to the Perth Fashion Festival after accepting the two tickets to its functions in September 2015. The actual combined value of the tickets (\$400.00) exceeded the prescribed amount of \$200.00,<sup>234</sup> which may have meant the Perth Fashion Festival was to be treated as being closely associated with him pursuant to section 5.62(1)(eb)(i) of the LG Act. Such a financial interest would have remained for the duration of Mr Limnios's then term as a council member.<sup>t</sup> He therefore may have been required to disclose an interest at any Council or committee meeting he attended in which sponsorship applications by the Perth Fashion Festival were considered.<sup>235</sup> As described above, Mr Limnios did not do so at three meetings.
139. The Inquiry does find that Mr Limnios failed to exercise adequate care in determining the estimated value of the two tickets he received to attend the 2015 Perth Fashion Festival, when he completed and signed the two gift declaration forms on 30 March 2016. As described above, these retrospective gift declaration forms were completed to rectify any previous inadvertent failure by council members to comply with their statutory obligations and to prevent those failures from affecting the decision-making functions of the Council in the future.<sup>236</sup> Mr Limnios admitted he was aware that the Administration required the completion of these forms, because of the "new policy" that was being implemented.<sup>237, (u)</sup> It was incumbent on Mr Limnios, as it was for all council members completing these retrospectively operating forms, to ensure the details were accurate. Indeed, the gift declaration forms required the council member concerned to declare, by ticking a box, that in circumstances where the gift had been accepted the information provided in the form was "accurate".

<sup>t</sup> Until the next local government elections on 21 October 2017.

<sup>u</sup> This "new policy" was also the subject-matter of a briefing session for council members on gift and travel declarations conducted by Mr Ridgwell on 23 March 2016.



140. When he arranged for Ms Firth to find out the value of these tickets, Mr Limnios gave her no information as to where he was sitting for the two events or what he thought the value of the tickets may have been. He asked her to seek that information by speaking to the relevant Director who was responsible for the sponsorship negotiations, rather than contacting the organisers of the Perth Fashion Festival. When asked why he did not advise Ms Firth to approach the organisers, Mr Limnios stated he never considered that as *“it wasn’t something that we did independently as Councillors”*.<sup>238</sup>
141. After giving evidence that for these events it was *“not strange”* for him to be provided with free drinks and food, that he sat in the front row and that he was provided with a bag with a lot of ladies’ products,<sup>239</sup> Mr Limnios agreed that the value of \$45.00 for each ticket appeared to be a little low and, with the benefit of hindsight, the estimate he had declared *“wasn’t very close to the actual value”*.<sup>240</sup> The Inquiry is of the view that hindsight would not have been necessary for Mr Limnios had he exercised adequate care to ensure an accurate estimate for the tickets’ value was recorded in the two gift declaration forms he signed.
142. Mr Limnios’s failure to exercise adequate care meant the City’s Gift Register did not record an accurate estimate of the value of these tickets. Such a value may have shown he had a financial interest with respect to any sponsorship applications by the Perth Fashion Festival after that date and until the City’s local government elections on 21 October 2017.
143. The Inquiry further finds that no blame can be attributed to the City’s Administration for failing to advise Mr Limnios he may have held a financial interest in the Perth Fashion Festival’s sponsorship applications made after March 2016. That is because, based on the ticket values Mr Limnios provided, the City’s Gift Register would not have recorded Mr Limnios as having gifts of a total amount of \$200.00 or more from the Perth Fashion Festival, which might otherwise have provided a link to section 5.62(1)(ea)(i), (ea)(ii) and/or (eb)(i) of the LG Act.

#### Ms Janet Davidson

144. The evidence before the Inquiry establishes that Ms Davidson, a very strong supporter of the Perth Fashion Festival, significantly under-valued the tickets she received for the 2015 Perth Fashion Festival on a gift declaration form she retrospectively completed sometime in late March 2016. Ms Davidson may have deliberately under-valued the price of those tickets so she would not have to disclose a financial interest in subsequent Perth Fashion Festival sponsorship applications. Her participation in the Council’s consideration of the Perth Fashion Festival sponsorship applications in 2016 and 2017 had a significant beneficial outcome on the amount of sponsorship provided to the Perth Fashion Festival in those two years and to the detriment of another event sponsored by the City in 2017.
145. Ms Davidson gave evidence that until March 2016 she was unaware that two or more gifts given to a council member by the same person within a period of six months would be defined as a prohibited gift if the total worth was \$300.00 or more.<sup>241</sup> Ms Davidson had no recollection of being aware of the circumstances in which someone would be defined as a closely associated person with a council member.<sup>242</sup>

146. Ms Davidson agreed she always voted in favour of sponsoring the Perth Fashion Festival and that she was a council member who strongly supported it.<sup>243</sup> Ms Davidson stated that she *“would have attended probably all of”* the annual Perth Fashion Festival events and she agreed receiving up to 20 free tickets annually.<sup>244, (v)</sup>
147. As described above, on 23 March 2016 there was a briefing session conducted with council members by Mr Ridgwell which related to gift and travel declarations.<sup>245</sup> Ms Davidson attended that briefing session. She referred to it in a message she sent to the WhatsApp message group titled *“Team”* the following day. The exchange of messages thereafter made it clear that the previous acceptance of tickets to City sponsored events by a council member could create a financial interest.<sup>246</sup>
148. Ms Davidson accepted it was important that the gift declaration forms retrospectively completed by the end of March 2016 had a value for the gift that was *“as accurate as you could put in there”*. After agreeing a council member could go to the organiser and ascertain the value of any tickets provided,<sup>247</sup> Ms Davidson was asked:
- “And indeed, that’s what ought to be done for tickets if a Councillor wasn’t sure of an accurate price of that ticket?---Yes”.*<sup>248</sup>

#### Gift declarations: 2015 Perth Fashion Festival

149. Ms Davidson retrospectively completed only one gift declaration form for the four events she attended during the 2015 Perth Fashion Festival.<sup>249</sup> For one of those events, she indicated she had received two tickets.<sup>w</sup> The estimated value of the gift that she wrote on the form was *“\$100+”*. The actual total value of these five tickets was between \$900.00 and \$920.00.<sup>250</sup> When asked how much more than \$100.00 does *“\$100+”* mean, Ms Davidson responded that she had no idea. She admitted it was *“an under-value”* and that it would have been easy enough for her to determine the price of the tickets by contacting the organisers. When advised of the actual total value of these five tickets, Ms Davidson agreed that she had *“hopelessly under-estimated”* their value. She denied, however, she deliberately did that to prevent any of the tickets becoming prohibited gifts under regulation 12(1) of the Conduct Regulations. Ms Davidson agreed that the value she had stated entitled her to vote on future sponsorship applications made by the Perth Fashion Festival. She also agreed that by March 2016 she was aware that if the value cited was considerably more then she may well have had an interest that needed to be declared.<sup>251</sup> She agreed that when she ticked the box *“yes”* to the question *“Are they [the organisation/person offering the gift] likely to be the subject of a future decision of the City”* on the gift declaration form it was almost inevitable the organisers of the Perth Fashion Festival would seek a further sponsorship from the City for their 2016 event.<sup>252</sup>

v Ms Davidson received 20 tickets to the 2012 Perth Fashion Festival: Email, M Harvey-Hanrahan to A Smith, 16 February 2018.

w In the box on the gift declaration form titled *“Date Gift was Offered”*, Ms Davidson had written, *“17, 18, 19 x 2, 20/9/15”*. *“19 x 2”*, which could either mean she attended two events on that date or received two tickets to one event. As there was only one Perth Fashion Festival function held on 19 September 2015 (*“WA Designer Runway 2”*), the Inquiry finds Ms Davidson received two tickets to this event. This also accords with Ms Davidson's evidence: Transcript, J Davidson, public hearing, 27 September 2019, p 22.

150. Ms Davidson incorrectly dated the gift declaration form as “Sept 2015” instead of the correct date being sometime in late March 2016. Ms Davidson’s explanation was because this was, “*the date when the event took place*”.<sup>253</sup>

#### Gift declarations: 2016 Perth Fashion Festival

151. On 22 March 2016, Ms Davidson completed another gift declaration form regarding her attendance at the Perth Fashion Festival Awards at the State Theatre on the same date.<sup>254</sup> The estimated value of the gift was stated as “\$50.00”. Again, Ms Davidson admitted she did not make inquiries to find out the exact value of the ticket and said she had no idea why she did not do that.<sup>255</sup> When Ms Davidson was advised that Ms Scaffidi had attended the same event and declared her ticket was valued at \$180.00,<sup>256</sup> she conceded if that value was correct, her estimate was somewhat short of the actual value. Ms Davidson accepted it was unlikely she would have given a speech on behalf of the City if Ms Scaffidi had attended the event.<sup>257</sup>
152. Ms Davidson attended one event of the Perth Fashion Festival in 2016; the “*Future Runway Event*” on 23 September 2016. She completed a gift declaration form purportedly on the same date<sup>x</sup> and the estimated value of the ticket was typewritten as “\$49.88”.<sup>258</sup> In an email from Ms Davidson to Ms Firth dated 25 September 2016, Ms Davidson asked Ms Firth to check with Ms Purnat about the cost of her ticket.<sup>259</sup> On 27 September 2016, Ms Purnat responded, stating that the “*Ticketmaster*” price was “\$49.88 ea”.<sup>260</sup>
153. Ms Davidson admitted she had received a VIP ticket to this event and agreed that if VIP tickets were being charged at that amount the Perth Fashion Festival would have been running at a substantial loss.<sup>261</sup> The actual value of this ticket was \$160.00.<sup>262</sup> Ms Davidson agreed that if she had carefully considered the accuracy of the ticket price provided to her, she would have made further inquiries and followed it up.<sup>263</sup> The Inquiry also notes that if Ms Davidson correctly followed the recommendations tabled on the reverse of this gift declaration form she may have declined the ticket as a “*Gift of Influence*”.<sup>264</sup>
154. The total estimated value that Ms Davidson placed on the seven tickets she had received for Perth Fashion Festival events from September 2015 to September 2016 was \$199.76. Although the gift declaration form cited “\$100+” as the combined value of five tickets, the City would have recorded the amount of “\$100.00” on its Gift Register.<sup>265</sup> This meant, according to the City’s records, Ms Davidson was entitled to vote on any sponsorship applications by the Perth Fashion Festival. However, the actual combined value of these tickets was between \$1,240.00 and \$1,260.00. Ms Davidson’s acceptance of the ticket to the second of the four events she attended in September 2015 may therefore have made the Perth Fashion Festival a closely associated person with her.<sup>266</sup>

x Ms Davidson dated the gift declaration form “23/9/16”. It is more likely she signed the form on or after 27 September 2016 given the email exchanges between C Firth and A Purnat on 27 September 2016 and the handwritten notation that appears at the bottom of the form “*Received from CR 29/9*”.

After Ms Davidson accepted the ticket for the event on 23 September 2016, the Perth Fashion Festival may again have become closely associated with her; this time under section 5.62(1)(eb)(i) of the LG Act. However, after March 2016, Ms Davidson participated in three deliberations of sponsorship applications by the Perth Fashion Festival and, on each occasion, sought to increase the officer recommended sponsorship amount.

155. The Inquiry finds that Ms Davidson did not provide accurate estimated values for the tickets she declared from the Perth Fashion Festival on three gift declaration forms and she could not give a satisfactory reason for providing these inaccurate values. By ticking the box on each of these forms that the information was “*accurate*” and “*will not create a future conflict of interest*” for her, Ms Davidson appears to have made a declaration that was incorrect. At the time, she was a Justice of the Peace (and a longstanding one) and should have been well aware of the importance of such declarations,<sup>267</sup> highlighting the seriousness of her conduct.

[Marketing, Sponsorship and International Engagement Committee meeting:  
26 July 2016](#)

156. At the MSIE Committee meeting on 26 July 2016, Ms Davidson deputised for Mr Limnios. The meeting considered the sponsorship application for the 2016 Perth Fashion Festival. Notwithstanding Mr Yong declaring a direct financial interest for the Perth Fashion Festival item on the basis that he had attended an event, Ms Davidson made no disclosure of a financial interest, although she had declared a direct financial interest for another sponsorship application and left the meeting when the Committee considered that application.<sup>268</sup> In her evidence, Ms Davidson accepted she also had a financial interest with the Perth Fashion Festival, “*on the basis that she had received some gifts*”. She denied that her failure to declare that interest was deliberate. It was put to her that she did not declare an interest, because she was turning a blind eye to what she was required to do. Ms Davidson denied that, although she was unable to offer any alternative explanation.<sup>269</sup>
157. At the meeting, Ms Davidson moved an amendment to the officer recommendation for the total sponsorship amount to be increased by \$30,000.00. That motion lapsed for want of a seconder. The original motion was then put and carried, with the support of Ms Davidson.<sup>270</sup>
158. On the basis of the evidence described above, Ms Davidson may have deliberately chosen not to disclose a financial interest in the Perth Fashion Festival so she could participate in the decision-making process and put forward a motion to amend, seeking an increase in the recommended sponsorship amount.

### Ordinary Council Meeting: 9 August 2016

159. The Council considered this sponsorship application at its Ordinary Council Meeting on 9 August 2016. As already described, this meeting took place immediately after a Special Council Briefing Session in which the offer of tickets, and gift declarations, were explained to council members, including Ms Davidson.<sup>271</sup> Notwithstanding a large number of disclosures of financial, proximity and impartiality interests at that meeting (including two direct financial interest disclosures by Ms Davidson for other items), she did not disclose a financial interest in the Perth Fashion Festival.<sup>272</sup> The officer and MSIE Committee recommendation was that Council approve a total sponsorship of \$269,315.91. However, Ms Davidson moved an alternate motion that the total sponsorship for the Perth Fashion Festival be increased by \$30,000.00. That alternate motion was put and carried four votes to three votes.<sup>273</sup>

160. Ms Davidson's explanation for not declaring a financial interest at this meeting was, *"I thought I was perfectly in order"*. She was then asked the following questions:

*"And I just want to know how, how could you possibly think that?---Well, I did do and that was it, I didn't declare."*

*But how could you possibly think that?---Well, that was my thinking at the time."*

*And I'm asking you how? If that really was your thinking, how could it possibly be because the theory I've got is that that wasn't your thinking. You're saying it was so now I'm asking you, how could it possibly be your thinking?---Well, it was."*

*I know that and I'm asking you how, how could it be?---No idea. That's obviously the way that I viewed it and did not declare."*

*You didn't want to declare?---It wasn't a case of that, no".<sup>274</sup>*

On the basis of the evidence, Ms Davidson may have again deliberately chosen not to disclose a financial interest in the Perth Fashion Festival so that she could participate in the decision-making process and move an alternate motion that increased the recommended sponsorship amount.

### Ordinary Council Meeting: 6 June 2017

161. The Perth Fashion Festival's sponsorship application for its 2017 event was considered at the Ordinary Council Meeting on 6 June 2017. Again, Ms Davidson did not declare a financial interest in the Perth Fashion Festival. This was despite other council members declaring various interests with respect to items.<sup>275</sup>

162. At this meeting, Ms Davidson successfully moved a motion to amend that the Triennial Event sponsorship of \$125,000.00 annually to the Hopman Cup be reduced by \$25,000.00 to \$100,000.00. The amended motion was put and carried which meant for each of the next three years the Hopman Cup was to receive \$25,000.00 less than the City's officers and MSIE Committee had recommended.<sup>276</sup>

163. The next item on the agenda was the Perth Fashion Festival sponsorship application. Again, Ms Davidson moved a motion to amend that the sponsorship amount for the Perth Fashion Festival be increased by \$25,000.00; from \$230,000.00 to \$255,000.00. That motion to amend was passed five votes to three votes. The amended motion was then put and carried, which meant that the Perth Fashion Festival received \$25,000.00 more than the City officers and the MSIE Committee had recommended.
164. At the meeting, Ms Davidson's initial reasoning for the increase was that, *"it is a Council prerogative to make such a decision"*. In response, Mr Ridgwell stated, *"the reason needs to be greater enhanced and substantiated, in its response. It can't just be a prerogative of Council. We'll need a reason in accordance with [the] Act as required"*.<sup>277</sup> When subsequently pressed at the meeting, Ms Davidson stated the reason was, *"that TPFF delivers the outcomes that support a greater increase in appropriate sponsorship"*.<sup>278</sup> The Inquiry finds that reason lacked merit and could not be objectively substantiated if the Officer Assessment Report<sup>279</sup> was taken into consideration. This report was prepared with the oversight of an assessment panel comprising of seven City officers (including two Directors) across three Directorates.<sup>280</sup> It stated the following in its concluding comments:

*"The assessment panel is instructed to benchmark all City sponsorships in their assessment obligations and when comparing the Perth International Arts Festival, FRINGE WORLD Festival, Perth Convention Bureau and Mastercard Hopman Cup, these sponsorships are considered to generate a higher return on investment and which is commensurate with the investment put into them by the City.*

...

*The panel has unanimously agreed to provide funding under the Annual Event Sponsorship program with \$230,000 considered appropriate in comparison to other sponsorship's in the City's portfolio and the expected return from the Festival"*.<sup>281</sup>

165. Similar observations had been made in the Officer recommendation for the sponsorship application by the Perth Fashion Festival the previous year:

*"The panel unanimously agreed that the event does not provide optimum level of commercial returns to the City when compared to its other major partnerships including those detailed above."*<sup>y</sup>

...

*The assessment panel believes that the Festival could assist more with activation for City retailers and driving economic returns to local businesses. Significant elements of the events are ticketed or exclusive for VIPs only"*.<sup>282</sup>

y These partnerships were with Fringeworld 2016 (with a return on investment of 1:801), Perth Chinese New Year Fair 2016 (1:181), Pride Festival 2016 (1:181) and PIAF 2016 (1:156). By comparison, the return on investment for the recommended level of sponsorship for the 2016 Perth Fashion Festival was just 1:28: Minutes, MSIE Committee meeting, 26 July 2016, p 11.

166. Ms Davidson said in her evidence that at some stage (although she could not recall when) she had sought advice from the Governance unit and did not declare a financial interest in the Perth Fashion Festival as a result of what she was told.<sup>283</sup> The Inquiry subsequently checked the audio of Council Meetings where Ms Davidson might have had this conversation. As has already been noted, from the audio of the Council Meeting on 6 June 2017, and after Ms Scaffidi had declared her financial interest in the Perth Fashion Festival, Ms Davidson can be heard asking, *“Could we just check with Governance in terms of TPF?”* Mr Ridgwell answers, *“Through the Chair, the only individual assessed is the Lord Mayor in her capacity as a patron”*.<sup>284</sup>
167. The Inquiry is of the view, however, that this would not have mitigated or excused Ms Davidson from not declaring any financial interest she may have had in the Perth Fashion Festival. That is because her completed gift declaration forms for tickets received from the Perth Fashion Festival in 2015 and 2016 declared a total value of \$199.76 for those tickets. That was the amount the City would have recorded in its Gift Register. This amount fell under the notifiable gift amounts of \$200.00 or more with respect to section 5.62(1)(ea)(i) or (ii) or section 5.62(1)(eb)(i) of the LG Act. Based on its records, the City would be unaware if Ms Davidson did, in fact, have a financial interest requiring disclosure. The blame for that lies entirely at the feet of Ms Davidson. Her answer to the following question recognises that:
- “Once more, there’s a trust placed by the City in Councillors properly and accurately recording details on the Gift Declarations, isn’t there?---Correct”*.<sup>285</sup>
168. However, the Inquiry notes that Ms Davidson was included in the email exchanges between Mr Yong and Mr Ridgwell on 10 October 2016 in which Mr Ridgwell inadvertently provided advice that only those council members who had received a gift over \$200.00 in value in the previous 12 months were required to declare a financial interest.<sup>286</sup> Ms Davidson had no recollection of reading this email. Although in her evidence, when referring to council members, she stated, *“our brains were all in the same direction because we didn’t declare”*.<sup>287</sup>
169. The Inquiry finds that if Ms Davidson had read this email and followed the advice of Mr Ridgwell then she would have had a reasonable excuse for failing to disclose her financial interest when the sponsorship application for the Perth Fashion Festival was next considered in June of the following year. That is because the only ticket she received from the Perth Fashion Festival in the 12 months prior to the Council Meeting on 6 June 2017 had an actual value of \$160.00.<sup>288</sup> The Inquiry must also consider whether this was the dialogue that Ms Davidson was referring to when she recalled discussing the disclosure of financial interests with Mr Ridgwell. Although she believed this dialogue was after the Council Meeting on 9 August 2016, she did not know whether it was in oral discussions or by email.<sup>289</sup> Notwithstanding the Inquiry’s findings with respect to Ms Davidson’s non-disclosure of a financial interest at the Council and committee meetings in 2016 (which both took place prior to Mr Ridgwell’s email to Mr Yong), the Inquiry is not satisfied, to the required standard, that Ms Davidson, knowing that she may have been required to do so, did not disclose a financial interest at the Ordinary Council Meeting on 6 June 2017.



### Mr Jim Adamos

170. Mr Adamos's understanding of the disclosure requirements for gifts and financial interest was relatively sound, although it was his understanding that council members only had to declare a financial interest for a period of 12 months after that financial interest had arisen.<sup>290</sup> No criticism is made of Mr Adamos for this misunderstanding as he was included in the email exchanges between Mr Yong and Mr Ridgwell on 10 October 2016, in which Mr Ridgwell inadvertently provided advice that only those council members who had received a gift over \$200.00 in value in the previous 12 months were required to declare a financial interest.<sup>291</sup>
171. Mr Adamos accepted it was important that an accurate value be given for a gift when gift declaration forms were completed. He relied on Ms Firth to assist him in determining the value of the gifts that he had received. He stated he did that because he was not at the City full-time and, as he had a job, it was just *"the time factor"*.<sup>292</sup> Based on the exchange of messages shared by the WhatsApp *"Team"* on 24 March 2016, Mr Adamos agreed that he would have been aware of the matter of the acceptance of free tickets and potential conflicts arising from future consideration of sponsorship applications by those who had provided the tickets.<sup>293</sup>
172. Six months after these WhatsApp messages, and following two Council briefing sessions regarding gift declarations on 23 March 2016 and 9 August 2016, Mr Adamos directly organised with Ms Harvey-Hanrahan in September 2016 to be given two tickets to attend the 2016 Perth Fashion Festival.<sup>294</sup> When Ms Firth asked him for the value of each ticket to be recorded on the gift declaration forms, Mr Adamos responded, *"I think the website said \$69.00"*.<sup>295</sup>
173. Mr Adamos subsequently completed and signed two gift declaration forms for these two functions. One form was for his ticket to attend the *"International Runway: Whole9Yards Event"* on 22 September 2016. The estimated value of the ticket was typewritten as *"\$69.00"*.<sup>296</sup> Mr Adamos signed and dated the form 22 September 2016. The actual value of this ticket was \$180.00.<sup>z</sup>
174. The other gift declaration form was for the ticket he received for the *"Future Runway Event"* held on 23 September 2016. The estimated value of this ticket was typewritten as *"\$69.00"*.<sup>297</sup> Mr Adamos signed and dated this form 22 September 2016. The actual value of this ticket was \$160.00.<sup>aa</sup>

z The Inquiry was able to identify this value from the complimentary ticket allocation order form that Ms M Brennan, a ticketing manager with the Fashion Council WA, provided to Ms Scaffidi by email on 2 August 2016. Tickets for events at the Fashion Paramount venue at Perth Concert Hall (which included the event Mr Adamos attended) were listed as costing \$180.00 each. This included a *"VIP function"* which commenced one and a half hours before the event. Email, M Brennan to L Scaffidi, 6.11 pm 2 August 2016; Form, Fashion Council WA ticket allocation, undated.

aa The Inquiry was able to identify this value from the complimentary ticket allocation order form that Ms M Brennan, a ticketing manager with the Fashion Council WA, provided to Ms Scaffidi by email on 10 August 2016. Tickets for the *"Future Runway Event"* at Perth Concert Hall that Mr Adamos attended were listed as costing \$160.00 each. This included a *"VIP function"* which commenced one and a half hours before the event. Email, M Brennan to L Scaffidi, 6.11 pm 2 August 2016; Form, Fashion Council WA ticket allocation, undated.

175. Mr Adamos agreed that council members would normally have very good seats at *Perth Fashion Festival* events. He also agreed they were invited for pre-show drinks and food. He also stated that there was “*definitely a price range*” in the tickets to these events.<sup>298</sup> Mr Adamos accepted that the total estimated value of the tickets that he had declared, being \$138.00, made the tickets a notifiable gift under regulation 12(1) of the Conduct Regulations, although their combined actual value was above \$300.00.<sup>299</sup> Mr Adamos had earlier given evidence that he understood a council member had a financial interest, “*if you’d had any kind of benefit or gift or you were advantaged in some financial way that was over \$300*”.<sup>300</sup>
176. Mr Adamos was shown the table that appeared at the back of the two gift declaration forms he had completed. This table was titled “*Declaring and Managing Gifts and Benefits – Elected Members*”. It provided various examples of gifts to council members with recommendations to either “*decline*” or “*accept*” the gift.<sup>301</sup> Mr Adamos’s evidence was that he did not use this table to assist him when completing the forms. From looking at the table during his evidence, he agreed each of the tickets he had received from *Perth Fashion Festival* would be most accurately described as a “*Gift of Influence*” for which the recommendation was to decline.<sup>302</sup>
177. The Inquiry finds that Mr Adamos did not provide an accurate estimated value of the tickets he had received from Ms Harvey-Hanrahan to attend the two events of the *Perth Fashion Festival* in 2016, and he did not provide a satisfactory explanation for doing so. The Inquiry finds it would have been a simple exercise for him to contact Ms Harvey-Hanrahan to ascertain the actual value of these tickets when Ms Firth asked him for their value for the gift declarations. Alternatively, he could have asked Ms Firth to contact Ms Harvey-Hanrahan. To simply rely on his recollection that the website said “\$69.00” was inadequate, particularly when council members by this stage were aware they needed to accurately complete gift declaration forms for free tickets they had received to City sponsored events. Mr Adamos should have known that the tickets he received (which included pre-event “*VIP*” access to complimentary drinks and food and prime seating for the events) would place his tickets in the upper range of ticket prices. At best, he was naive in believing each ticket was valued at only \$69.00.
178. The combined value of these tickets may have made the second ticket a prohibited gift from a person “*who it is reasonable to believe is intending to undertake an activity involving a local government discretion*”.<sup>303</sup> If so, Mr Adamos should not have accepted it. By accepting this ticket, the *Perth Fashion Festival* may also have become a closely associated person with Mr Adamos pursuant to section 5.62(1)(eb)(i) of the LG Act. This would have required Mr Adamos to declare a financial interest at the Council Meeting he attended on 6 June 2017, which considered a sponsorship application by the *Perth Fashion Festival*. He did not.<sup>304</sup>
179. Mr Adamos’s incorrect belief that a council member’s financial interest in a matter need only be disclosed for 12 months from the date the financial interest arose would not provide him with a reasonable explanation for not disclosing such an interest. That is because this Council Meeting was conducted less than nine months after Mr Adamos had received the tickets.

180. The Inquiry further finds that no blame can be attributed to Mr Ridgwell or the City's Administration for failing to determine that Mr Adamos had a financial interest in the Perth Fashion Festival's sponsorship application in 2017. Based on the ticket values Mr Adamos provided, the City's Gift Register would not have recorded Mr Adamos as having gifts of a total amount of \$200.00 or more from the Perth Fashion Festival. Were it otherwise, they may have fallen under the provisions of section 5.62(1)(eb)(i) of the LG Act.
181. The responsibility for the under-valued amount of the tickets in the City's Gift Register was solely Mr Adamos's. By September 2016, council members had a clear understanding of the importance of accurately stating (or estimating) the value of tickets to City sponsored events. Mr Adamos did not do so with respect to the two tickets he had requested from Ms Harvey-Hanrahan.

#### Concluding observation

182. There is a further onus on a council member completing a gift declaration form to ensure its details are as accurate as possible. In circumstances where the gift has been accepted, the council member is required to declare that the information within the form is "*accurate*". The words "*I declare*" are in bold type and underlined. The Inquiry finds that some council members, when completing these forms, failed to appreciate the significance of this declaration.

### City of Perth's management of financial interests related to the Perth Fashion Festival

#### Mr Mark Ridgwell

183. Mr Ridgwell was the Manager, Governance for the City from October 2013. He held that position during the period of the Inquiry's Terms of Reference. During that period, he initially reported to Mr Robert Mianich (Director, Corporate Services) until about July 2017 when, through a re-structure, he reported to the CEO, Mr Mileham.
184. The Inquiry notes that the workload for Mr Ridgwell was clearly significant. His evidence was that he worked 50-55 hours per week, including weekends. When asked whether he was able to cope with his workload, Mr Ridgwell responded, "*I tried to, as best to my abilities*". Mr Ridgwell acknowledged that the legislation at the time relating to gifts was "*quite complex and changing*". Again, he stated that he tried to understand the legislation, "*to the best of my abilities*".<sup>305</sup>
185. Mr Ridgwell, correctly in the Inquiry's view, believed it was the responsibility of the individual council member to determine whether he or she had a financial interest in a matter, although the Governance unit would provide support and assistance.<sup>306</sup>
186. However, Mr Ridgwell gave examples where the Governance unit would not always be proactive in a matter in which a council member may have a financial interest. For example, the Governance unit would not necessarily question the value of a gift that had been declared on a gift declaration form by a council member. Although Governance would, if requested, assist a council member with determining the value of the gift to be declared on a form, once a value had been declared that would not be questioned.<sup>307</sup>

187. Although Mr Ridgwell had an overall adequate understanding of the legislative provisions relating to gifts and financial interests, he admitted that at some stage he held the mistaken understanding that after a financial interest arose, there was only an obligation to disclose that interest for 12 months. He subsequently received legal advice from the City’s lawyers that the financial interest was, in fact, for the duration of the council member’s term of office.<sup>308</sup>
188. Mr Ridgwell was able to recall the Special Council Briefing Session to council members regarding the offer of tickets he conducted on 9 August 2016.<sup>309</sup> He recalled providing an overview to those council members in attendance regarding disclosures of interests required at the Ordinary Council Meeting commencing after the session and at all future meetings as well.<sup>310</sup>
189. The Council minutes for the Ordinary Council Meeting on 9 August 2016 show that there were disclosures of financial interests, proximity interests and an impartiality interest for various items by six of the seven council members present.<sup>311</sup> However, the only council member who declared a financial interest for the item concerning the sponsorship application by the Perth Fashion Festival was Mr Yong.
190. As to whether any other council member should have declared a financial interest with respect to that item, Mr Ridgwell was shown a letter dated 7 June 2016 from Mr Mileham to Mr Brendan Peyton, an officer attached to the Investigations Unit – Governance at the Department.<sup>312</sup> Mr Ridgwell recalled assisting in the preparation of that letter,<sup>313</sup> which was applying for Ministerial approval for council members who had disclosed financial interests in matters to participate in meetings relating to those matters.<sup>314</sup> The letter nominated four council members (including Mr Yong) as having a financial interest in the Perth Fashion Festival “for their full length as serving members,” as they had accepted tickets which were gifts from the Perth Fashion Festival.<sup>315</sup> Mr Ridgwell agreed that if this part of the letter was correct, then declarations of such an interest should have been made by all four of those council members rather than just Mr Yong at the meeting on 9 August 2016.<sup>316, (ab)</sup> As to whether the Administration bore any responsibility for a potential oversight by those council members in failing to declare a financial interest with the Perth Fashion Festival at the meeting, Mr Ridgwell responded as follows:

*“This is a very difficult one in this regard because if we take, as Administration, the responsibility of this and this has been – I use the example of other officers that have – we have a transfer of officers, so transfer of knowledge, it needs to be on the individual and even to the extent that we were providing information and tools to Elected Members, and I’ve got to say also, the same rules were applying to staff as well, is, it’s your responsibility so if you miss an element in respect to this process, then the responsibility is on you as an individual”.<sup>317</sup>*

ab No Ministerial approval was granted to any council member who had a financial interest regarding the Perth Fashion Festival.

191. Mr Ridgwell was later questioned by the Commissioner:

*“But responsibility doesn’t need to be exclusive, does it?---No.*

*And responsibility must depend on the circumstances, mustn’t it, in particular what you know?---Correct, yes.*

*So that if a member of staff knows something of this kind and does not do something about it when an opportunity presents itself, then in those circumstances, would you not say that the staff member has some responsibility to do something?--  
-If you recalled a disclosure of interest at the time or that we introduce that process, and that may be a recommendation from the Inquiry Panel that we do that.*

*Let’s take this instance here, and I’m not being critical of you or anyone else on your staff for that matter, but if a staff member, for example, had access to this information and therefore knew about it, then that person ought to have done something about it, rather than just letting it through to the keeper, wouldn’t you agree?---Yes, I absolutely agree and as officers of the City, we do try to be proactive in informing people about anything, but I can see in this instance here, this has been missed, from what I can see.”<sup>318</sup>*

192. Notwithstanding Mr Ridgwell’s acknowledgement that the Administration had potentially failed to inform council members of a financial interest at the meeting, no finding will be made against the City for failing to do so in this instance. The letter from Mr Mileham to Mr Peyton cited 49 financial interests involving all nine council members and referred to nine entities. It could not be expected that Mr Mileham or Mr Ridgwell or anybody else from Administration would be able to recall each of those financial interests. The Inquiry notes the considerable amount of work that would have been undertaken by the Administration in the preparation of this letter and its efforts to avoid the City having an insufficient number of council members to form a quorum for the consideration of future sponsorship applications.
193. In the absence of any evidence that a council member specifically sought assistance from the Administration regarding any financial interest he or she may have had with the Perth Fashion Festival during the Ordinary Council Meeting on 9 August 2016, the Inquiry finds that the briefing session given to council members immediately before the meeting had sufficiently put them on notice regarding any declarations they needed to make at that meeting.
194. The Inquiry finds Mr Ridgwell undoubtedly had a very heavy workload and that he did his best to perform his job in a competent manner. The Inquiry also acknowledges the efforts undertaken by Mr Ridgwell to educate council members as to their disclosure obligations regarding the receipt of tickets to City sponsored events. Given the complexity of the legislation, this would not have been an easy task. However, the poorly worded email he sent on 10 October 2016 to Mr Yong and other council members that inadvertently conveyed inaccurate information was likely a reason why Mr Yong (and possibly other council members) failed to declare financial interests they had at subsequent Council and committee meetings. The relevant email exchange between Mr Yong and Mr Ridgwell is described earlier in this Section.

195. Mr Ridgwell accepted that the correct answer to Mr Yong's question as to whether the disclosure of financial interests by council members had to be for the balance of their terms was "yes".<sup>319</sup> Although Mr Ridgwell had an initial view that the period of time was only 12 months, by 7 June 2016 (the date of the letter from Mr Mileham to Mr Peyton), he would have understood that a council member's financial interest in a matter was maintained "*for their full length as serving members*".<sup>320</sup> Mr Yong's email was sent to Mr Ridgwell on 10 October 2016.<sup>321</sup>
196. Mr Ridgwell's explanation for his response was, "*I think I may have interpreted that to be for tickets going forward, is what it is*". Mr Ridgwell conceded his email could be read by a council member as meaning he or she only had to declare a financial interest if the ticket or gift creating that financial interest was received in the previous 12 months.<sup>322</sup> That concession was rightly made.
197. However, the Inquiry accepts Mr Ridgwell's explanation that his quick response to the question meant that he was probably in a meeting at the time and that insufficient attention was given to what it was Mr Yong was seeking clarification.<sup>323</sup> In light of the surrounding circumstances, the Inquiry is not too critical of Mr Ridgwell for sending that email. Nevertheless, it is clear some council members may have misunderstood their obligation to disclose financial interests by relying on that email.

#### Mr Martin Mileham

198. Mr Mileham was appointed as Acting CEO of the City on 20 January 2016. On 2 October 2016, he was appointed on a permanent basis. He was still the CEO for the City when the Council was suspended on 1 March 2018.
199. In his evidence, Mr Mileham displayed a good understanding of gift declarations and the circumstances in which financial interests may arise from receiving gifts. His understanding of his responsibilities when receiving gift declaration forms from council members was not so good. Mr Mileham, like many other witnesses before the Inquiry, believed the legislation relating to financial interests was "*overly complex*".<sup>324</sup>
200. Mr Mileham was responsible for signing the elected member gift declaration forms that were required to be retrospectively completed by council members by the end of March 2016. Those forms related to all tickets received by council members for City sponsored events since 1 July 2015. The evidence before the Inquiry was that a number of these forms had not been fully completed and/or had estimated values for the gift that were noticeably inaccurate. The question requiring the Inquiry's determination is whether Mr Mileham, by signing these incomplete and/or inaccurate gift declaration forms and forwarding them onto the Governance unit, was performing his duties in a proper manner.

201. As to these gift declaration forms, Mr Mileham was asked the following questions:

*“What was your job in relation to that, because you’ve appeared to have signed off on them at the bottom of the page?---To receive them, in effect.*

*Anything else?---My view was that at that time my job was to, as I said, do a sweep and see what had transpired over that time, to receive and log those documents. So what’s the next step? I didn’t see my job, if you’re asking that question, of testing their veracity per se, but at least getting the first stage of getting them declared.*

*Why didn’t you regard it as your job of testing the veracity of the forms?---I would call it an audit process as opposed to a true quality check, quality assurance process. It’s not my role, not the CEO’s role to, for want of a better term, police what people are declaring as the truth.*

*Whose role then would that be?---Policing?*

*Yes, making sure what’s completed on these Gift Declaration Forms is accurate and full, that all the required details have been completed?---The Elected Members, with guidance and assistance where appropriate”.<sup>325</sup>*

202. Mr Mileham considered it would only be “germane” if the form left out matters that were important to the actual declaration itself. He identified those matters as being the quantum, the date and the provider.

203. Mr Mileham accepted that the information provided on the retrospective gift declaration forms was going to be used by the City to determine if there were any interests that the council members needed to disclose.<sup>326</sup>

204. Mr Mileham was questioned as to why he signed the seven gift declaration forms retrospectively completed by Ms Scaffidi on 23 March 2016 that had failed to answer the following questions:

- *“Is this the first gift you have been offered by this person/organisation?”*
- *“Who will benefit from acceptance of the gift?”*
- *“Are they [the organisation/person offering the gift] likely to be the subject of a future decision of the City?”<sup>ac</sup>*

205. When questioned by the Commissioner as to why he would sign off on a form before it was completed, Mr Mileham answered, *“As I’ve said, in my view it offers sufficient information for our purposes and it was presented in the absence of any such form or declaration in the past, so---”.<sup>327</sup>*

ac For example, Form, Elected member gift declaration, L Scaffidi, 23 March 2016.



206. Underneath the section for the CEO's signature and date on the gift declaration form was the heading, *"STEP 4 – Forward Completed Declaration form to the Governance Unit"*. After agreeing that this step was his job, Mr Mileham was asked by the Commissioner:

*"So when you read that as you signed it, what did you think 'completed declaration form' meant?---From my perspective, Governance would---*

*What did you think it meant, those words?---The form sufficiently complete with the information.*

*So you're saying to me that even though it was incomplete, it was completed?---Sufficiently for our purposes".<sup>328</sup>*

207. The Inquiry does not accept Mr Mileham's assertion that it was simply his job to receive the gift declaration forms and not to conduct a *"true quality check"*. Nor does the Inquiry accept that the seven gift declaration forms submitted by Ms Scaffidi were sufficiently completed for the City's purposes. The questions left unanswered by Ms Scaffidi were necessary for the determination of a future financial interest that may arise. Mr Mileham gave evidence that this was a reason why the council members were requested to complete the gift declaration forms retrospectively.<sup>329</sup>

208. When asked if the information on the gift declaration forms regarding the dollar value of the gift was the most important, Mr Mileham answered: *"Was it the most important? The cumulative dollar value for individual providers, yes, to individuals so that we could assess what we were facing because to that point we had zero information".<sup>330</sup>*

209. Mr Mileham was then shown the single gift declaration form that Ms Davidson had retrospectively completed for five tickets she had received to four events she had attended during the 2015 Perth Fashion Festival.<sup>331</sup> The estimated value of the gift that she wrote on the form was *"\$100+"*. Mr Mileham was asked the following questions:

*"Given the fact that you have stated that it was important that these forms 'offered sufficient information for our purposes' and you've also said that 'the monetary value was one of the important matters that needed to be accurately recorded', do you accept there the description, 'Value of gift: \$100-plus' was inadequate?---It's not accurate, not as accurate as the other ones.*

...

*So is this a Gift Declaration Form that should not have been forwarded on to the Governance unit after you signed it?---It's a declaration by the Councillor, received by me and passed to Governance.*

*I know all that?---Yes.*

*But should it have been forwarded on to Governance by you with that information on it?---Absolutely.*

*Why?---If there's any issue there, it would be quality checked by Governance.*

*Why would it be the responsibility of Governance and not you?---To advise me if there's any further action required of me, but as I've said, the forms themselves are designed for the Elected Members to make a declaration which they say is true.*

*Yes?---My signature is there to receive it.*

*Or in this instance here, as a rubber stamp?---No".<sup>332</sup>*

210. Mr Mileham was later asked the following questions by the Commissioner regarding Ms Davidson's gift declaration form:

*"When you read it and signed it, was it your view that the information on this form was adequate?---For our purposes at the time.*

*No, was it your view that the information on this form when you signed it, after having read it, was adequate, that's a simple question?---No.*

*No what?---No, it wasn't adequate in itself.*

*Then, if you didn't think it was adequate, why did you sign it?---To receive it only.*

*Thank you, Mr Mileham?---It's a step in the process".<sup>333</sup>*

211. When later asked by Counsel Assisting who was it incumbent upon to make sure the inadequacy regarding the value of the gift was addressed, Mr Mileham answered, *"I don't administer the Act".<sup>334</sup>* However, as described below, regulation 12 of the Conduct Regulations made the CEO responsible for the receipt of gift notifications and the maintenance of a register of gifts.
212. Nevertheless, after being questioned at some length by the Commissioner and Counsel Assisting, Mr Mileham accepted that it was the responsibility of the Administration to ensure that the inadequate amount specified by Ms Davidson in her gift declaration form was rectified. Although he admitted he was part of the Administration, Mr Mileham maintained it was not solely his responsibility. He was then asked:
- "If it's not your responsibility, whose responsibility is it then?---It's the CEO's responsibility to give information to Councillors so that they can do their job. If additional information would have helped that be filled out better, then that would be my responsibility.*
- Indeed in [an] ideal situation, would you accept that the value that's been given there is something that should have been addressed?---It could have been checked, as I said".<sup>335</sup>*
213. The Inquiry finds that Mr Mileham was partly responsible for ensuring that the details in Ms Scaffidi's and Ms Davidson's declarations of their gifts to the 2015 Perth Fashion Festival were fully and accurately completed. In that regard, Mr Mileham should have ensured Ms Scaffidi's seven gift declaration forms were returned to her with a request that the three questions be answered. Mr Mileham did not have Ms Davidson notified that she was required to complete a gift declaration form with respect to each event she attended at the Perth Fashion Festival in 2015 and to provide an accurate estimated value for each ticket she had received. Mr Mileham agreed in his evidence that it was *"probably appropriate"* that Ms Scaffidi had completed a separate gift declaration form for each event that she went to at the 2015 Perth Fashion Festival.<sup>336</sup> Ms Davidson should have done so as well.

214. At the relevant time, section 5.82 of the LG Act and regulation 12 of the Conduct Regulations governed the disclosure of gifts. Section 5.82(1)(d) of the LG Act provided that the disclosure was to be in writing to the CEO and include *“the estimated value of the gift at the time it was made”*. Regulation 12(5) of the Conduct Regulations read, *“The CEO must maintain a register of gifts in which details of notices received under sub-regulation (4) are recorded”*. Regulation 12(4)(c) of the Conduct Regulations provided that the notification of the acceptance of a notifiable gift was to be in writing to the CEO and was to include *“a description, and the estimated value, of the gift”*. As CEO, Mr Mileham was not only required to keep a register of gifts disclosed by council members under section 5.82 of the LG Act, he was also required to keep a register of contributions to travel disclosed by council members pursuant to section 5.83 of the LG Act.<sup>337</sup>
215. If a CEO has signed his or her name to a City’s gift declaration form under the heading *“STEP 3 – Submit Declaration to the CEO within 10-days of accepting of Gift”* and forwarded it to the Governance unit without completing any details in the *“Comments”* section regarding *“Risks/Issues”* immediately above his or her signature, those staff at the Governance unit should have been entitled to accept the form had been completed to the satisfaction of the CEO. This is how Mr Mileham signed off Ms Scaffidi’s seven incomplete gift declaration forms and Ms Davidson’s gift declaration form. In those circumstances, it should not have been incumbent on the Governance unit to have, in the words of Mr Mileham, *“quality checked”* the information contained in the forms.
216. It is the responsibility of council members to make sure the details they record in gift declaration forms are accurate. Parliament, nevertheless, had ensured that the receipt of gifts by council members was monitored by the CEO by requiring council members to disclose gifts to the CEO and requiring the CEO to keep registers of those gifts.<sup>338</sup> The register of gifts declared by council members under section 5.82 of the LG Act is a public record available for examination.<sup>339</sup> It is a primary source available for members of the public wanting to know if a council member has any interests in a matter before the Council. It must therefore contain accurate and complete information and, as it is the responsibility of the CEO to maintain the register of gifts, it is implicit that this responsibility encompasses more than simply receiving a gift declaration form that is incomplete and/or obviously inadequate. Those responsibilities are in addition and complementary to the CEO’s role in dealing with allegations of misconduct or improper conduct by council members, which may include failures by council members to declare gifts. In that context, the CEO’s role in receiving gift declaration forms from council members should never be regarded as a rubber-stamping exercise involving no requirement to review the contents of the forms.
217. With respect to Ms Davidson’s gift declaration form, the value of the gift would have been recorded in the City’s Gift Register as \$100.00.<sup>340</sup> Given it was his responsibility under the legislation to maintain the Gift Register, the Inquiry rejects Mr Mileham’s excuse that he did not think it was *“incumbent upon me or any of the Administration to necessarily police the Elected Member”*.<sup>341</sup> In this instance, it was his responsibility.

218. The Inquiry has considered whether Mr Mileham had a reasonable excuse for not addressing the deficiencies in the gift declaration forms completed by Ms Scaffidi and Ms Davidson. A reasonable excuse might have existed due to the large volume of retrospective gift declaration forms submitted at the end of March 2016. With that in mind, Counsel Assisting asked Mr Mileham the following question:

*“Might it have been the case, Mr Mileham, that with this large influx of Gift Declarations you received on or about 30 March, that given the work involved to carefully scrutinise each one, that it may have just been, because of time constraints you, for want of a better term, rubber-stamping the forms without giving the sort of attention to the forms in an ideal world you might have?---No, the opposite. It was an information gathering process that I wanted to get from the Elected Members as quickly as possible, the information we needed and registered as received, because the timeframes were important, but to register and receive the information and then assess it. So rubber-stamping would be if someone in the normal course of things just waved things through”.<sup>342</sup> [emphasis added]*

219. Having expressly disavowed himself from relying on this excuse, the Inquiry has no evidence that it was the reason for Mr Mileham not addressing the inadequacies in the gift declaration forms completed by Ms Scaffidi and Ms Davidson.

#### **Tickets given to council members in association with sponsored events: Business News 40under40 Awards 2016**

##### **Ms Janet Davidson**

220. Ms Davidson’s disclosures in relation to Perth Fashion Festival can be contrasted with the disclosures she made in relation to the WA Business News 40under40 Awards (40under40 Awards).
221. Ms Davidson said she had attended the 40under40 Awards “since its inception” and that “City of Perth always had a corporate table”.<sup>343</sup> Ms Davidson completed a gift declaration form for tickets offered for 9 March 2016. The value was given as an estimated value at “\$200+”. Ms Davidson did not submit the form until 30 March 2016 but she dated the form 9 March 2016.<sup>344</sup> Ms Davidson declared that a ratepayer would benefit from the acceptance of the gift.<sup>345</sup>
222. The day after the form was completed, Mr Ridgwell forwarded the online gift and travel register to council members, noting it would be uploaded to the City’s website at 2.00 pm that day. That register, when uploaded, included Ms Davidson’s interest in the 40under40 Awards with a value of \$200.00.<sup>346</sup> Ms Davidson gave evidence she “later discovered” the correct ticket price was \$275.00.<sup>347</sup> However, in their gift declarations for the tickets they received to the 40under40 Awards, Dr Jemma Green declared her ticket as having an actual value of \$275.00<sup>348</sup> and Mr Adamos<sup>349</sup> and Mr Harley<sup>350</sup> estimated the value of their tickets as \$275.00 and \$270.00 respectively. Ms Davidson could not explain why her estimate was inaccurate.<sup>351</sup>

223. Half an hour later, Mr Harley emailed Ms Davidson, stating:

*“Hi Janet.*

*FYI, raising this with you for your own benefit. I notice you’ve declared one ticket for the 40 under 40, not two. Might want to amend the record in case someone picks you up? :).”*<sup>352</sup>

224. Ms Davidson then emailed Mr Ridgwell advising that she *“had two places so the figure is incorrect”*. Mr Ridgwell responded, clarifying that she wished to amend the declaration form to read \$550.00, *“i.e. 2 x \$275”*.<sup>353</sup> Ms Davidson responded: *“Yes please – it will have to be – over the \$300, but you see at the time viewed as Sponsorship”*.<sup>354</sup>

225. At the MSIE Committee on 26 July 2016, Ms Davidson, Ms Chen and Mr Yong were in attendance. The MSIE Committee considered a corporate sponsorship proposal for the 40under40 Awards. This was the meeting at which Mr Yong declared a financial interest related to the Perth Fashion Festival in connection with tickets he had received to attend the event.<sup>355</sup>

226. Although Ms Davidson did not declare any interest in the Perth Fashion Festival, she did declare a direct financial interest in the 40under40 Awards. Her disclosure in the minutes of the meeting stated *“Nature: Attended Award Ceremony Extent: Minor”*.<sup>356</sup> Immediately after staying and voting on the Perth Fashion Festival, Ms Davidson left the meeting while the MSIE Committee considered sponsorship of the 40under40 Awards.<sup>357</sup>

227. The matter came before the Council at the Ordinary Council Meeting on 9 August 2016. Ms Davidson again disclosed a direct financial interest in the item for the sponsorship application by the 40under40 Awards, but not in the item regarding the sponsorship application for the Perth Fashion Festival.<sup>358</sup>

#### **Tickets given to council members in association with sponsored events: Hopman Cup 2016**

228. The City sponsored the Hopman Cup tennis event for at least six years, from 2011 to at least 2017. As part of the City’s sponsorship arrangements, four council members received up to 12 tickets each to attend the Hopman Cup event taking place in January 2016. Those council members each brought up to five guests at a time to attend the event and were seated in a corporate box with food and drink provided.

#### **Mr Keith Yong**

229. As part of the City’s sponsorship arrangements, Mr Yong received a total of 12 tickets for two days of the Hopman Cup event that took place in January 2016.<sup>359</sup> Mr Yong had received two sets of six tickets for seats in a corporate box which accommodated six attendees, namely, only Mr Yong and his five guests. Food and drink was provided.<sup>360</sup>

230. At the request of the City’s Governance unit, Mr Yong completed two gift declaration forms for those tickets on 24 March 2016, along with a number of other retrospective disclosures.<sup>361</sup>

231. Mr Yong did not complete all parts of the gift declaration forms related to his Hopman Cup tickets. In the space marked *“Who will benefit from acceptance of the gift”*, Mr Yong left the section blank. He said this was an *“oversight”*.<sup>362</sup>
232. In the space marked *“Organisation/person offering the gift”*, Mr Yong wrote *“Hopman Cup organiser”*, but he did not provide any contact details as the form indicated he should.<sup>363</sup> Mr Yong said he felt this was not required as the tickets were *“coming from the City”* and the City would therefore have those details.<sup>364</sup> Mr Yong said he had not collected the tickets from the *“Hopman Cup organiser”* directly, rather that the City had received a number of tickets and had offered these to council members by email. These tickets were then placed in the pigeonhole of each council member who had requested and been allocated tickets.<sup>365</sup> Nonetheless, Mr Yong ultimately agreed that the source of the tickets was the *“Hopman Cup organiser”* and not the City.<sup>366</sup>
233. Mr Yong had provided the same value of \$96.00 per ticket on each form, although on one form he marked this as an *“estimated value”* and on the other form he marked as the *“actual value”*.<sup>367</sup> Mr Yong said he found the ticket price on the Hopman Cup website, although he did not know whether that price was for general admission tickets or corporate box tickets with the food and drink that he had received.<sup>368</sup>
234. In any event, the total ticket value at \$96.00 per ticket was \$576.00 per event day, as Mr Yong noted on the forms,<sup>369</sup> or \$1,152.00 for both days combined. The Inquiry notes this amount significantly exceeded the \$300.00 threshold after which a gift became a *“prohibited gift”* under the legislation in place as at March 2016. It also exceeded the \$200.00 threshold which may render a gift provider a *“closely associated person”*.
235. Mr Yong said that when he received the tickets, he did not understand the tickets to be a prohibited gift, although at the time he was given the disclosure forms and asked to complete them in March 2016, he realised the ticket values exceeded the prohibited gift threshold.<sup>370</sup> The Inquiry notes that Mr Yong completed the disclosure forms for the Hopman Cup on the same day the *“Team”* WhatsApp group had discussed the receipt of free tickets for City sponsored events creating potential financial interests.
236. Although Mr Yong ticked the box on each form corresponding to the statement *“Gift has been accepted”*, he did not make any mark in the checkbox in the immediate next column. The checkbox he left blank corresponded to the declaration:
- “I declare this information is accurate and that acceptance of the gift is not in conflict with the Code of Conduct or Local Government Act 1995 and will not create a future conflict of interest for me in fulfilling my position responsibilities”*.<sup>371</sup>
237. There is no evidence the forms were returned to Mr Yong after he submitted them or that he was directed to complete the missing details and make the declaration required by the form.
238. Mr Yong agreed that if he had ticked that box, the declaration would not have been accurate. Mr Yong was asked: *“So is that the reason why you didn’t cross that box, because you didn’t want to declare something that was false?”*. He answered: *“That may have been the reason”*.<sup>372</sup>



239. However, Mr Yong then said *“I believe that reason should be but at that time when completing that form, I don’t believe that I have breached because the tickets is [sic] coming from the City”*.<sup>373</sup> He later said *“If I knew that the tickets coming from Hopman Cup, I would have completed this form as soon as I received the tickets, but this form was asked to sign, completed in March”*.<sup>374</sup>
240. This is not a direct answer to the question and is incompatible with Mr Yong’s entry on the forms that the *“Hopman Cup organiser”* had provided the tickets. He later said that because the tickets had been distributed by the City, he believed the City had *“cleared those tickets to be received and to be accepted”* by council members in January 2016. He said he put *“Hopman Cup organiser”* on the form because *“As I’ve given the evidence earlier, the tickets was [sic] printed by the organiser but it was accounted for by the City, so in actual fact, the City has cleared the tickets to be accepted by Councillors”*.<sup>375</sup> At his hearing, Mr Yong accepted that the tickets had created a financial interest for him that he needed to declare.<sup>376</sup>
241. Although he had left the declaration relating to a *“future conflict of interest”* blank, Mr Yong ticked “yes” to the question *“Are they [the organisation/person offering the gift] likely to be the subject of a future decision of the City?”*.<sup>377</sup> Mr Yong said he did so because he believed it was likely the organisation would apply again for sponsorship of the Hopman Cup Event the following year. He was correct.
242. On 11 October 2016, approximately nine months later, the Council considered an application for sponsorship of the 2017 Hopman Cup.<sup>378</sup> The matter went straight to Council without having been considered by the MSIE Committee.<sup>379</sup> The day before the meeting, Mr Ridgwell emailed the council members to *“... review the agenda papers for the Council meeting and undertake the necessary disclosures ...”*.<sup>380</sup> He then sent a follow-up meeting advising that Mr Yong and other specified council members had a financial interest in relation to the upcoming meeting. He wrote:
- “Dear Councillors, it has been identified that you have a direct financial interest in item 13 of the Council agenda. Can you please complete the attached Disclosure of Interest form and return to myself. Nature: tickets as part of previous corporate sponsorship. Extent: Hopman Cup tickets. Enter number of tickets, corporate box, dollars, enter value”*.<sup>381</sup>
243. Appropriately, Mr Yong declared a financial interest in connection with the tickets he had received earlier that year and excused himself from the meeting while the sponsorship was considered by the remaining council members.<sup>382</sup>
244. The MSIE Committee next considered a sponsorship application for the Hopman Cup on 23 May 2017. Only Mr Yong and Mr Limnios were in attendance. Mr Yong did not declare a financial interest in this matter. He seconded a motion put by Mr Limnios to recommend that Council approve a triennial sponsorship application for the Hopman Cup at a value of \$125,000.00 per year for three years.<sup>383</sup> The matter was then considered by Council on 6 June 2017. Mr Yong did not disclose a financial interest at this meeting either, and he voted on the item relating to the sponsorship application.<sup>384</sup>



245. At his hearing, Mr Yong was asked why he did not disclose a financial interest in 2017 when he had done so the preceding year. He said he believed that someone from the City or Council, most likely someone in the Governance unit, and likely Mr Ridgwell, had told him he was permitted to stay and vote on matters concerning the Hopman Cup, even where he had a financial interest. He said *“my understanding is some kind of exemption to allow us to participate”* at both the MSIE Committee and Council level. He conceded there was no record of such an exemption in the minutes of the meeting.<sup>385</sup>
246. The Inquiry had obtained documentation showing that the Department had granted exemptions permitting one council member to participate in decisions relating the Western Australian Symphony Orchestra, notwithstanding the financial interest that attached to tickets they had received. Mr Yong was advised that while the Inquiry had located this documentation, it had not been able to find any correspondence showing that such an exemption had been granted in relation to the Hopman Cup. Mr Yong maintained his recollection that such a conversation had occurred.<sup>386</sup>
247. Mr Yong was then shown his response to Mr Ridgwell’s emails in relation to the preceding year’s sponsorship application, on 10 October 2016, when the council members had been advised to disclose a financial interest in relation to the Hopman Cup.<sup>387</sup> The email exchange between Mr Yong and Mr Ridgwell has already been described above. It is accepted that Mr Ridgwell had inadvertently provided inaccurate advice suggesting that the financial interests of council members arising from the receipt of a gift or gifts need only be disclosed for 12 months from the receipt of the gift(s) and not for the balance of their terms.
248. Mr Yong agreed he *“took [Mr Ridgwell’s] word that that was in fact correct”* and this was a reason he proceeded to vote on sponsorship matters relating to the Hopman Cup. He maintained the verbal conversation he had mentioned occurred in addition to the email exchange.<sup>388</sup>
249. After being shown the emails with Mr Ridgwell, Mr Yong was asked, in relation to the verbal conversations he recalled having, it *“might not have been the case that anyone said to you [Mr Yong] that the Department of Local Government has approved or exempted?”* Mr Yong replied *“It might not, yes. Maybe I related to other matters”*. Mr Yong was then asked if he could *“recall whether that matter was actually the exemption to do with the West Australian Symphony Orchestra?”* He said he could not recall which exemption was received.<sup>389</sup>
250. A question for the Inquiry is whether Mr Yong’s reliance on Mr Ridgwell’s email meant he would have had a reasonable excuse for not declaring a financial interest in the Hopman Cup sponsorship application which was considered at the meetings on 23 May 2017 and 6 June 2017. The Inquiry finds that he did have a reasonable excuse. Mr Yong had received the tickets to the Hopman Cup in January 2016, which was in excess of 12 months before the meetings. It was therefore not unreasonable for him to rely on the advice he had received from Mr Ridgwell and form a belief that he did not have a financial interest in the Hopman Cup after January 2017. Mr Yong’s non-disclosure of his interest at the 2017 meeting was consistent with the advice contained in Mr Ridgwell’s email.

### Mr Jim Adamos

251. Mr Adamos also received 12 tickets for two dates of the Hopman Cup event held in January 2016.<sup>390</sup> Mr Adamos completed retrospective gift declaration forms for those tickets, on which he also listed the ticket value at \$96.00 per ticket, totalling \$576.00 for each day,<sup>391</sup> or \$1,152.00 for both days combined.
252. In the space marked “*Who will benefit from acceptance of the gift?*”, Mr Adamos wrote: “*Self, spouse and City stakeholders*”. He said this was because, in addition to his wife, his guests at the event were City ratepayers with whom Mr Adamos was acquainted.<sup>392</sup>
253. The total amount of the tickets substantially exceeded the \$300.00 threshold at which a gift would become a prohibited gift under the legislation in force at March 2016. Mr Adamos was asked whether, by the time he completed the disclosure forms in March 2016, he understood he now had a financial interest with respect to the Hopman Cup should any sponsorship applications be made in the future.
254. He responded:
- “I guess so. I don’t remember at the time. I mean, we filled these forms in because we were asked because we hadn’t completed them when we should have.*
- ... I don’t – to be honest, it’s probably just – yes, I think I just would have filled the form in. I didn’t think about the ramifications of it, I suppose, with the value of it, although I put the value in.”*<sup>393</sup>
255. When reminded that he had completed his disclosure forms four days after the “*Team*” WhatsApp group had discussed the impact of having accepted tickets to City sponsored events, Mr Adamos said:
- “Yes, but it’s still during ’16, it was still – I didn’t think the City – even with the WhatsApp messages, I still didn’t think that the City Administration really landed exactly how this was all going to be treated, so I didn’t take anyone else’s discussion as kind of anything valid until the end of the year, until it was all kind of finalised.”*<sup>394</sup>
256. On 11 October 2016, the Council considered an application for sponsorship of the 2017 Hopman Cup approximately seven months after Mr Adamos completed his disclosure forms.<sup>395</sup> The day before the meeting, Mr Ridgwell emailed the council members to “... *review the agenda papers for the Council meeting and undertake the necessary disclosures ...*”.<sup>396</sup> He then sent a follow-up meeting advising that Mr Adamos and other specified council members had a financial interest in relation to the upcoming meeting. He wrote:
- “Dear Councillors, it has been identified that you have a direct financial interest in item 13 of the Council agenda. Can you please complete the attached Disclosure of Interest form and return to myself. Nature: tickets as part of previous corporate sponsorship. Extent: Hopman Cup tickets. Enter number of tickets, corporate box, dollars, enter value.”*<sup>397</sup>

257. Appropriately, Mr Adamos declared a financial interest in connection with the tickets he had received earlier that year and excused himself from the meeting while the sponsorship was considered by the remaining council members.<sup>398</sup>
258. The Council next considered sponsorship of the Hopman Cup on 6 June 2017.<sup>399</sup> Mr Adamos was in attendance, but he did not declare a financial interest in the matter, and he voted on the item relating to the sponsorship application.<sup>400</sup>
259. Mr Adamos was asked why he had not disclosed a financial interest in relation to the Hopman Cup in 2017 when he had done so the preceding year. He initially said he did not know and attributed it to *“carelessness”*.<sup>401</sup>
260. Mr Adamos reiterated his understanding that the *“buck stops”* with council members and it is an individual council member’s *“final responsibility”* to ensure disclosures are made accurately. However, he also said it was a *“dual responsibility”* and that council members needed *“support from the Administration to help [a council member] get through this and just remind you from time to time”*.<sup>402</sup>
261. Mr Adamos understood there to be a 12-month period in which a gift would create a financial interest that may need to be disclosed, but he could not recall from where he got that information. However, he did not say this 12-month time period was a reason he did not declare a financial interest relating to the Hopman Cup at the Council Meeting on 6 June 2017.
262. Mr Adamos was then shown the email exchange on 10 October 2016 between Mr Yong and Mr Ridgwell described above, into which Mr Adamos had been copied.
263. However, Mr Adamos did not recall that email exchange, and could not say whether that was how he came to understand that a financial interest need only be disclosed in relation to gifts received within the preceding 12 months.<sup>403</sup>
264. A question that requires resolution by the Inquiry is whether Mr Adamos’s decision not to disclose a financial interest at the Council Meeting on 6 June 2017 may have been due to Mr Ridgwell’s email the previous October. Mr Adamos was a recipient of Mr Ridgwell’s email and Mr Adamos’s non-disclosure of his financial interest in the Hopman Cup at the 2017 Council Meeting would be consistent with the advice contained in that email. It is possible that Mr Adamos, either from reading the email or having been advised of it by another council member, had formed a reasonable belief by 6 June 2017 he no longer had a financial interest with respect to any sponsorship applications by the Hopman Cup made after January 2017; that is, more than 12 months after he had received the tickets. If Mr Adamos had formed his belief in that way, the Inquiry considers that would explain his conduct and only limited criticism could be made of him.

### Ms Janet Davidson

265. Ms Davidson received 12 tickets to attend two dates of the Hopman Cup event held in January 2016. She received two sets of six tickets for a corporate box at the event. At the direction of the City, Ms Davidson completed retrospective gift declaration forms for the tickets.<sup>404</sup> Ms Davidson backdated each form to the date of the relevant event. However, both forms were marked as received by the City on 30 March 2016.<sup>405</sup>
266. On each form, Ms Davidson provided an “*estimated value*” of \$600.00 for each set of six tickets. A member of the Administration had then handwritten the exact ticket values, being \$96.00 each, totalling \$576.00 for each day,<sup>406</sup> or \$1,152.00 for both days combined.
267. Ms Davidson said her guests at those events were ratepayers who she knew personally and was inclined to call “*colleagues*” rather than “*friends*”.<sup>407</sup> On the disclosure forms, in the space marked “*Who will benefit from acceptance of the gift?*”, Ms Davidson had written “*Ratepayers invited*”.<sup>408</sup>
268. On 11 October 2016, approximately seven months later, the Council considered an application for sponsorship of the 2017 Hopman Cup.<sup>409</sup> The day before the meeting, Mr Ridgwell emailed the council members to “... *review the agenda papers for the Council meeting and undertake the necessary disclosures ...*”.<sup>410</sup> He then sent a follow-up meeting advising that Ms Davidson and other specified council members had a financial interest in relation to the upcoming meeting. He wrote:
- “Dear Councillors, it has been identified that you have a direct financial interest in item 13 of the Council agenda. Can you please complete the attached Disclosure of Interest form and return to myself. Nature: tickets as part of previous corporate sponsorship. Extent: Hopman Cup tickets. Enter number of tickets, corporate box, dollars, enter value.”*<sup>411</sup>
269. Appropriately, Ms Davidson declared a financial interest in connection with the tickets she had received earlier that year and excused herself from the meeting while the sponsorship was considered by the remaining council members.<sup>412</sup>
270. At her hearing, Ms Davidson had said she “*did not know why*” she would have declared that financial interest “*because we always viewed sponsorship in the old system as sponsorship where you’re either a table or a corporate box or otherwise and it was viewed accordingly*”.<sup>413</sup> Ms Davidson was reminded of Mr Ridgwell’s email advising those council members who had received tickets to the Hopman Cup that they would need to disclose a direct financial interest at the Council Meeting on 11 October 2016.
271. Ms Davidson could not recall why she did not disclose a financial interest when the Council considered a sponsorship application for the Hopman Cup on 6 June 2017. Ms Davidson was then shown the email exchange described above between Mr Yong and Mr Ridgwell on 10 October 2016, to which Ms Davidson had been copied.

272. Ms Davidson did not recall those emails. She was asked if the emails assisted her as to a reason why she did not disclose a financial interest in relation to the Hopman Cup when it was considered at the 2017 Council Meeting. She replied: *“No, it doesn’t. Obviously a corporate box and that was all part of that sponsorship, so yes”*.<sup>414</sup>
273. A question that requires resolution by the Inquiry is whether Ms Davidson’s decision not to disclose a financial interest at the Council Meeting on 6 June 2017 may have been due to Mr Ridgwell’s email the previous October. Ms Davidson was a recipient of Mr Ridgwell’s email and her non-disclosure of her financial interest in the Hopman Cup at the 2017 Council Meeting would be consistent with the advice contained in that email. It is possible that Ms Davidson, either from reading the email or having been advised by another council member, had formed a reasonable belief by 6 June 2017 she no longer had a financial interest with respect to any sponsorship applications by the Hopman Cup made after January 2017; that is, more than 12 months after she had received the tickets. If Ms Davidson had formed her belief in that way, the Inquiry considers that would explain her conduct and only limited criticism could be made of her.

#### Ms Lily Chen

274. Ms Chen also received tickets to attend the Hopman Cup in January 2016. Following Mr Ridgwell’s email, in which he advised Ms Chen and other council members of their direct financial interest in the matter,<sup>415</sup> Ms Chen appropriately disclosed a financial interest when the Hopman Cup was considered at the Council Meeting on 11 October 2016.
275. When sponsorship of the Hopman Cup was considered by the Council again in June 2017, Ms Chen did not disclose a financial interest and she voted on the item.<sup>416</sup>
276. Ms Chen was also shown the email exchange on 10 October 2016 between Mr Yong and Mr Ridgwell described above, into which Ms Chen had been copied.
277. However, Ms Chen did not recall that email exchange. When asked why she voted for the Hopman Cup sponsorship application in 2017, she said it was a *“mistake”*.<sup>417</sup>
278. A question that requires resolution by the Inquiry is whether Ms Chen’s *“mistake”* not to disclose a financial interest at the Council Meeting on 6 June 2017 may have been due to Mr Ridgwell’s email the previous October. Although Ms Chen could not recall Mr Ridgwell’s email at the time of her hearing, she was a recipient. Her non-disclosure of her financial interest in the Hopman Cup at the 2017 Council Meeting would be consistent with the advice contained in that email. It is possible that Ms Chen, either from reading the email or having been advised by another council member, had formed a reasonable belief by 6 June 2017 she no longer had a financial interest with respect to any sponsorship applications by the Hopman Cup made after January 2017; that is, more than 12 months after she had received the tickets. If Ms Chen had formed a belief in that way, the Inquiry considers that would explain her conduct and only limited criticism could be made of her.

### City of Perth's management of financial interests related to the Hopman Cup

279. In the period following the enactment of the *City of Perth Act 2016* with the consequential amendments to the gift disclosure requirements in the LG Act and subsequent legal advice the City had received, it became apparent to the City that these tickets to the Hopman Cup may have constituted gifts giving rise to financial interests for multiple council members.
280. In Mr Mileham's letter to Mr Peyton at the Department, under the heading "*Hopman Cup*", Mr Mileham identified Mr Yong, Mr Adamos, Ms Chen and Ms Davidson as council members who each had a "*closely associated person interest and a financial interest in this matter, each year until the end of their terms and for their full length as serving members, as they accepted ... gifts from the Hopman Cup exceeding \$200.00*".<sup>418</sup>
281. Despite these four council members having been identified as having these interests "*each year until the end of their terms and for their full length as serving members*", none of them disclosed a financial interest when sponsorship of the Hopman Cup was considered in 2017. All four council members participated in decision-making on the matter.
282. Along with a number of other identified sponsored events and other identified council members, the letter sought Ministerial approval for those members "*in certain instances to participate in discussion and decision making in relation to reports being presented to Committee and/or Council*" in relation to the Hopman Cup.<sup>419</sup>
283. The Department advised that a blanket exemption was not possible. Instead, the City would need to apply individually for exemptions where it became apparent that a matter was to be considered where the removal of council members impacted by financial interests would result in there being insufficient remaining council members to form a quorum of five council members.<sup>420</sup> There is no evidence before the Inquiry that such an exemption was ever sought or granted in respect of the Hopman Cup for matters arising in 2016 or 2017.
284. As the full Council, comprising nine members, was present at the Ordinary Council Meeting on 6 June 2017, the four identified council members could have disclosed financial interests and removed themselves from decision-making related to the Hopman Cup, and there would have been five remaining members to make the decision. There was therefore no need to obtain an exemption for the matter.
285. Only one council member voted against an amendment to reduce the amount of the recommended sponsorship, and the decision to support the sponsorship application in the reduced amount was unanimous.<sup>421</sup> It is therefore noted that, in this case, had the four council members disclosed financial interests and excused themselves from decision-making, the Council's decision may well have been unchanged. Although it is also noted that it was Ms Davidson (one of the four council members identified as having a financial interest) who successfully moved the motion to amend, which reduced the sponsorship amount by \$25,000.00.
286. However, it is a notable discrepancy that, as at 7 June 2016, the City had identified four council members as having financial interests in the Hopman Cup that would endure for each of their full terms.

It was explicitly flagged that the matter was likely to be considered again in the middle of 2017, as the City had sponsored the event for five consecutive years. When that time came on 6 June 2017, those financial interests were evidently not considered or addressed by the council members themselves or by the City's Governance unit or by the CEO. As a result, four council members appear to have participated in decision-making on a matter in which they each had, as identified by the City, a financial interest lasting for the duration of their terms.

#### Mr Mark Ridgwell

287. It is apparent that some or all of these four council members may have relied on an interpretation of Mr Ridgwell's email of 10 October 2016 and considered it to mean that they did not need to disclose the interest unless the gift had been received in the 12 months preceding the decision. Mr Ridgwell gave evidence that this was not the intention of his email, but he conceded it could have been read in that way.<sup>422</sup>
288. In giving evidence to the Inquiry, Mr Ridgwell also repeatedly stated his view that, while the Administration could certainly provide guidance and support to council members in managing their financial disclosure obligations, the responsibility for complete and accurate compliance necessarily lay with each individual council member.<sup>423</sup>
289. Mr Ridgwell also expressed a concern that if the Administration were to take on a role of policing council members in this regard, or always proactively managing conflicts and advising council members of their potential conflicts, it could set up a situation of inappropriate reliance where the Administration would be blamed in the event something was "*missed*".<sup>424</sup>

#### Mr Martin Mileham

290. Mr Mileham was also questioned about why these four council members did not disclose a financial interest in relation to the Hopman Cup at the Ordinary Council Meeting on 6 June 2017. Mr Mileham was unable to offer an explanation as to why this occurred and he accepted that, as the Administration was aware of it, assistance could have been given to the council members. Mr Mileham clarified that when he referred to the "*Administration*" he was referring to himself as the CEO and Governance.<sup>425</sup>
291. Although Mr Mileham was aware of these financial interests due to the contents of his letter dated 7 June 2016 to Mr Peyton,<sup>426</sup> the Inquiry does not consider it is appropriate to criticise him for not advising those council members of their financial interests at the Ordinary Council Meeting on 6 June 2017. The letter from Mr Mileham to Mr Peyton cited 49 financial interests involving all nine council members and referred to nine entities. It could not be expected that Mr Mileham would be able to recall each of those financial interests after the passage of a year.
292. However, Mr Mileham acknowledged that the system which existed at the City relied on manual processes and people's memories and a better approach would be some form of automation to identify when a council member had an interest in a matter.<sup>427</sup>
293. The situation reveals gaps in both knowledge and application that are indicative of the issues the City faced in properly managing the disclosure of tickets as gifts giving rise to financial interests from March 2016 onwards.



294. The Inquiry supports Mr Mileham's suggestion. By attaching to the agenda for a Council or committee meeting a list of prior declarations of interest made by council members during their current term relating to an item on the agenda, everyone who needed to be put on notice would be. Similarly, if the Administration had a system in place that could flag when a council member may have to declare an interest for the first time, then this could also be included in an agenda. Mr Ridgwell's evidence regarding the City's hub indicated this system may already have the necessary information to introduce this measure.<sup>428</sup> If these changes were implemented by way of an automated process, there would be less scope for the human errors that the Inquiry uncovered during its investigations.

### **Tickets given to council members in association with sponsored events: Perth International Arts Festival**

#### **Mr Jim Adamos**

295. Mr Adamos received two tickets, each for three shows, that formed part of Perth International Arts Festival (PIAF) in February 2016. At the direction of the City, he completed retrospective gift disclosure forms for those tickets on 28 March 2016. Mr Adamos took his wife to those events and disclosed this on the forms. The total estimated value of those tickets, as disclosed by Mr Adamos, was \$500.00.<sup>429</sup>
296. After that disclosure, the Council next considered sponsorship of PIAF on 13 December 2016, in relation to the 2017 PIAF. Mr Adamos appropriately declared a financial interest in the matter and removed himself from the meeting when the relevant item was being considered.<sup>430</sup> He agreed that the financial interest was in relation to the tickets he had received earlier that year. However, he could not recall how he came to understand that he would need to disclose the interest at that meeting and remove himself from decision-making on the matter.<sup>431</sup>
297. When the Council next considered sponsorship in relation to PIAF, on 1 August 2017, Mr Adamos was in attendance. However, this time, he did not declare a financial interest in relation to the matter, despite having made an unrelated disclosure of an impartiality interest at that same meeting. Mr Adamos participated in decision-making in relation to the PIAF sponsorship application.<sup>432</sup> Mr Adamos could not recall why he did not make a declaration when he had done so the preceding year.<sup>433</sup>
298. The question that requires resolution by the Inquiry is whether Mr Adamos's decision not to disclose a financial interest at the Council Meeting on 1 August 2017 may have been due to Mr Ridgwell's email the previous October that has been described earlier in this Section. Mr Adamos was a recipient of Mr Ridgwell's email and Mr Adamos's non-disclosure of a financial interest in relation to PIAF at the 2017 Council Meeting would be consistent with the advice contained in that email. It is possible that Mr Adamos, either from reading the email or having been advised by another council member, had formed a reasonable belief by 1 August 2017 he no longer had a financial interest with respect to any sponsorship applications by PIAF made after February 2017; namely, more than 12 months after he had received the tickets. If Mr Adamos had formed his belief in that way, the Inquiry considers that would explain his conduct and only limited criticism could be made of him.

## Findings

### Finding 2.2.4 – 1

#### Ms Lily Chen

The Inquiry makes the following findings:

- i. Ms Chen under-valued her tickets to the 2015 Perth Fashion Festival on three of her four gift declaration forms dated 27 March 2016. She may have done so intentionally so that their combined total value fell within the range of a notifiable gift under regulation 12(1) of the Conduct Regulations.
- ii. Ms Chen did not disclose a financial interest she may have had with the Perth Fashion Festival at the MSIE Committee meeting she attended on 26 July 2016, which considered a sponsorship application by the Perth Fashion Festival. If a financial interest existed, any such nondisclosure may have been intentional, rather than careless.
- iii. Ms Chen did not disclose a financial interest she may have had with the Perth Fashion Festival at the Council Meeting she attended on 9 August 2016, which considered a sponsorship application by the Perth Fashion Festival. If a financial interest existed, any such non-disclosure may have been intentional, rather than careless.
- iv. Ms Chen did not disclose an impartiality interest she may have had with the Perth Fashion Festival at the MSIE Committee meeting she attended on 26 July 2016, which considered a sponsorship application by the Perth Fashion Festival. If an impartiality interest existed, any such non-disclosure may have been intentional, rather than careless. In so doing, Ms Chen may have breached regulation 11(2) of the Conduct Regulations.
- v. Ms Chen did not disclose an impartiality interest she may have had with the Perth Fashion Festival at the Council Meeting she attended on 9 August 2016, which considered a sponsorship application by the Perth Fashion Festival. If an impartiality interest existed, any such non-disclosure may have been intentional, rather than careless. In so doing, Ms Chen may have breached regulation 11(2) of the Conduct Regulations.
- vi. Ms Chen did not disclose an impartiality interest she may have had with the Perth Fashion Festival at the Council Meeting she attended on 6 June 2017, which considered a sponsorship application by the Perth Fashion Festival. If an impartiality interest existed, any such non-disclosure may have been intentional, rather than careless. In so doing, Ms Chen may have breached regulation 11(2) of the Conduct Regulations.
- vii. Ms Chen did not disclose a financial interest she may have had in relation to the Hopman Cup when the matter was considered at a Council Meeting on 6 June 2017. Ms Chen participated in decision-making on the matter. However, any such non-disclosure would have been consistent with advice Ms Chen received in an email from Mr Ridgwell on 10 October 2016, which may therefore have been a reasonable excuse for such a non-disclosure.

### Finding 2.2.4 – 2

#### Ms Lisa Scaffidi

The Inquiry makes the following findings:

- i. Ms Scaffidi did not ensure that the actual value of the tickets she received to the 2015 Perth Fashion Festival was accurately and unambiguously declared on five of her gift declaration forms dated 23 March 2016.
- ii. Ms Scaffidi did not answer all relevant questions on seven gift declaration forms she signed and dated 23 March 2016.
- iii. Ms Scaffidi did not disclose a financial interest she may have had with the Perth Fashion Festival at the Council Meeting she attended on 9 August 2016, which considered a sponsorship application by the Perth Fashion Festival. If a financial interest existed, any such non-disclosure may have been intentional, rather than careless.
- iv. By ticking the box on each of her two gift declaration forms dated 11 August 2016, declaring that the information on the form was “*accurate*” and “*will not create a future conflict of interest*” for her in fulfilling her responsibilities as a council member, Ms Scaffidi may have made declarations that were incorrect.
- v. Ms Scaffidi may have accepted a prohibited gift from the Perth Fashion Festival by attending a function of the Perth Fashion Festival on 23 September 2016. In so doing, Ms Scaffidi may have breached regulation 12(2) of the Conduct Regulations.
- vi. On 14 November 2016, Ms Scaffidi attended a meeting with Perth Fashion Festival representatives and City officers in which she canvassed support for the sponsorship of a Perth Fashion Festival event. She had previously sent a message to Ms Battista, the then Acting Director, Economic Development and Activation, on or about 9 November 2016 which included a statement that the decision by the City’s Administration not to fund the event was “*not acceptable*”. By forwarding that message to Ms Battista, Ms Scaffidi may have breached regulation 10(1)(a) of the Conduct Regulations.

### Finding 2.2.4 - 3

#### Mr James Limnios

The Inquiry makes the following findings:

- i. Mr Limnios did not provide accurate estimated values for two tickets he had received to attend the 2015 Perth Fashion Festival when completing two gift declaration forms dated 30 March 2016.

### Finding 2.2.4 – 4

#### Ms Janet Davidson

The Inquiry makes the following findings:

- i. Ms Davidson did not provide accurate estimated values for five tickets she had received to attend the 2015 Perth Fashion Festival when completing a gift declaration form at or about the end of March 2016.
- ii. Ms Davidson did not provide an accurate estimated value for one ticket she had received to attend the 2016 Perth Fashion Festival Awards when completing a gift declaration form dated 22 March 2016.
- iii. Ms Davidson did not provide an accurate estimated value for one ticket she had received to attend the 2016 Perth Fashion Festival when completing a gift declaration form dated 23 September 2016.
- iv. By ticking the box on each of the above three gift declaration forms declaring that the information on the form was “*accurate*” and “*will not create a future conflict of interest*” for her in fulfilling her responsibilities as a council member, Ms Davidson may have made declarations that were incorrect.
- v. Ms Davidson did not disclose a financial interest she may have had with the Perth Fashion Festival at the MSIE Committee meeting she attended on 26 July 2016, which considered a sponsorship application by the Perth Fashion Festival. If a financial interest existed, Ms Davidson may have intentionally refrained from disclosing this interest so she could participate in the decision-making process and move an amendment for the recommended sponsorship amount to be increased.
- vi. Ms Davidson did not disclose a financial interest she may have had with the Perth Fashion Festival at the Council Meeting she attended on 9 August 2016, which considered a sponsorship application by the Perth Fashion Festival. If a financial interest existed, Ms Davidson may have intentionally refrained from disclosing this interest so that she could participate in the decision-making process and move an alternate motion increasing the recommended sponsorship amount.
- vii. Ms Davidson did not disclose a financial interest she may have had in relation to the Hopman Cup when the matter was considered at a Council Meeting on 6 June 2017. Ms Davidson participated in decision-making on the matter. However, any such non-disclosure would be consistent with advice Ms Davidson had received in an email from Mr Ridgwell on 10 October 2016, which may provide a reasonable excuse for such a non-disclosure.

### Finding 2.2.4 – 5

#### Mr Jim Adamos

The Inquiry makes the following findings:

- i. Mr Adamos did not provide accurate estimated values for two tickets he had received to attend the 2016 Perth Fashion Festival when completing two gift declaration forms dated 22 September 2016.
- ii. Mr Adamos may have accepted a prohibited gift from the Perth Fashion Festival by attending a function of the Perth Fashion Festival on 23 September 2016. In so doing, Mr Adamos may have breached regulation 12(2) of the Conduct Regulations.
- iii. Mr Adamos did not disclose a financial interest he may have had with the Perth Fashion Festival at the Council Meeting he attended on 6 June 2017, which considered a sponsorship application by the Perth Fashion Festival.
- iv. Mr Adamos did not disclose a financial interest he may have had in relation to the Hopman Cup when the matter was considered at a Council Meeting on 6 June 2017. Mr Adamos participated in decision-making on the matter. However, any such non-disclosure would be consistent with advice Mr Adamos had received in an email from Mr Ridgwell on 10 October 2016, which may provide a reasonable excuse for such a non-disclosure.

### Finding 2.2.4 – 6

#### Mr Martin Mileham

The Inquiry makes the following findings:

- i. Mr Mileham did not ensure that seven gift declaration forms signed by Ms Scaffidi on 23 March 2016 were fully completed before he signed them and forwarded them to the Governance unit.
- ii. Mr Mileham did not ensure that a gift declaration form signed by Ms Davidson at or about the end of March 2016 was correctly completed before he signed it and forwarded it to the Governance unit.

### Finding 2.2.4 – 7

#### Mr Keith Yong

The Inquiry makes the following findings:

- i. Mr Yong did not disclose a financial interest he may have had in relation to the Hopman Cup when the matter was considered at a Council Meeting on 6 June 2017. Mr Yong participated in decision-making on the matter. However, any such non-disclosure was consistent with advice Mr Yong had received in an email from Mr Ridgwell on 10 October 2016, which may provide a reasonable excuse for such a non-disclosure.

## Finding 2.2.4 – 8

### City of Perth

The Inquiry makes the following findings:

- i. By reason of the matters described above, from March 2016 there may have been repeated and sustained failures by council members to comply with their statutory obligations to declare gifts and declare financial interests in matters before Council and committee meetings.
- ii. The Inquiry considers, on the basis of the evidence before it, that the City's governance practices and systems in relation to the declaration of gifts and financial interests during the period of the Inquiry's Terms of Reference were not always adequate. The Inquiry has formed that view due to the following.
  - a. The apparent repeated and sustained failures by council members to comply with their statutory obligations.
  - b. Mr Mileham's failures to ensure that gift declaration forms were correctly completed.
  - c. Mr Ridgwell's advice to council members in his email of 10 October 2016.
  - d. The participation of Mr Adamos, Mr Yong, Ms Davidson and Ms Chen in decision-making on a sponsorship application for the Hopman Cup at the Council Meeting on 6 June 2017, despite:
    - the City identifying, as at 7 July 2016, that those council members would have a financial interest in any sponsorship application for the Hopman Cup, when that application came before Council in the future; and
    - each of those council members having previously declared a financial interest when a sponsorship application for the Hopman Cup was considered at the Council Meeting on 11 October 2016.
- iii. The above finding is made, because council members' non-disclosure of gifts and financial interests arising out of the receipt of free tickets was a serious risk to good governance at the City and the integrity of Council's decision-making.
- iv. While the Inquiry reiterates that it was ultimately the responsibility of council members to comply with their statutory obligations, that risk meant it was properly a matter of concern for the City's Administration. The City's Administration in particular, Mr Mileham and Mr Ridgwell, knew of this risk but did not always adequately mitigate against it.

## Endnotes

- 1 Document, Authorisation of Local Government Inquiry, signed Michael Connolly Acting Director General, 8 January 2018.
- 2 Transcript, A Battista, discovery Interview, 21 June 2018.
- 3 Grants and sponsorship, City of Perth website.
- 4 Report, Review of Governance and Financial Matters, Crowe, August 2019, p 96.
- 5 Policy, Council Policy Manual, Revision 137, 24 November 2016.
- 6 Minutes, Ordinary Council Meeting, 13 December 2016, p 126-131; Policy, Council Policy Manual, Revision 140, CP18.13, CP18.14, CP18.15; Minutes, Ordinary Council Meeting, 19 December 2017, p 15.
- 7 Policy, Council Policy Manual, Revision 152, CP18.13 and CP18.14.
- 8 Agenda, Marketing, Sponsorship and International Engagement Committee, 31 January 2017.
- 9 Minutes, City of Perth Ordinary Council Meeting, 13 December 2016, p 130-131.
- 10 Minutes, City of Perth Ordinary Council Meeting, 13 December 2016, p 129.
- 11 For example, Telstra Perth Fashion Festival 2016 – Impact Assessment: Attachment 13.6B to Agenda, Ordinary Council Meeting, 6 June 2017, p 197.
- 12 For example, Perth City Snapshot 2016, p 61, 70-71, 118-120.
- 13 Document, City of Perth, Response to Notice to Produce a Statement of Information, No. 016 of 2019, Budget and Actual Expenditure Figures – Sponsorships and Donations, 6 June 2019; Reports, City of Perth Annual Reports 2015/2016, p 43; 2016/2017, p 42; 2017/2018, p 36; Financial Report 2014/2015, p 26; Financial Report 2015/2016, p 43; Financial Report 2016/2017, p 42; Financial Report 2017/2018, p 17.
- 14 Reports, City of Perth Annual Reports 2015/2016, p 43; 2016/2017, p 42; 2017/2018, p 36.
- 15 Reports, City of Perth Annual Reports 2015/2016, p 43; 2016/2017, p 42; 2017/2018, p 36.
- 16 Email, L Chen to International Alliance Coordinator City of Perth, 3 August 2011.
- 17 Email, International Alliance Coordinator City of Perth to L Chen 24 August 2011.
- 18 Email, Governance Officer to L Chen, 22 November 2011.
- 19 Minutes, Marketing, Sponsorship and International Engagement Committee Meeting, 22 November 2011, p 26.
- 20 Minutes, Ordinary Council Meeting, 6 December 2011, p 137.
- 21 Report, Review of Governance and Financial Matters, Crowe, August 2019, p 97-98.
- 22 Minutes, Marketing, Sponsorship and International Engagement Committee Meeting, 10 November 2015, p 15.
- 23 Minutes, Ordinary Council Meeting, 24 November 2015, p 107.
- 24 Minutes, Marketing, Sponsorship and International Engagement Committee Meeting, 29 November 2016, p 2428.
- 25 Memo, A Battista, Director Economic Development and Activation to council members, 6 December 2016.
- 26 Minutes, Ordinary Council Meeting, 13 December 2016, p 4.
- 27 Minutes, Ordinary Council Meeting, 13 December 2016, p 141-142.
- 28 Minutes, Marketing, Sponsorship and International Engagement Committee Meeting, 7 November 2017, p 3, 1014.
- 29 Minutes, Ordinary Council Meeting, 21 November 2017, p 6 and 21-23.
- 30 Document, City of Perth, Response to Notice to Produce a Statement of Information, No. 016 of 2019, Budget and Actual Expenditure Figures – Sponsorships and Donations, Donations – General – 2016–17, Donations – General – 2017–18 and 2015–2017 Sponsorship Register – Provided by Ben Fitzpatrick, 6 June 2019; Reports, City of Perth Annual Reports 2015/2016, p 56; 2016/2017, p 68; Minutes, Ordinary Council Meeting, 24 November 2015, p 148; Minutes, Ordinary Council Meeting, 7 June 2016, p 33; Minutes, Ordinary Council Meeting, 22 November 2016, p 58; Minutes, Ordinary Council Meeting, 9 May 2017, p 9; and Minutes, Ordinary Council Meeting, 21 November 2017, p 22.
- 31 Minutes, Marketing, Sponsorship and International Engagement Committee meetings, 24 May 2016, and 26 April 2017.
- 32 Minutes, Ordinary Council Meetings, 7 June 2016 and 9 May 2017.
- 33 Minutes, Marketing, Sponsorship and International Engagement Committee meetings, 10 November 2015, and 8 November 2016; Minutes, Ordinary Council Meetings, 24 November 2015 and 22 November 2016.
- 34 Email, J McEvoy to L Scaffidi, 4 November 2014.
- 35 Transcript, J Limnios, public hearing, 25 September 2019, p 120.
- 36 Minutes, Marketing, Sponsorship and International Relations Committee Meeting, 4 November 2014, p 61.
- 37 Emails between J Limnios and A Battista, 5 and 6 November 2017.
- 38 Transcript, J Limnios, public hearing, 25 September 2019, p 126-127.
- 39 Minutes, Marketing, Sponsorship and International Engagement Committee meeting, 17 November 2017, p 14.
- 40 Letter, R Mianich A/CEO to HCWA, 8 February 2018.
- 41 Letter, Manager Business Support and Sponsorship City of Perth to Creative Director Open House Perth, 27 February 2017.
- 42 Email, L Scaffidi to four council members, 27 February 2017.
- 43 Emails between L Scaffidi and A Battista, 2 March 2017.
- 44 Emails, A Battista to M Ridgwell and B Moyser, 2 and 3 March 2017.
- 45 Emails, L Scaffidi and A Battista, 3 March 2017.
- 46 Emails, M Mileham and L Scaffidi, 3 March 2017.
- 47 Email, A Battista to L Scaffidi, 10 March 2017.



- 48 Minutes, Marketing, Sponsorship and International Engagement Committee meeting, 26 April 2017, p 3.
- 49 Minutes, Ordinary Council Meeting, 9 May 2017, p 12.
- 50 *Local Government Act 1995*, s 5.67.
- 51 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(1).
- 52 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(1).
- 53 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(1).
- 54 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(2).
- 55 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(3).
- 56 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(4).
- 57 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(5); *Local Government Act 1995*, s 5.94(b).
- 58 *Local Government Act 1995*, s 5.62(1)(ea)(i).
- 59 *Local Government Act 1995*, s 5.62(1)(ea)(iii).
- 60 *Local Government Act 1995*, s 5.62(1)(eb)(i).
- 61 *Local Government (Elections) Regulations 1997*, reg 30A(4); *Local Government (Administration) Regulations 1996*, reg 25.
- 62 Terms of Reference, Part A.3(iv).
- 63 Terms of Reference, Part A.3(ii).
- 64 Report, Public Sector Commission, Acquisition and use of hospitality resources by Healthway – Investigation report, January 2015.
- 65 Report, Public Sector Commission, Ticket use for sponsored or financially supported events – Review report, 17 February 2016.
- 66 Email with attachment, M Ridgwell to J Adamos, L Chen, J Green, R Harley, J Limnios, J Davidson, J McEvoy and K Yong, 9.04 pm 23 March 2016.
- 67 Personal communication, WhatsApp, the team group chat, J Davidson, L Scaffidi, J McEvoy and J Adamos, 12.06 pm 24 March 2016 – 12.36 pm 24 March 2016.
- 68 Personal communication, WhatsApp, the team group chat, L Scaffidi, 4.36 pm 22 October 2015.
- 69 Personal communication, WhatsApp, the team group chat, J Davidson, 12.06 pm 24 March 2016.
- 70 Personal communication, WhatsApp, the team group chat, L Scaffidi, 12.11 pm 24 March 2016.
- 71 Personal communication, WhatsApp, the team group chat, L Scaffidi, 12.29 pm 24 March 2016.
- 72 Personal communication, WhatsApp, the team group chat, J Adamos, 12.36 pm and 12.46 pm 24 March 2016.
- 73 Transcript, M Ridgwell, public hearing, 26 September 2019, p 57-59; Letter, M Mileham to B Peyton, 7 June 2016, p 1.
- 74 *City of Perth Act 2016*, s 35-36.
- 75 The transitional period was established by the *Local Government (Administration) Regulations 1996*, reg 25-26, reg 28A as amended by *Local Government (Administration) Amendment Regulations 2016*, reg 7-8; *Local Government (Rules of Conduct) Regulations 2007*, reg 13-15 as amended by *Local Government (Rules of Conduct) Amendment Regulations 2016*, reg 5-6.
- 76 Transcript, M Mileham, public hearing, 1 October 2019, p 64.
- 77 Transcript, K Yong, public hearing, 24 September 2019, p 7-8; Minutes, Special Council Meeting, 22 October 2015, p 10.
- 78 Transcript, K Yong, public hearing, 24 September 2019, p 13.
- 79 Form, Elected member gift declaration, K Yong, 24 March 2016.
- 80 Form, Elected member gift declaration, L Scaffidi, 23 March 2016. Ms Scaffidi also attended the same event and declared the estimated value of her ticket as \$40.00.
- 81 Form, Gift register – elected member declarations: September 2015, K Yong, 2 October 2015.
- 82 Minutes, Marketing, Sponsorship, International Engagement Committee meeting, 26 July 2016, p 2.
- 83 *Local Government Act 1995*, s 5.62(1)(eb)(i).
- 84 Minutes, Ordinary Council Meeting, 9 August 2016, p 5.
- 85 Transcript, K Yong, public hearing, 24 September 2019, p 24.
- 86 Transcript, K Yong, public hearing, 24 September 2019, p 32-33.
- 87 Email, K Yong to M Ridgwell, 11.04 am 10 October 2016, p 1-2.
- 88 Email, M Ridgwell to K Yong, 11.35 am 10 October 2016, p 1.
- 89 Transcript, L Chen, public hearing, 24 September 2019, p 64-65.
- 90 Transcript, L Chen, public hearing, 24 September 2019, p 69.
- 91 Transcript, L Chen, public hearing, 24 September 2019, p 71-72.
- 92 Transcript, L Chen, public hearing, 24 September 2019, p 73-74.
- 93 Transcript, L Chen, public hearing, 24 September 2019, p 74-75.
- 94 Transcript, L Chen, public hearing, 24 September 2019, p 75.
- 95 Form, Elected member gift declaration, L Chen, 27 March 2016.
- 96 Form, Elected member gift declaration, L Chen, 27 March 2016; Transcript, L Chen, public hearing, 24 September 2019, p 82.
- 97 Transcript, Ms Chen, public hearing, 24 September 2019, p 82, 84.
- 98 Form, Elected member gift declaration, L Chen, 27 March 2016.
- 99 Email, M Harvey-Hanrahan to A Smith, 16 February 2018; Minutes, MSIE Committee meeting, 26 July 2016, p 6.
- 100 Form, Elected member gift declaration, L Chen, 27 March 2016.
- 101 Email, M Harvey-Hanrahan to A Smith, 16 February 2018.

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- 102 Transcript, L Chen, public hearing, 24 September 2019, p 83.
- 103 Transcript, L Chen, public hearing, 24 September 2019, p 84.
- 104 Transcript, L Chen, public hearing, 24 September 2019, p 85.
- 105 Transcript, L Chen, public hearing, 24 September 2019, p 90.
- 106 Transcript, L Chen, public hearing, 24 September 2019, p 91.
- 107 Form, Elected member gift declaration, L Chen, 27 March 2016.
- 108 Transcript, L Chen, public hearing, 24 September 2019, p 88-89.
- 109 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(3).
- 110 Transcript, M Ridgwell, public hearing, 26 September 2019, p 59.
- 111 Transcript, L Chen, public hearing, 24 September 2019, p 88.
- 112 *Local Government Act 1995*, s 5.62(2).
- 113 Transcript, L Chen, public hearing, 24 September 2019, p 71-72.
- 114 Minutes, MSIE Committee meeting, 26 July 2016, p 2.
- 115 Transcript, L Chen, public hearing, 24 September 2019, p 92-93.
- 116 Transcript, L Chen, public hearing, 24 September 2019, p 93-95.
- 117 Transcript, L Chen, public hearing, 24 September 2019, p 94; Minutes, MSIE Committee meeting, 26 July 2016, p 2.
- 118 Transcript, L Chen, public hearing, 24 September 2019, p 94.
- 119 Transcript, L Chen, public hearing, 24 September 2019, p 94.
- 120 Transcript, L Chen, public hearing, 24 September 2019, p 96.
- 121 Minutes, Ordinary Council Meeting, 9 August 2016, p 2-4.
- 122 Transcript, L Chen, public hearing, 24 September 2019, p 99.
- 123 Audio recording, Ordinary Council Meeting, 9 August 2016, extract of recording for Item 277/16: Event sponsorship (partnership) – Telstra Perth Fashion Festival.
- 124 Transcript, L Chen, public hearing, 24 September 2019, p 100.
- 125 Transcript, L Chen, public hearing, 24 September 2019, p 100-101.
- 126 Briefing notes, Special Council Briefing Session, 9 August 2016; Presentation, M Ridgwell, Offer of tickets for elected members, 9 August 2016.
- 127 Briefing notes, Special Council Briefing Session, 9 August 2016, p 1-2.
- 128 Briefing notes, Special Council Briefing Session, 9 August 2016, p 4.
- 129 Briefing notes, Special Council Briefing Session, 9 August 2016, p 1-2.
- 130 Minutes, Ordinary Council Meeting, 9 August 2016, p 5.
- 131 Minutes, Ordinary Council Meeting, 6 June 2017, p 5-6.
- 132 Minutes, Ordinary Council Meeting, 6 June 2017, p 22.
- 133 Minutes, Ordinary Council Meeting, 6 June 2017, p 22-23.
- 134 Emails, K Yong and M Ridgwell, 10 October 2016, p 1-2.
- 135 Transcript, L Chen, public hearing, 24 September 2019, p 102-103, 105.
- 136 Transcript, L Chen, public hearing, 24 September 2019, p 100.
- 137 Transcript, L Scaffidi, public hearing, 25 September 2019, p 2-7.
- 138 *Local Government Act 1995*, s 5.62(1)(ea)(ii), s 5.62(1)(eb)(i).
- 139 Emails, between K Yong and M Ridgwell, 10 October 2016, p 1-2.
- 140 Transcript, L Scaffidi, public hearing, 25 September 2019, p 2-3; *Local Government Act 1995*, s 5.82(4).
- 141 Transcript, L Scaffidi, public hearing, 25 September 2019, p 5.
- 142 Transcript, L Scaffidi, public hearing, 25 September 2019, p 7; Transcript, Counsel for L Scaffidi, public hearing, 25 September 2019, p 74.
- 143 Minutes, Ordinary Council Meeting, 9 August 2016.
- 144 Transcript, L Scaffidi, public hearing, 25 September 2019, p 7.
- 145 Form, Elected member gift declaration, L Scaffidi, 23 March 2016; Form, Elected member gift declaration, L Scaffidi, 23 March 2016; Form, Elected member gift declaration, L Scaffidi, 23 March 2016; Form, Elected member gift declaration, L Scaffidi, 23 March 2016; Form, Elected member gift declaration, L Scaffidi, 23 March 2016; Form, Elected member gift declaration, L Scaffidi, 23 March 2016.
- 146 Transcript, L Scaffidi, public hearing, 25 September 2019, p 21-22.
- 147 *Local Government Act 1995*, s 5.82(4).
- 148 *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222, p 43, [146].
- 149 Transcript, L Scaffidi, public hearing, 25 September 2019, p 27.
- 150 *Local Government Act 1995*, s 5.65(1).
- 151 Form, Elected member gift declaration, L Scaffidi, 23 March 2016.
- 152 Form, Elected member gift declaration, L Scaffidi, 23 March 2016.
- 153 Email, M Harvey-Hanrahan to A Smith, 16 February 2018.
- 154 Transcript, L Scaffidi, public hearing, 25 September 2019, p 77.

- 155 Transcript, L Scaffidi, public hearing, 25 September 2019, p 79.
- 156 Form, Elected member gift declaration, L Scaffidi, 23 March 2016.
- 157 Email, M Harvey-Hanrahan to A Smith, 16 February 2018.
- 158 Transcript, L Scaffidi, public hearing, 25 September 2019, p 77.
- 159 *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222, p 48, [165].
- 160 Form, Elected member gift declaration, L Scaffidi, 23 March 2016.
- 161 Email, M Harvey-Hanrahan to A Smith, 16 February 2018.
- 162 Transcript, L Scaffidi, public hearing, 25 September 2019, p 78.
- 163 Form, Elected member gift declaration, L Scaffidi, 23 March 2016.
- 164 Email, M Harvey-Hanrahan to A Smith, 16 February 2018.
- 165 Form, Elected member gift declaration, L Scaffidi, 23 March 2016.
- 166 Email, M Harvey-Hanrahan to A Smith, 16 February 2018.
- 167 Form, Elected member gift declaration, L Scaffidi, 23 March 2016.
- 168 *Local Government Act 1995*, s 5.62(1)(ea)(i), (ii): this section must also be read in conjunction with *Local Government Act 1995*, s 4.59(a), s 5.62(2) and *Local Government (Election) Regulations 1997*, reg 30A(4), 30B(1), 30C(1).
- 169 Personal communication, WhatsApp, the team group chat, L Scaffidi, 12.11 pm 24 March 2016; Personal communication, WhatsApp, the team group chat, L Scaffidi, 12.29 pm 24 March 2016.
- 170 Transcript, L Scaffidi, public hearing, 25 September 2019, p 26.
- 171 Minutes, Ordinary Council Meeting 9 August 2016, p 2.
- 172 Minutes, Ordinary Council Meeting 9 August 2016, p 15-18.
- 173 Minutes, Ordinary Council Meeting 9 August 2016, p 2-4.
- 174 Transcript, L Scaffidi, public hearing, 25 September 2019, p 30-31.
- 175 Minutes, Ordinary Council Meeting 9 August 2016, p 17.
- 176 Personal communication, WhatsApp, the team group chat, L Scaffidi, 12.11 pm 24 March 2016.
- 177 Briefing notes, Special Council Briefing Session, 9 August 2016; Presentation, M Ridgwell, Offer of tickets for elected members, 9 August 2016.
- 178 Transcript, L Scaffidi, public hearing, 25 September 2019, p 30.
- 179 Form, Elected member gift declaration, L Scaffidi, 11 August 2016.
- 180 Form, Fashion Council WA ticket allocation, undated.
- 181 Email, M Brennan to L Scaffidi, 6.11 pm 2 August 2016.
- 182 Transcript, L Scaffidi, public hearing, 25 September 2019, p 42-43.
- 183 Form, Fashion Council WA ticket allocation, undated.
- 184 Email, M Brennan to L Scaffidi, 6.11 pm 2 August 2016; Form, undated, Fashion Council WA ticket allocation.
- 185 Transcript, L Scaffidi, public hearing, 25 September 2019, p 37, 41.
- 186 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(2)(b).
- 187 Transcript, L Scaffidi, public hearing, 25 September 2019, p 37, 43-44.
- 188 Email, M Brennan to L Scaffidi, 6.11 pm 2 August 2016.
- 189 Form, Fashion Council WA ticket allocation, undated.
- 190 Email, A Purnat to M Brennan, 3.22 pm 10 August 2016; Email, A Purnat to M Brennan, 3.27 pm 10 August 2016.
- 191 Form, Elected member gift declaration, L Scaffidi, 10 February 2016.
- 192 Transcript, L Scaffidi, public hearing, 25 September 2019, p 77.
- 193 *Local Government (Rules of Conduct) Regulations 2007*, reg 12(1).
- 194 Transcript, L Scaffidi, public hearing, 25 September 2019, p 44-45.
- 195 Minutes, Ordinary Council Meeting 6 June 2017, p 5-6.
- 196 Transcript, L Scaffidi, public hearing, 25 September 2019, p 45-46.
- 197 Transcript, L Scaffidi, public hearing, 25 September 2019, p 46-47.
- 198 Minutes, Ordinary Council Meeting 6 June 2017, p 5-6.
- 199 Audio recording, Ordinary Council Meeting 6 June 2017, 10 mins 54 secs-11 mins 22 secs.
- 200 Minutes, Ordinary Council Meeting 6 June 2017, p 20-23.
- 201 Transcript, L Scaffidi, public hearing, 25 September 2019, p 4.
- 202 Transcript, J Davidson, private hearing, 4 July 2019, p 16, 20.
- 203 Transcript, M Mileham, private hearing, 23 July 2019, p 50.
- 204 Transcript, J Davidson, public hearing, 27 September 2019, p 75.
- 205 Transcript, L Scaffidi, public hearing, 25 September 2019, p 7.
- 206 Email, A Battista to M Harvey-Hanrahan, 24 October 2016.
- 207 Transcript, A Battista, private hearing, 24 June 2019, p 41.
- 208 Email, A Battista to M Harvey-Hanrahan, 24 October 2016; Transcript, A Battista, private hearing, 24 June 2019, p 41.
- 209 Email, A Battista to M Harvey-Hanrahan, 24 October 2016.
- 210 Email, R Haythorpe to A Battista, 2 November 2016.

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- 211 Email, A Battista to R Haythorpe, 2.17 pm 10 November 2016.
- 212 Email, A Battista to A Purnat, 12.50 pm 10 November 2016.
- 213 Personal communication, WhatsApp, L Scaffidi to A Battista, 11.06 am on or about 9 November 2016.
- 214 Transcript, A Battista, private hearing, 24 June 2019, p 49.
- 215 Transcript, L Scaffidi, public hearing, 25 September 2019, p 61-64.
- 216 Transcript, A Battista, private hearing, p 49.
- 217 Email, M Tannock to A Battista, 10 November 2016.
- 218 Transcript, A Battista, private hearing, p 49.
- 219 Transcript, A Battista, private hearing, p 50, 53-54.
- 220 File note, M Ridgwell, 14 November 2016.
- 221 Transcript, L Scaffidi, public hearing, 25 September 2019, p 66.
- 222 Email, A Battista to M Harvey-Hanrahan, 24 October 2016.
- 223 Minutes, Ordinary Council Meeting 22 October 2015, p 10.
- 224 Minutes, Ordinary Council Meeting 24 October 2017, p 3.
- 225 Transcript, J Limnios, public hearing, 25 September 2019, p 83; *Local Government (Rules of Conduct) Regulations 2007*, reg 12(1).
- 226 Transcript, J Limnios, public hearing, 25 September 2019, p 84-85.
- 227 Form, Elected member gift declaration, Mr Limnios, 30 March 2016; Form, Elected member gift declaration, Mr Limnios, 30 March 2016.
- 228 Email, M Harvey-Hanrahan to A Smith, 16 February 2018.
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- 230 Transcript, J Limnios, public hearing, 25 September 2019, p 92.
- 231 Transcript, J Limnios, public hearing, 25 September 2019, p 103-109.
- 232 Personal communication, WhatsApp, the team group chat, 24 March 2016.
- 233 Briefing notes, Special Council Briefing Session, 9 August 2016; Presentation, M Ridgwell, Offer of tickets for elected members, 9 August 2016.
- 234 *Local Government Act 1995*, s 5.82(2)(a); *Local Government (Administration) Regulations 1996*, reg 25.
- 235 *Local Government Act 1995*, s 5.65(1).
- 236 Transcript, M Mileham, public hearing, 1 October 2019, p 64.
- 237 Transcript, J Limnios, public hearing, 25 September 2019, p 91.
- 238 Transcript, J Limnios, public hearing, 25 September 2019, p 92.
- 239 Transcript, J Limnios, public hearing, 25 September 2019, p 93.
- 240 Transcript, J Limnios, public hearing, 25 September 2019, p 94-96.
- 241 Transcript, J Davidson, public hearing, 27 September 2019, p 3.
- 242 Transcript, J Davidson, public hearing, 27 September 2019, p 7.
- 243 Transcript, J Davidson, public hearing, 27 September 2019, p 8-9.
- 244 Transcript, J Davidson, public hearing, 27 September 2019, p 10-11.
- 245 Email, M Ridgwell to J Adamos, L Chen, J Green, R Harley, J Limnios, J Davidson, J McEvoy and K Yong, 9.04 pm, 23 March 2016. It is noted Ms Scaffidi was not included in this email.
- 246 Personal communication, WhatsApp, the team group chat, J Davidson and L Scaffidi, 24 March 2016.
- 247 Transcript, J Davidson, public hearing, 27 September 2019, p 18-19.
- 248 Transcript, J Davidson, public hearing, 27 September 2019, p 19.
- 249 Form, Elected member gift declaration, J Davidson, September 2015 [sic].
- 250 Email, M Harvey-Hanrahan to A Smith, 16 February 2018.
- 251 Transcript, J Davidson, public hearing, 27 September 2019, p 23-25.
- 252 Transcript, J Davidson, public hearing, 27 September 2019, p 27.
- 253 Transcript, J Davidson, public hearing, 27 September 2019, p 20.
- 254 Form, Elected member gift declaration, J Davidson, 22 March 2016.
- 255 Transcript, J Davidson, public hearing, 27 September 2019, p 29.
- 256 Form, Elected member gift declaration, L Scaffidi, 10 February 2016.
- 257 Transcript, J Davidson, public hearing, 27 September 2019, p 29, 33.
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- 325 Transcript, M Mileham, public hearing, 1 October 2019, p 64-65.
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# 2.3

## Administrative Leadership





## About this Part

**Strong administrative leadership ensures the integrity and reputation of a local government, and the efficient and effective delivery of services, facilities and programmes to the community.**

The Administration is headed by a Chief Executive Officer (CEO), who has responsibility for the:

- management of the local government's resources, including people, physical assets and finances;
- delivery of services and programmes; and
- accountability of the decisions and actions of its workforce.

The CEO at the City of Perth (City) was assisted by an Executive Leadership Group, consisting of directors of individual directorates.

The CEO at the City led a workforce of between 700 to 760 employees during the Inquiry period. The CEO was assisted in this task by an Executive Leadership Group, consisting primarily of directors of individual directorates, by governance officers and by other employees of the City.

A CEO has a difficult role. A strong, capable CEO is needed to manage a large Council and its workforce. Where a Council is factionalised, and where council members interfere in the operations of the local government, there is an extra political dimension and layer of difficulty to the role of CEO. The CEO is responsible for keeping council members 'in line' and, if necessary, for reporting them to external oversight bodies such as the Corruption and Crime Commission.

This Part, Administrative Leadership, explores aspects of the Administration at the City. It commences with the termination of the employment of a CEO and the appointment of a new CEO, highlighting deficiencies in a system which relies on council members having sufficient capability to manage these processes.

This Part then examines a range of functions performed by the City: people management; financial management and planning; and procurement and contracting. It identifies weaknesses and shortcomings in the systems and processes, interference in the Administration by council members and poor conduct and possible misconduct by individual employees.



## 2.3.1 Chief Executive

The Chief Executive Officer (CEO) of a local government occupies a vital position. The role is essential to the delivery of services to the community. The CEO leads and manages the Administration and its performance.

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The CEO is accountable to, and managed by, a democratically elected Council, which is the employer of the CEO. The CEO supports the Council to provide good government to the local community.

The CEO is also directly accountable for functions provided under legislation. This includes specific responsibilities under the *Local Government Act 1995* (LG Act) and regulations as well as other legislation.<sup>1</sup> The CEO is also responsible for ensuring good government through his or her decisions and actions.

For the Administration, the CEO plays a crucial role in translating the Council's direction and decisions into actions, employing and leading staff, managing the financial resources and providing a safe workplace. The CEO is instrumental in setting the workplace culture.

### Relationships

The relationship between the CEO and Council is critical to a local government's success. Mutual understanding of the roles of each is the cornerstone of this relationship. A constructive, respectful and positive working relationship sets the tone for the whole organisation. Importantly, the relationship also relies on each having the ability to manage and resolve issues and conflicts as they arise.

The relationship between the respective City of Perth (City) CEOs and the City's Council (Council) is examined further in this Chapter and **Chapter 2.1.2 – Culture and governance**.

### Appointing a Chief Executive Officer

Appointing, managing and terminating a CEO is one of the single most important decisions a Council will make – it is a significant financial investment in one person to deliver on the future aspirations and directions of the local government.

The selection and performance management of a CEO requires council members to have specific capabilities in people management. As representatives of the community, elected to their roles, these may be skills and experiences they do not have.

Council members should understand the provisions of the LG Act and how they operate practically, when appointing, managing performance and terminating a CEO's employment. It is incumbent on Council to acquire the necessary skills and knowledge to perform the statutory functions imposed on it.

Council members are individually and collectively responsible, as the Council, for decisions related to the CEO. Decision-making related to people management should, among other things, be:

- free of nepotism, patronage or unlawful discrimination;
- fair; and
- transparent and capable of review.<sup>2</sup>

Information provided to council members to make their decisions, whether by other council members or the Administration, should be consistent with these principles. All council members should have access to the same information.

The decision-making of the Council in the appointment, performance management and termination of a CEO's employment is examined further in this Chapter.

### **Managing a Chief Executive Officer's performance**

The performance of a CEO should be managed appropriately and with regard to good people management principles.<sup>3</sup> CEOs should be told, and understand, how their performance will be measured. They should be given the opportunity to have input into the development of the measures, and know how and when their performance will be assessed. Measures of performance should enable objective assessment, be set in advance, provide sufficient time for the measure to be achieved and be readily understood by both the Council and the CEO. In setting appropriate performance criteria (or key performance indicators), a balance should be struck between measures that relate to service delivery outcomes, financial outcomes and leadership effectiveness.

Furthermore, the performance assessment process should be transparent and include input from relevant stakeholders, including council members and the City's senior managers. Strategies should be established to address performance concerns as well as support leadership developmental needs. Most of all, the performance process should facilitate and support a constructive, respectful and positive working relationship.

This Chapter provides insights into the Council's failure to follow proper process in the management of a CEO's performance at the City.

### **Terminating the employment of a Chief Executive Officer**

There are risks and potential conflicts in the many roles and functions performed by a CEO. This is particularly the case where a Council is factionalised, bringing an internal political dimension which a CEO must manage without becoming involved, or where council members attempt to 'empire build', by controlling the activities of the CEO, or usurping the CEO's role by interfering in the day-to-day running of the local government.

Disintegration in the relationship between Council and the CEO has critical consequences for the City, the Council and the CEO.

The employment relationship between the Council and CEO can end under certain conditions. Where a Council seeks to terminate the employment of a CEO, it should be procedurally fair to that CEO and the decision should be transparent and capable of review.

In the circumstances explored in this Chapter, a Council that seeks to terminate the employment of its CEO must comply with the provisions of the LG Act. When it fails to do so, the good government of the local government is not served. Reputational and industrial risks increase as a result of poor governance in terminating the employment of a CEO.

During the period of the Inquiry's Terms of Reference there were two CEOs – Mr Gary Stevenson and Mr Martin Mileham. A group of council members controlled the CEO Recruitment Committee and the CEO Performance Review Committee as well as holding the majority vote on Council. The Lord Mayor, Ms Lisa Scaffidi, was on that Committee, as was her ally, Councillor Ms Janet Davidson. Through these committees, they oversaw the recruitment of Mr Stevenson in 2012, his performance reviews, the termination of his employment, the appointment of Mr Mileham as an Acting CEO, his recruitment to the substantive position and his first performance review.

### Legislative framework

The role and functions of a local government CEO are set out in the LG Act and other legislation. In summary, a CEO:

- is employed by the Council, is performance managed by the Council, and can have his or her employment terminated by the Council;
- implements decisions of the Council, ensures that advice and information is available to Council, and liaises with the Lord Mayor;<sup>4</sup> and
- manages the day-to-day operations of the local government and employs the staff who work for the local government.

The LG Act provides the following in relation to the employment of a CEO:

#### ***“5.36. Local government employees***

*(1) A local government is to employ –*

*(a) a person to be the CEO of the local government;*

*...*

*(2) A person is not to be employed in the position of CEO unless the council –*

*(a) believes that the person is suitably qualified for the position; and*

*(b) is satisfied\* with the provisions of the proposed employment contract”.*

An absolute majority (\*) is required for sub-section (2)(b).

Regulation 18C of the *Local Government (Administration) Regulations 1996* (Administration Regulations) requires a Council to approve a process for the selection and appointment of a CEO before the position is advertised.

In relation to a CEO's performance assessment, section 5.38(1) of the LG Act states that "A local government must review the performance of the CEO if the CEO is employed for a term of more than 1 year". The review must be conducted at least once in relation to each year of the CEO's employment.<sup>5</sup> Regulation 18D of the Administration Regulations provides for the local government's duties in undertaking the performance review of a CEO:

*"A local government is to consider each review on the performance of the CEO carried out under section 5.38 and is to accept the review, with or without modification, or to reject the review".*

In addition to these roles, the CEO is also the principal officer of a local government. He or she is responsible for reporting suspected serious misconduct to the Corruption and Crime Commission (CCC) or minor misconduct to the Public Sector Commissioner,<sup>6</sup> and the complaints officer for reporting complaints about council members to the Local Government Standards Panel (LGSP).<sup>a</sup>

Specifically, section 28 of the *Corruption, Crime and Misconduct Act 2003* states:<sup>b</sup>

**"28. Certain officers obliged to notify serious misconduct"**

(1) This section applies to the following persons –

...

(c) the principal officer of a notifying authority;

...

(2) Subject to subsections (4), (5) and (6), a person to whom this section applies must notify the Commission in writing of any matter –

(a) which that person suspects on reasonable grounds concerns or may concern serious misconduct".

The principal officer of the City (a notifying authority) is the CEO.

<sup>a</sup> Unless another senior officer has been nominated as Complaints Officer by the Council: *Local Government Act 1995*, s 5.120.

<sup>b</sup> Note: section 45H of the *Corruption, Crime and Misconduct Act 2003* provides, in similar terms, for a report of misconduct to be made to the Public Sector Commissioner.

### Departmental guidelines

During the period of the Inquiry's Terms of Reference the Department of Local Government, Sport and Cultural Industries (Department) made available *"Local Government Operational Guideline – Number 10: Appointing a CEO"* (revised August 2012). This was designed to assist Councils in understanding their legislative obligations in relation to recruiting and appointing a CEO. They included guidance for council members in the following areas.

- The principles of merit and equity.
- The requirement for absolute confidentiality.
- Processes to be followed by a selection panel.
- Declarations to be made by selection panel members of any previous association with an applicant.
- Selection reports.
- Formal and final appointments to be made by the Council.

### Council Policy

The City also established Council Policy *"CP 12.6 Staff – Local Government Employees – Senior Employees"* which governed which employees could act in the position of CEO, and the process for filling the position on an acting basis.

### Trends in local government

Experience across Australia demonstrates that issues relating to the selection and appointment, remuneration, performance management and termination of employment of CEOs are not new to the local government sector. Contemporary research focuses on factors affecting CEOs in local government including workplace safety and wellness, appointment of CEOs and the roles and relationships between mayors and CEOs.<sup>7</sup> Investigative or statutory bodies have also examined matters related to CEOs on a number of occasions.<sup>8</sup>

One report of note was published by the Local Government Inspectorate of Victoria (Inspectorate) last year.<sup>9</sup> The Inspectorate conducted a review which highlighted a number of matters relevant to issues examined by this Inquiry and which are considered in this Chapter.

The review considered the *"existing arrangements between councils and CEOs, including the complete employment cycle of recruitment, performance management, tenure and separation"*.<sup>10</sup> In relation to role clarity, the Inspectorate observed that *"Often the role of council and CEO are misunderstood"*. The Council *"... are elected under the Local Government Act to undertake their duties in the best interests of the people in the municipality by providing the overall policy and strategic direction"*. While the CEO's role *"... is a unique and complex role given the political nature, service delivery and business imperatives"*.



The report notes that in respect of issues relating to employment contracts and the review process for CEOs:

*“The way in which both new and reappointed CEO contracts are negotiated, prepared and executed has at times been problematic, prompted in part by a misunderstanding by councillors of their roles and obligations in this process and/or limited experience or capability in human resource management.*

*Instances have occurred in which the proposed contract has not been subject to proper consultation with councillors; the proposed appointment and contract may not be subject to a proper report and recommendations to the council; or the council has not formally adopted or executed the contract. Each of these circumstances could pose an unintended financial risk for the council. The Inspectorate is aware of instances where CEO performance reviews have not been appropriately conducted or where review outcomes were not formally reported and adopted by the council. There was also many examples of a lack of capability among the employer in managing the CEO review process”.*

The report also makes critical observations on the “political risk for the role of CEO”:

*“One of the key issues across the sector was the political risk inherent in local government politics. It was commonly considered that a CEO is not fairly judged on their performance.*

*...*

*The ability for CEOs to separate themselves from electoral politics while remaining politically sensitive is the most common factor contributing to CEOs successfully doing their job. A key challenge for councils is to establish contractual and performance management systems that allow CEOs to achieve their objectives, to deal more effectively with challenges facing communities and contribute to more sustainable local governments. It is argued that CEOs performance is not the major determinant of success in the role; rather the capacity to engage councillors was identified as the most critical issue in gaining successful outcomes. The CEO must be policy oriented but not political. Without this balance there can be serious consequences. Several empirical studies have suggested that political disputes can be a significant cause of CEO turnover contributing to resignations prior to contract completion”.*

The Inquiry recognises the risks associated with the role of CEO in local government.

The events that transpired at the City are unfortunately not a unique situation, but evidence of a more endemic problem across the sector. Of particular note is the tension that can exist between the expectations of council members and those of a CEO. Ultimately though, each has responsibility to lead, be accountable for their own performance and fulfil the obligations entrusted to them by the community and under statute.

### **Evidence of Chair Commissioner, Mr Andrew Hammond**

Mr Andrew Hammond became a Commissioner of the City of Perth on 2 March 2018 and Chair Commissioner on 9 August 2019. He gave evidence to the Inquiry on 10 October 2019. In his evidence, Mr Hammond explained some of the issues and risks relating to the employment of a local government CEO.<sup>11</sup>

Mr Hammond commented on difficulties which can arise when a CEO is obliged to report a council member.

He said:

*“... a CEO has an obligation under law to report misconduct or serious misconduct, either to the Public Sector Commissioner or the Crime and Corruption Commission. He’s obliged to do that under the law. If he does that and he does that to a Councillor, that Councillor has every right to sit on that CEO’s Performance Appraisal and vote as to whether he gets a pay rise or if his contract’s renewed, etcetera. So it’s my opinion that that is a problem. As a past CEO, it is really firstly not fair on an elected Council to expect that they would have the necessary skills to be able to do such a thing as employing a CEO without assistance but secondly, some Councillors may come to the table with regards to decision-making on either the performance or appointment of a CEO, with other agendas in mind.”<sup>12</sup>*



A decision to appoint and obviously a decision to dismiss, or a decision to not renew a contract, the engagement or otherwise of a CEO is the most critical decision that a Council can make.



**Mr Andrew Hammond**  
Chair Commissioner

Mr Hammond said that a Council should be able to determine who they want as a CEO, but the process needs assistance:

*“At the moment, Councils can, at their discretion, procure services which are essentially consultants and the consultants, in my view, do a reasonably good job. However, Councillors also have the discretion not to do that and to actually run processes themselves. I think that there is the problem there.”<sup>13</sup>*

Mr Hammond gave some examples of the need for independent oversight:

*“Well I will give some examples of things that do happen that shouldn’t happen ...*

*The first one is that Councillors that are in a confidential process, break that confidentiality and make phone calls to determine the efficacy or otherwise of applicants to a job, who obviously would wish their application to remain confidential. That happens on occasion.*

*Issues such as basic meeting procedure in governance, like a committee can’t make a decision – certainly can’t make a decision on a CEO because a committee can’t be delegated powers of which an absolute majority is required. If the CEO isn’t there, has gone and perhaps there’s been some conflict, perhaps there’s not a lot of trust with staff, the Councillors won’t go to the staff and seek advice, they will have a go themselves. It’s those type of scenarios where problems happen.*

*Other issues with Councillors are, in some cases actually calling a prospective applicant and having a chat with them prior to an interview and in some cases, of course, with applicants calling Councillors who they may know are on the panel, to seek their support. All of this is unethical behaviour. I don’t think it’s necessarily unlawful but it certainly can lead to not the right person being appointed to the role.”<sup>14</sup>*

The description by Mr Hammond of difficulties in the relationship between council members and CEO which can arise when a CEO is obliged to report possible misconduct by a council member, and the weaknesses in CEO selection processes run by council members, are issues which arose at the City, and are considered by the Inquiry in this Chapter.

## Termination of a Chief Executive Officer

### Introduction

1. On 6 September 2012, Mr Gary Stevenson was appointed by the City of Perth Council (Council) as the Chief Executive Officer (CEO) of the City of Perth (City). His employment as CEO was terminated by Council on 20 January 2016. On the same day, Mr Martin Mileham began acting in the position of CEO. Council accepted a recommendation to appoint Mr Mileham as CEO on 1 September 2016.
2. The committee and council processes which resulted in Mr Stevenson being replaced by Mr Mileham were driven by three council members. These were Lord Mayor Ms Lisa Scaffidi, Councillor Ms Janet Davidson and, initially, Deputy Lord Mayor Mr Rob Butler, and when he was not re-elected on 17 October 2015, Deputy Lord Mayor Mr James Limnios.
3. These council members formed, at different times, the CEO Recruitment Committee and the CEO Performance Review Committee. In these capacities they oversaw the recruitment of Mr Stevenson in 2012, his performance reviews, the termination of his employment, the appointment of Mr Mileham as an Acting CEO, his recruitment to the substantive position and then his performance reviews.
4. At times, these three council members appear to have confused which roles they were performing on which committees. At times, they may well have acted without the authorisation of the Council.
5. These council members were part of a “*Team*” which, until the election in October 2017, had a majority on the Council and controlled decision-making by the Council.
  - Ms Scaffidi was the acknowledged leader of the team.
  - The other members of that team were council members Mr Jim Adamos, Ms Lily Chen, Ms Davidson, Mr Limnios, Ms Judy McEvoy, and Mr Keith Yong.
6. Mr Limnios appears to have fallen out with Ms Scaffidi and other members of her team during 2016. When this occurred, he was no longer part of team communications.
7. Council members Dr Jemma Green and Mr Reece Harley were not part of Ms Scaffidi’s team and could be considered to be in opposition. Mr Harley and Mr Yong were elected as council members on 17 October 2013. Dr Green was elected as a council member in place of Mr Butler on 17 October 2015 and was relatively new to the role at the time Mr Stevenson’s employment was terminated.
8. Ms McEvoy and Mr Yong were not re-elected in October 2017.

9. The team communicated by WhatsApp. As Ms Scaffidi told her team:

**Ms Scaffidi**



*"We are a team  
All or nothing  
7 musketeers  
No new members  
No lone coffee dates ..."*<sup>15</sup>

10. The CEO of a local government is the person responsible for reporting allegations of misconduct and complaints to the Corruption and Crime Commission (CCC), to the Public Sector Commission, to the Local Government Standards Panel (LGSP) or to the Department of Local Government, Sport and Cultural Industries (Department).
11. The reporting obligations of a CEO may place the CEO in an unenviable position from time to time by obliging him or her to report the alleged or suspected improper behaviour of a council member who he or she must work closely with and who, as a member of Council, is responsible for the CEO's ongoing employment and may be in a position to influence or prejudice that employment.<sup>16</sup>

## Timeline

2012	6 September	The Council appointed Mr Stevenson as Chief Executive Officer (CEO).
	29 October	Mr Stevenson commenced as CEO. No Key Performance Indicators (KPIs) had been set for him.
2013	During April	Mr Geoff Blades of Lester Blades commenced a six-month performance review of Mr Stevenson (2013 Performance Review).
	4 June	Council established its CEO Performance Review Committee (Committee).
	22 June	Ms Davidson, Ms Scaffidi and Mr Butler were appointed as the inaugural members of the Committee.
	During June	Mr Blades finalised the 2013 Performance Review process, reporting that multiple council members felt Mr Stevenson did not <i>"have their back"</i> and that he frequently mentioned the CCC.
	4–10 October	Ms Scaffidi and Mr Martin Mileham then Director of Planning and Development at the City, travelled to New York and attended a conference. The hosting company paid for their fares and accommodation.
2014	1 April	Council received the results of the 2013 Performance Review.
	15 July	Mr Blades commenced Mr Stevenson's first annual performance review (2014 Performance Review).
	2 October	Mr Blades met Mr Stevenson to discuss the results of his 2014 Performance Review. Over the next few days, Mr Stevenson prepared and presented a written submission to Council.
	6 October	Mr Blades and Mr Stevenson attended a <i>"heated"</i> meeting of the Committee.
	28 October	Council endorsed the revised performance review and a salary increase for Mr Stevenson.

2015	17 April	The CCC began an investigation into Ms Scaffidi's gifts and travel.
	During June	Ms Davidson, Committee chair, commenced Mr Stevenson's 2015 Performance Review.
	11 June	Mr Mileham retrospectively disclosed the fares and accommodation from the trip to New York in 2013.
	26 August	Mr Stevenson referred a <i>"Report on Gifted Travel"</i> to the CCC.
	5 October	The CCC issued a <i>"Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth"</i> .
	17 October	Local government elections were held and Dr Green was elected to Council. Mr Butler was not re-elected and Mr Limnios replaced him on the Committee.
	22 October	The Committee was reformed. Its members were Ms Scaffidi, Ms Davidson and Mr Limnios.
	3 November	Results of the 2015 Performance Review sent to Mr Stevenson.
	30 November	Mr Stevenson met with the Committee, having presented a submission setting out two options to <i>"move forward"</i> . Lawyers for Ms Scaffidi asked for documents Mr Stevenson sent to the CCC regarding the <i>"Report on Gifted Travel"</i> .
	2 December	Mr Stevenson telephoned Ms Davidson and was told his <i>"Option 1"</i> regarding termination, <i>"was not being considered"</i> .
2016	24 December	Ms Scaffidi commenced a leave of absence.
	13 January	Mr Stevenson called Ms Davidson to discuss his performance review. He assumed the next meeting would <i>"set that path of reconciliation and rebuild"</i> .
	14 January	Mr Stevenson provided Ms Scaffidi with his <i>"Report on Gifted Travel"</i> . Ms Scaffidi emailed MDC Legal for advice about termination of his employment.
	18 January	Ms Scaffidi's leave of absence ended.
	19 January	The Committee recommended Council accept Mr Stevenson's <i>"Option 1"</i> .
	20 January 8:30am	Mr Stevenson met with Ms Scaffidi, Ms Davidson and Mr Limnios and was told his employment would be terminated.
	20 January 9:21am	A Special Council Meeting endorsed the Committee recommendations. Mr Stevenson's employment as CEO was terminated with immediate effect. Mr Mileham was appointed Acting CEO.

## Issues considered by the Inquiry

12. Consistent with A.1(i), A.3(ii), A.3(iii), A.3(v) and A.3(vi) of the Inquiry's Terms of Reference, the Inquiry has considered, with respect to Mr Stevenson:

- the quality of Mr Stevenson's performance reviews, and comments by council members about the CCC in the performance review surveys of 2013, 2014 and 2015;
- whether Mr Stevenson's employment was terminated, because he reported Ms Scaffidi to the CCC; and
- the circumstances in which Council was asked to consider terminating Mr Stevenson's employment at a Special Council Meeting on 20 January 2016.

## Investigation by the Inquiry

13. The Inquiry's Terms of Reference cover the period between 1 October 2015 and 1 March 2018, although it may report on earlier periods *"for the purpose of properly discharging its function"* and to place matters *"within a relevant context"*.<sup>17</sup>
14. On this basis, the Inquiry has considered some matters relating to the employment of Mr Stevenson which occurred before 1 October 2015.
15. The Inquiry interviewed, and held private and public hearings, involving a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section:

- Council members involved in decisions relating to the termination of the employment of Mr Stevenson and the appointment of Mr Mileham: namely, Mr Adamos, Mr Butler, Ms Chen, Ms Davidson, Dr Green, Mr Harley, Mr Limnios, Ms McEvoy, Ms Scaffidi and Mr Yong.
- CEOs, Mr Stevenson and Mr Mileham.
- Mr Robert Mianich, Director, Corporate Services.
- Mr Mark Ridgwell, Manager, Governance.
- Ms Michelle Howells, Manager of Human Resources.<sup>c</sup>
- Mr Geoff Blades, Director of Lester Blades Pty Ltd (Lester Blades), an executive search company.

16. In the course of its investigations, the Inquiry heard evidence relating to the performance of Mr Frank Edwards, Mr Stevenson's predecessor as the CEO of the City. Mr Edwards ceased employment with the City in 2012. The Inquiry did not hear evidence from Mr Edwards and makes no findings in relation to his performance as CEO.

## Legislative background

### Council's responsibility for the Chief Executive Officer's employment

17. A local government must employ a CEO.<sup>18</sup> A person is not to be employed as a CEO unless Council believes he or she is suitably qualified and is satisfied with the provisions of his or her proposed contract of employment.<sup>19</sup> A CEO's contract of employment cannot be for a term longer than five years, but it can be terminated *"on the happening of an event specified in the contract"*.<sup>20</sup>

<sup>c</sup> During her private hearings, Ms Howells expressed concerns to the Inquiry about possible victimisation arising from the publication of her testimony. However, the Inquiry considers that her evidence is essential to the issues considered in this matter. Furthermore, the *Royal Commissions Act 1968* has several provisions which make it clear that any adverse action taken in relation to a person, because of evidence they have given to the Inquiry, is a serious offence with a penalty of five years imprisonment: *Royal Commissions Act 1968*, s 29.

18. A CEO's contract of employment is of no effect unless the contract specifies performance criteria for the purpose of reviewing the CEO's performance.<sup>21</sup> The CEO's performance must be reviewed at least once for every year of employment.<sup>22</sup> A local government must consider each review and either accept the review, with or without modification, or reject the review.<sup>23</sup>
19. The review of a CEO's performance is an important statutory function. It should not be tainted or influenced by improper considerations, such as the fact that the CEO has complied with his or her legal obligations by reporting a council member to the CCC or another body. It should take place, so far as is practicable, based on agreed objective criteria and not the personal opinions of council members.
20. Council is responsible for employing, reviewing the performance of and dismissing the CEO. When doing so, Council is to treat the CEO fairly and consistently.<sup>24</sup>

#### Role and responsibilities of the Chief Executive Officer

21. The CEO is, among other things, responsible for:
  - managing the day-to-day operations of the local government;
  - advising the Council on the local government's functions under the *Local Government Act 1995* (LG Act) and other laws;
  - ensuring that advice and information is available to Council, so informed decisions can be made;
  - causing Council decisions to be implemented; and
  - liaising with the Lord Mayor on the local government's affairs and the performance of the local government's functions.<sup>25</sup>
22. The relationship between the CEO and Council is crucial to the proper functioning of the local government. As Mr Andrew Hammond, the Chair Commissioner of the City, said in his evidence before the Inquiry:
 

*"A decision to appoint and obviously a decision to dismiss, or a decision to not renew a contract, the engagement or otherwise of a CEO is the most critical decision that a Council can make".*<sup>26</sup>
23. The CEO has specific responsibilities for handling complaints and allegations of misconduct. The *Corruption Crime and Misconduct Act 2003* (CCM Act) provides that where a CEO suspects on reasonable grounds that a matter concerns or may concern serious misconduct (including serious misconduct by council members), the CEO must notify that matter to the CCC in writing as soon as reasonably practicable after the CEO becomes aware of the matter.<sup>27</sup> A CEO's duty to notify the CCC is "*paramount*"—the CEO must notify the CCC even if that would contravene another Act or if the CEO is otherwise obliged to keep the matter confidential.<sup>28</sup> If the CEO fails to report suspected misconduct, the CCC may report that failure to the Council.<sup>29</sup> The CEO has the same duty to report suspected minor misconduct by an employee (but not a council member)<sup>30</sup> to the Public Sector Commissioner.<sup>31</sup>



24. The CEO is also designated by the LG Act as the complaints officer for the local government<sup>32</sup> and in that capacity is required to:
  - send complaints of “*minor breaches*” by council members to the LGSP, for the LGSP to address;<sup>33</sup>
  - provide the LGSP with anything that it requires to help the LGSP deal with a complaint against a council member;<sup>34</sup>
  - keep a register of all complaints in which the LGSP has made orders against a council member;<sup>35</sup> and
  - send complaints that a council member has committed an offence to the CEO of the Department.<sup>36</sup>
25. The CEO may also make complaints of minor breaches by council members to the LGSP.<sup>37</sup>
26. As a result, the statutory framework established by the CCM Act and the LG Act relies significantly on local government CEOs to report certain conduct to the appropriate authorities.
27. There are statutory protections for a CEO reporting matters to the CCC. Section 175 of the CCM Act provides that a person must not threaten to prejudice the safety or career of any person or do any act that is, or is likely to be, to the detriment of any person, because that person helped the CCC or the Public Sector Commissioner in the performance of functions under that Act. There are no equivalent protections for a CEO reporting matters to the Department or the LGSP.

## Evidence obtained by the Inquiry

### Employment of Mr Gary Stevenson

28. Mr Stevenson commenced as CEO of the City on 29 October 2012. He was contracted until 28 October 2017.
29. Mr Stevenson was recruited through a process run by Lester Blades. A CEO Recruitment Committee, consisting of Ms Scaffidi, Ms Davidson and Mr Butler, developed the position documentation and was involved, with Mr Blades, in interviewing shortlisted candidates.
30. The CEO Recruitment Committee recommended to Council that Mr Stevenson be appointed as the CEO on a five-year contract. Terms were negotiated and a contract of employment was put before Council at a Special Council Meeting on 6 September 2012, where it was endorsed.<sup>38</sup>
31. According to Mr Stevenson’s contract of employment, a review of his performance had to occur at least once for every year of employment. Mr Stevenson’s salary increases were tied to him achieving satisfactory performance.

32. Mr Stevenson's position description, which was annexed to his employment contract, provided that "*Key Performance Criteria will be agreed and included*" in his employment contract. Mr Stevenson's employment contract provided that the performance criteria for the purposes of reviewing his performance "*will be broadly based on*" the position description, annual plan and strategic plan outcomes, budget outcomes and the outcome of assessments for development needs/requirements.<sup>39</sup>
33. During his employment at the City, three performance reviews were conducted by the CEO Performance Review Committee:

**2013: A six-month review.<sup>40</sup>**

- Mr Blades of Lester Blades assisted the Council with this performance review.
- On 1 April 2014, Council received the performance review and determined an increase in total annual remuneration for Mr Stevenson.<sup>41</sup>

**2014: First annual performance review.**

- Mr Blades of Lester Blades assisted the Council with this review.
- On 28 October 2014, Council received the performance review and determined an increase in total annual remuneration for Mr Stevenson.<sup>42</sup>

**2015: Second annual performance review.**

- Ms Davidson, presiding member of the CEO Performance Review Committee, conducted this performance review.
- This performance review was considered by the CEO Performance Review Committee on 19 January 2016.
- On 20 January 2016, Council resolved to endorse the minutes/ recommendations of the CEO Performance Review Committee meeting.

34. In accordance with clause 8.5 of Mr Stevenson's contract, the City could terminate his employment for any reason. If it did, the City was required to pay Mr Stevenson the equivalent of 12 months salary.<sup>43, (d)</sup>
35. On 20 January 2016, Mr Stevenson's employment as CEO was terminated by Council.

**Chief Executive Officer Performance Review Committee**

36. On 4 June 2013, Council established the CEO Performance Review Committee. Its members were appointed on 22 October 2013. It consisted of the same members as Council's CEO Recruitment Committee – Ms Scaffidi, Ms Davidson and Mr Butler. Its terms of reference were to:
- undertake an annual review of the performance of the CEO;
  - establish annual performance objectives for the CEO; and
  - report the outcome of the various reviews.<sup>44</sup>

d In accordance with the contract of employment, increases in Mr Stevenson's total annual remunerations would occur "*subject to satisfactory performance*" at designated intervals: Contract of Employment, G Stevenson, 19 September 2012.

37. The City did not have policies or procedures in place to support these council members in meeting their obligations.
38. All three of Mr Stevenson's reviews were overseen by the CEO Performance Review Committee. Mr Limnios replaced Mr Butler as a member of this committee on 22 October 2015.

### Six-month performance review, 2013

39. In April 2013, Mr Blades of Lester Blades conducted a six-month review of Mr Stevenson's performance. Mr Blades created a survey for council members, directors and Mr Stevenson to complete.
40. The survey required respondents to rate, from "A" to "E",<sup>e</sup> and provide comments on Mr Stevenson's performance against 26 outcome/performance criteria.
41. The review was completed in June 2013. There were no key performance indicators (KPIs) in place. A note made by Mr Stevenson of the meeting of the CEO Employment Committee on 5 June 2013 indicates that it was agreed the Deputy Lord Mayor, Mr Butler, would prepare draft performance objectives.<sup>45</sup> Mr Butler had no previous experience in drafting or implementing KPIs. In his evidence before the Inquiry, Mr Butler had no recollection of what process was applied to drafting KPIs for Mr Stevenson.<sup>46</sup>

### Council members assess Mr Gary Stevenson's performance for the first time

42. The returned 2013 surveys contained positive and negative comments by council members. Mr Blades met with council members individually to understand their responses and collated the responses into an outcomes document. Many of the responses are not attributed to identified participants.<sup>47</sup>
43. In the outcome of the review, unidentified council members<sup>f</sup> were noted as commenting on Mr Stevenson's approach to the CCC and his relationship with council members:  
*"He is not 'watching our backs' (like previous CEO did) ... Why does the answer (so often) have to be the CCC or the Ombudsman or an external review, just deal with it!"*  
*"It is typical to mention the CCC in his answers or an external investigator. Just deal with and manage issues. Not every issue is a CCC issue, just been some dialogue and strategy. I don't feel comfortable to open up. I want the CEO to 'have my back'".<sup>48</sup>*

<sup>e</sup> CEO Performance Review Outcome of Survey 2013, Lester Blades. The survey scale: "A – Exceeding the requirements of this position outcome/performance criterion; B – Meeting the requirements of this position outcome/performance criterion; C – Meeting the requirements of this position outcome/performance criterion, but room for improvement; D – Below the requirements of this position outcome/performance criterion; E – Unable to make an assessment (this may be because you have not had sufficient exposure to the CEO in this area or it is simply too early to make a judgement); NR – No rating provided".

<sup>f</sup> In the public hearings, the Inquiry examined council members but were unable to attribute these comments.

44. Mr Limnios, in his survey, rated Mr Stevenson's overall performance as CEO as a "C" and made the following comment:

*"Personally He comes across very beauracratic [sic], lacks people skills. Whenever In instances I've shared concerns or issues where I was probably seeking guidance or assurance or expressing frustration his answers were not comforting, very typical or extreme ie mentioning CCC or external investigation etc for issues that weren't even at that level, and probably just needed some dialogue & strategy. Don't feel comfortable to open up to him at all. Frank was the total opposite a decent, supportive, strong CEO that had your BACK!"<sup>g</sup>*

45. During his meetings with council members to discuss their responses to the survey, Mr Blades summarised council members discussing Mr Stevenson's approach to the CCC in the following way:

*"... seemingly, Gary would say to Elected Members, 'You really shouldn't say or do that because that's something the CCC would be interested in', or 'You could get reported to the CCC for saying or doing that, we don't want to attract the attention of the CCC.' So Councillors relayed those kind of comments to me that Gary had said to them and clearly they were not happy about that".<sup>49</sup>*

46. The phrase "has my back" (or similar) typically means that a person is protecting or defending someone.
47. Given the importance of the relationship between the CEO and the Council, it was appropriate, to some extent, for council members to take into account Council's relationship with Mr Stevenson, including his communications with them, when reviewing his performance.
48. However, Mr Stevenson's performance (including his relationship with Council) could only be properly assessed if council members fully appreciated his responsibilities and obligations and properly considered how he had discharged those responsibilities and obligations.
49. The comments at paragraph 43-45 indicate that some council members did not accept or properly appreciate Mr Stevenson's responsibilities and obligations in relation to certain conduct matters under the CCM Act and the LG Act.
50. It was Mr Stevenson's role to ensure that advice and information was available to the Council on his and its statutory obligations, even if council members did not view that advice favourably. It was not his role to protect council members from the consequences of their actions, including any suspected misconduct. On the contrary, it was his statutory obligation to report suspected misconduct to the CCC and his role to make complaints to the LGSP if he saw fit.
51. For these reasons, the remarks at paragraph 43-45 do not demonstrate an adequate assessment of Mr Stevenson's performance. An assessment on that basis was unfair to him and contrary to section 5.40(c) of the LG Act.

<sup>g</sup> CEO Performance Review 2013, J Limnios. In Mr Limnios's survey, under "Outcome 6: Stakeholder Relationships" there is a handwritten note (which may be a note made by Mr Blades in a subsequent meeting between Mr Blades and Mr Limnios) that reads "priorities are different to councillors, he is cold, not looking after councillors, not got our backs, wants to report to Govt, CCC, Ombudsman". The Inquiry has been unable to determine the provenance of this handwriting and has not had regard to it.

### First annual performance review, 2014

52. Mr Stevenson's first annual performance review was conducted between 15 July 2014 and October 2014. Mr Blades was engaged to conduct it.
53. There were still no agreed KPIs in place. The City had no policies or procedures in place to assist committee members to develop them or assess against them.
54. It was the CEO Performance Review Committee's responsibility, under its terms of reference, to develop agreed KPIs with Mr Stevenson. Mr Stevenson told the Inquiry that he raised the need for KPIs at his six-month performance review, but nothing was done.<sup>h</sup> Ms Davidson, the presiding member of the CEO Performance Review Committee, accepted the Committee should have developed KPIs for Mr Stevenson, but she could not explain why this was not done.<sup>50</sup>
55. The Inquiry finds the CEO Performance Review Committee did not establish KPIs with Mr Stevenson for the 2014 assessment period.

### Council members assess Mr Gary Stevenson's performance

56. Mr Blades finalised the "CEO Performance Review September 2014" survey outcomes. The format was similar to that used for the six-month review. The rating scale was the same and the survey used the same criteria.<sup>51</sup>
57. Council members were mixed in their views of Mr Stevenson's performance. There were further negative comments regarding Mr Stevenson's approach to the CCC.
58. Ms Davidson made the following comment about Mr Stevenson's "Knowledge of legislative and corporate governance/compliance requirements":  
*"... Sometimes too quick to refer to CCC without handling internally first especially if a one off occasion".*<sup>52</sup>
59. Mr Blades again met with council members during this performance review process to understand their responses. In notes of a meeting between Mr Blades and Mr Limnios on 11 August 2014, Mr Blades recorded Mr Limnios as saying:  
*"not the friend of the councillors – created a 'them & us'  
need to be a friend of the city of perth  
propensity to refer want to refer matters to the CCC.  
would not employ him again.  
I am really not happy.  
our back is not covered  
I cannot depend upon him".*<sup>53</sup>
60. In the Inquiry's view, it was not appropriate for Mr Limnios and Ms Davidson to negatively assess Mr Stevenson's performance on the basis of his propensity to report matters to the CCC or his speed in reporting matters. It was not Mr Stevenson's role to be "the friend of the councillors" or to cover their backs.

<sup>h</sup> Transcript, G Stevenson, private hearing, 28 February 2019, p 6. That is consistent with Mr Stevenson's submission to the CEO Performance Review Committee in 2014, where he said "During negotiations for the appointment in 2012 and again during the 2013 Performance Review, I asked for these to be established. This has not occurred despite the Committee agreeing to do so in 2013".

That an incident of suspected misconduct might be a “one-off” should have no bearing on whether the matter should be reported to the CCC.

61. These remarks demonstrate a failure to appreciate the role and statutory obligations of the CEO and should not have been considered in the way they were in a proper assessment of Mr Stevenson’s performance.
62. In notes of a meeting between Mr Blades and Mr Butler on 20 August 2014, Mr Blades recorded Mr Butler as saying, “*don’t use the threat of the CCC*”.<sup>54</sup>
63. Ms Scaffidi did not personally complete a survey in 2014, but she met with Mr Blades to complete it. Mr Blades made notes of their meeting<sup>55</sup> and recorded Ms Scaffidi as saying:  
*“don’t use the CCC as a veiled threat.  
we need to know he has our back”*.<sup>56</sup>
64. Mr Blades’s report under “*Summary of Findings*” stated:  
*“EM’s [elected members] are concerned at the CEO’s use of the CCC as a ‘veiled threat’. We need to know that the CEO ‘has our backs’ and guides us respectfully”*.<sup>57</sup>
65. In her evidence to the Inquiry, Ms Scaffidi accepted these comments were hers and said she was speaking for other council members.<sup>58. (i)</sup> Ms Scaffidi did not take kindly to Mr Stevenson talking to her about the CCC and felt Mr Stevenson used the CCC as a veiled threat.<sup>59</sup>
66. Ms Scaffidi denied that she was bothered that Mr Stevenson would report matters to the CCC. Ms Scaffidi did not accept that, by making these comments during Mr Stevenson’s performance review, she was assessing his performance by reference to him pursuing governance matters.<sup>60</sup>
67. Ms Scaffidi gave evidence that council members were expressing to her that Mr Stevenson needed to have their backs “*often enough*” and in “*forums where we were together*”. According to Ms Scaffidi, council members used this phrase “*not because we were seeking any protection but because we were seeking governance guidance, which was one of the prerequisites he had championed as being a leader of at the time of his interview*”.<sup>61</sup> However, Ms Scaffidi’s evidence about the intentions of other council members who used the phrase “*have our backs*” is largely unreliable. The Inquiry accordingly places little weight on this evidence.
68. It is apparent that by making these remarks to Mr Blades, in the course of the 2014 performance assessment, Ms Scaffidi assessed Mr Stevenson’s performance by reference to his approach to the CCC. Ms Scaffidi and Mr Blades completed the survey for the purpose of reviewing the performance of Mr Stevenson. It had no other purpose. An obvious inference which arises is that anything Ms Scaffidi said to Mr Blades and which Mr Blades then recorded was related to the performance of Mr Stevenson in his role as CEO.

i However, Mr Limnios said the statement “*We need to know that the CEO has our backs and guides us respectfully*” were his words: Transcript, J Limnios, public hearing, 6 September 2019, p 19.

69. Mr Blades's report also stated under "Outcome 5 – Management of Change & Risk":
- "In several discussions with EM's mention was made of the CCC. EM's openly critical to GB [Geoff Blades] of the fact CEO raises this seemingly as a veiled threat and a way of resolving matters. Several EM's clearly very unhappy about this. EM's believe attempts should be made to resolve matters 'in-house' where possible".<sup>62</sup>*
70. It appears that this statement was a compilation of comments from several council members.<sup>j</sup> However, Ms Scaffidi accepted, when it was put to her, that this was her comment. Ms Scaffidi denied she or other council members wanted Mr Stevenson to resolve potential CCC matters "in-house". Ms Scaffidi also denied there was a link between references to the CCC and the statement "EM's believe attempts should be made to resolve matters 'in-house' where possible". Ms Scaffidi said her comments meant "we wanted him [Mr Stevenson] to tighten up on Gift Declarations and other declarations" and "ensure that the systems were better than they clearly were".<sup>63</sup> Again, Ms Scaffidi cannot give very reliable evidence about the intentions of other council members. The Inquiry gives little weight to this evidence.
71. Contrary to Ms Scaffidi's evidence, it appears that some council members preferred Mr Stevenson to resolve matters in-house and not report matters to the CCC. Ms Chen, at the time of the 2014 performance review, held the view that most things could be resolved in-house (except for "very serious matters" and "very serious conflicts of interest") and that attempts should be made to resolve matters in-house where possible.<sup>64</sup>
72. In her evidence to the Inquiry, Ms Chen appeared to refer to failures by council members to declare gifts or contributions to accommodation as matters that should be dealt with internally rather than reported to the CCC.<sup>65</sup> However, the failure by a council member to declare a gift or a contribution to travel in an annual return (as required by sections 5.78, 5.82 and 5.83 of the LG Act)<sup>k</sup> amounts to serious misconduct under the CCM Act and must be reported by the CEO to the CCC.<sup>l</sup>
73. As set out later in this Section, the Inquiry is not satisfied there was anything inappropriate in Mr Stevenson's discussions with council members regarding his and their obligations. In particular, the Inquiry is not satisfied that Mr Stevenson used the CCC as a threat in his discussions with council members.<sup>66</sup>

<sup>j</sup> The Inquiry notes Mr Harley's evidence that in September 2014, he was openly critical of Mr Stevenson raising the CCC and spoke about having a preference for attempts to be made to resolve matters in-house where possible: Transcript, R Harley, public hearing 4 September 2019, p 18. However, it appears that Mr Harley was instead referring to the 2015 performance review. When Mr Harley expanded on "his preference for attempts to be made to resolve matters in-house where possible", he said, "I believe I said the CCC thing is still real" and referred to Mr Stevenson's complaint to the LGSP. Those matters were raised by Mr Harley in his survey response during the 2015 performance review. Furthermore, Mr Stevenson only made the complaint to the LGSP on 13 July 2015, after the 2014 performance review was completed: Letter, R Murphy to G Stevenson, December 2015.

<sup>k</sup> Local Government Act 1995, s 5.78(1) was amended on 4 March 2016 (by the City of Perth Act 2016, Act No. 2 of 2016) to remove the need to disclose gifts and contributions to travel under sections 5.82 and 5.83 in the annual return.

<sup>l</sup> This is because giving false information relating to gifts and contributions to travel in an annual return is an offence punishable by two years imprisonment: Local Government Act 1995, s 5.89. Serious misconduct occurs if a "public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years imprisonment": Corruption, Crime and Misconduct Act 2003, s 3, 4(c).



74. The Inquiry considers that the evidence and comments mentioned above demonstrate that some council members either did not accept or did not properly appreciate Mr Stevenson's responsibilities and obligations. Those comments demonstrate they did not adequately assess Mr Stevenson's performance as CEO and were unfair to him, contrary to section 5.40(c) of the LG Act.

#### Outcome of 2014 performance review

75. On 2 October 2014, Mr Blades met with Mr Stevenson to discuss the results. Mr Blades noted that the council members' assessments of Mr Stevenson *"overall are very disappointing"*.<sup>67</sup>
76. In a written submission dated 5 October 2014, which he later presented to Council, Mr Stevenson outlined his concerns about the performance review in the following way:
- "The report is damning and is in my view perhaps defamatory. It appears to be founded almost on entirely subjective opinion and is not accompanied by objective evidence based assessment. If the report is intended to be the sole document arising from the 2014 Performance Review, it will grossly misrepresent my actual performance"*.<sup>68</sup>
77. The CEO Performance Review Committee met on 6 October 2014. Mr Stevenson and Mr Blades also attended.<sup>69</sup>
78. Mr Stevenson told the Inquiry that he made it clear to the Committee that the results of the survey were offensive to him. Mr Stevenson said the message he relayed was that it was not a fair or robust review, it did not reflect his broader role and broader performance and the comments of the councillors appeared to be subjective and *"perhaps not well informed"*.<sup>70</sup> Mr Stevenson noted that KPIs had not been established and recommended that he and the presiding member of the CEO Performance Review Committee prepare a draft performance agreement for the Committee to consider.<sup>71</sup>
79. In his evidence to the Inquiry, Mr Blades described the meeting as *"heated and stressful and pretty ugly"*. As a result of the meeting, Mr Blades formed the view that *"Gary would soon not with [sic] the CEO at the City of Perth"* and *"wasn't going to be there for the five year contract at that point. The relationship had broken down"*.<sup>72</sup>
80. The Committee received the performance review. After some consideration, a revised performance review was prepared. The revised review stated *"In accordance with his employment contract, a Performance Plan including objectives and measures will be developed and agreed within two months. This plan will form the basis of future performance reviews"*.<sup>73</sup>
81. The revised performance review was received by Council at its meeting on 28 October 2014 and a salary increase endorsed, both unanimously.<sup>74</sup>
82. By this time, Mr Stevenson had completed a second year as the City's CEO and another annual performance review was required.

### Quality of Mr Gary Stevenson's performance reviews: 2013, 2014

83. Ms Howells and Mr Blades gave evidence to the Inquiry on Mr Stevenson's 2013 and 2014 performance reviews.
84. Ms Howells informed the Inquiry she would expect a performance review to contain both qualitative and quantitative assessments, KPIs, key objectives and measurable elements. Ms Howells said that a good performance review contains KPIs or objectives that someone can be measured against, in addition to a list of competencies expected of the position.<sup>75</sup>
85. Ms Howells said that if any position in an organisation needed to have strong metrics against which performance can be measured it is that of the CEO, because the CEO is *"the leader of the organisation and the ultimate person accountable for delivering the strategy of the organisation"*.<sup>76</sup>
86. The 2013 and 2014 surveys set out expectations for six criteria (labelled *"Outcomes"*) against which Mr Stevenson's performance could be assessed. For example, the criterion *"Stakeholder Relationships"* in the 2013 and 2014 surveys stated:

#### ***"Outcome 6: Stakeholder Relationships"***

- *Stakeholder relationships have been developed built on trust and confidence*
- *The City's interests are promoted and represented in its relationships with the State and Commonwealth government agencies and local governments in the metropolitan area.*
- *The Lord Mayor and Councillors are assisted to ensure that the City's image in the city, country and internationally is consistent with its Vision and Strategic Objectives.*

*Note: Council sees this as a strategically important area for the City. Good quality stakeholder relationships are critical to the City successfully achieving its objectives. Stakeholders include the Council's Elected Members, the City's Directors, Managers and all staff, Federal and State Government Ministers, MP's, key members in the Federal and State bureaucracies, the Perth and WA business community, community groups within the City and ratepayers (where appropriate)".<sup>77</sup>*

87. Furthermore, the introduction to the 2013 survey suggested key documents which might be useful in reviewing Mr Stevenson's performance.
88. However, 19 out of the 25 criteria in the 2013 and 2014 surveys did not set out any expectations against which Mr Stevenson's performance could be measured.<sup>78</sup>
89. For example, the 2013 and 2014 surveys asked council members to assess Mr Stevenson's *"Strategic and business planning, including the ability to conceptualise and articulate a shared vision"* without any further detail or information.

90. Ms Howells said she would expect a performance review for a CEO to be more detailed and to assess the CEO's understanding of the organisation's goals and its five-year plans and the CEO's ability to articulate and address the organisation's challenges. Furthermore, as there were no quantitative measures against which Mr Stevenson's performance could be measured, Ms Howells considered the review was subjective and *"based on people's opinions, not facts"*. It meant the review did not allow for a fair assessment or an effective rating of Mr Stevenson's performance.<sup>79</sup>
91. Given that the 2014 survey was in the same terms as the 2013 survey,<sup>80</sup> Ms Howells's criticisms of the 2013 review apply equally to the 2014 review.
92. In his evidence before the Inquiry, Mr Blades agreed the outcomes in the 2013 survey, against which Mr Stevenson's performance was assessed, were too broad. There were no metrics which he could use in drafting the survey.
93. Mr Blades said that if there had been agreed KPIs between the Council and Mr Stevenson, he would have drafted the survey differently and *"would have reflected only the KPIs and nothing or little else"*, because that *"would be the right way to do it"*. Mr Blades agreed that if KPIs had been available, he may have been able to ask questions which elicited more objective responses.<sup>81</sup> Mr Blades said he *"made the best of the situation"* by drafting the survey so that Mr Stevenson's performance was rated against his position description.<sup>82</sup> The Inquiry accepts this evidence.
94. Mr Blades had serious concerns about the way some council members had assessed Mr Stevenson's performance. In the 2014 performance review, Mr Blades wrote under the heading *"Able to manage and work effectively with the Executive Director and Managers"*:
- "Some EMs have rated the CEO poorly against this competency though it should be noted that some by their own admission **do not actually know how well the CEO works with Executive Directors and Managers, they have still rated the CEO low**"*.<sup>83</sup>  
[emphasis added]
95. In a handwritten note made by Mr Blades during the 2014 performance review, Mr Blades was critical of some council members. He wrote:
- *Some EM's have rated you a D on all/almost all Outcome & competencies scores are invariably not supported with objective comments.*
  - *Your scores are in my view significantly impacted by:*
    - *Some EM's simply say they do not like you. Because of that they are simply not going to give you a good score or make a positive comment.*
    - *Some EM's actually don't understand what the CEO's job is. At least 2 clearly don't understand what their own job is.*
    - ...
    - *you are compared to Frank, they liked him – he did what they wanted him to do – whether that was right or not*.<sup>84, (m)</sup>
96. Mr Blades made similar comments in his evidence to the Inquiry.<sup>85</sup>

m It appears Mr Blades conveyed some or all of the contents of this note to Mr Stevenson in their meeting on 2 October 2014; Submission to CEO Performance Review Committee, 2014 CEO Performance Review, G Stevenson.

97. The Inquiry finds that the CEO Performance Review Committee failed to develop and set appropriate performance criteria for Mr Stevenson's performance to be assessed against in 2013 and 2014. This was the Committee's role under its terms of reference, and it should have been done at the commencement of Mr Stevenson's employment and following the conclusion of the 2013 performance review.
98. The Inquiry finds that this failure prejudiced Mr Blades's ability to carry out an effective review of Mr Stevenson's performance.
99. In relation to the 2013 and 2014 performance reviews, 19 of the 25 criteria contained no expectations against which Mr Stevenson's performance could be objectively measured, which in effect, invited council members to assess Mr Stevenson based on their subjective opinions. It increased the risk that council members would have regard to inappropriate considerations and would not pay proper regard to Mr Stevenson's functions and obligations.
100. The 2013 and 2014 performance reviews did not adequately assess Mr Stevenson's performance and were unfair to him, contrary to section 5.40(c) of the LG Act.
101. The Inquiry notes that there was no guidance for the Committee from the Department or Council about its function to agree annual performance objectives with the CEO, nor about conducting the performance assessment.

### Second annual performance review, 2015

102. In June 2015, Council decided not to use an external provider to conduct Mr Stevenson's next annual performance review. Instead, it was decided that Ms Davidson would conduct Mr Stevenson's performance review.<sup>86</sup> Although Mr Blades was independent, Ms Davidson felt she was an adequate substitute for Mr Blades and believed she had sufficient skills in the area to undertake the review herself.<sup>87</sup>
103. Mr Stevenson gave evidence to the Inquiry that he had agreed to this reluctantly. There was still no performance plan, nor any KPIs in place.<sup>88</sup> This was despite Mr Stevenson raising the lack of KPIs during his performance reviews in 2013 and again in 2014 and a plan to establish KPIs being an outcome of the 2014 performance review.
104. Mr Stevenson gave evidence that he had raised his KPIs with Ms Davidson after the 2014 performance agreement was completed and in early 2015 Ms Davidson had said words to the effect of "yes, I'll get to it".<sup>n</sup> Ms Davidson referred to an agreement between herself and Mr Stevenson to work on draft "Agreed KPI objectives and criteria" in an email to Ms Scaffidi and Mr Butler on 7 October 2014.<sup>89</sup> In her hearing before the Inquiry, Ms Davidson agreed it was important to have KPIs in place when conducting a review of a senior executive<sup>90</sup> and accepted that the Committee should have developed KPIs for Mr Stevenson. Nonetheless, Ms Davidson could not explain why this was not done.<sup>91</sup>

<sup>n</sup> Transcript, G Stevenson, private hearing, 28 February 2019, p 34. That is consistent with Mr Stevenson's submission to the CEO Performance Review Committee on the 2015 performance review where Mr Stevenson said "Despite my own endeavours to facilitate [the establishment of KPIs] in December 2014, January 2015, April 2015, May 2015 and June 2015, no action has been taken by the CEO Performance Review Committee to satisfy this contractual commitment": CEO Performance Review, G Stevenson, 30 November 2015.

105. The Inquiry finds that the CEO Performance Review Committee did not establish KPIs with Mr Stevenson for the 2015 assessment period.
106. Ms Davidson used the Lester Blades reviews as a guide and created her own survey. In June and August 2015, Ms Davidson sought comments from each council member and director.
107. Ms Davidson collated the responses and prepared a “CEO Performance Review – 2015” document for consideration. The final version was sent to Mr Stevenson on 3 November 2015.<sup>92</sup>
108. Again, for the third review, council members referred to Mr Stevenson’s propensity to talk to them about the CCC. Under the heading “*The quality of relationships with the Lord Mayor, Deputy Lord Mayor and Councillors*”, council members wrote:

**Ms Chen:** “Not bad with me, not sure with others. But did not like threatened me once to refer to CCC”.<sup>93</sup>

**Mr Harley:** “He needs to have our back ... During a recent administrative matter he was threatening and unnecessarily dramatic. He seems to get a bit carried away at times. ‘The CCC’ thing is still real”.<sup>94</sup>

**Ms Scaffidi:** “We do not feel that Gary ‘has our back’ enough – if at all”.<sup>95</sup>

109. Ms Chen gave evidence that she felt Mr Stevenson used the CCC as a threat, because “he would say to us, if we ask him something in the future, whether, you know, I could do or someone else could do, he would say, ‘If someone does that, I would report them to CCC’”. When Counsel Assisting put it to Ms Chen that it was not a threat but a statement of Mr Stevenson’s obligations, Ms Chen said “Some people probably perceived that was a threat because never did – no CEO did before”. Ms Chen gave evidence that Mr Stevenson did not mean to threaten council members, but that she felt threatened because of the way Mr Stevenson communicated. Ms Chen thought it was “probably” Mr Stevenson’s obligation and in his “personal interest as a CEO” to report matters to the CCC. Ms Chen agreed Mr Stevenson adhered to the City’s governance requirements except in relation to “how he communicated”.<sup>96</sup>
110. On her own evidence, Mr Stevenson did not threaten Ms Chen with the CCC. Rather, she felt threatened when Mr Stevenson raised his obligation to refer matters to the CCC.<sup>o</sup> That Ms Chen disliked Mr Stevenson doing so should not have been something she considered in assessing his performance.

<sup>o</sup> Whether Mr Stevenson made threats to council members in relation to the CCC is considered in further detail at paragraph 130-145 of this Section.

111. Mr Harley gave evidence that his comment about a *“recent administrative matter”* was about an incident where Mr Stevenson referred him to the LGSP in relation to his use of the City’s resources to print and send a newsletter to ratepayers. The LGSP found Mr Harley did not breach the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations).<sup>p</sup> Mr Harley believed the LGSP found there was no proper basis for the referral being made in the first place.<sup>97</sup>
112. However, Mr Harley agreed that it might be proper for a CEO to refer a complaint to the LGSP, even where the LGSP does not subsequently find the complaint to be made out. Mr Harley accepted it was the CEO’s responsibility to deal with complaints and report matters to the LGSP or other investigative bodies as he or she saw fit. Mr Harley also agreed that as the CEO, Mr Stevenson was better placed than him to assess matters and any referrals that needed to be made.<sup>98</sup> The Inquiry also notes that contrary to Mr Harley’s assertion, the LGSP did not find that Mr Stevenson’s referral was without a proper basis.
113. Ms Scaffidi admitted that her comment related to the CCC but also to *“a number of things in the context of the organisation”*. Ms Scaffidi said her comment *“was feedback from a number of Councillors”* who felt similarly. Ms Scaffidi denied that she meant Mr Stevenson was not protecting council members’ interests. However, when Counsel Assisting put to Ms Scaffidi that *“To have someone’s back is to protect them from harm, isn’t it?”*, Ms Scaffidi answered *“Well, protecting them from harm is also ensuring good governance”*.<sup>99</sup>
114. Ms Scaffidi stated it was *“Mr Stevenson and the Governance Team’s job to manage”* good governance and believed she used the phrase *“has our back”* *“in the context of [Mr Stevenson] helping us ensure that we were meeting our obligations adequately, systems being in place that weren’t in place and a more professional working relationship”*.<sup>100</sup>
115. The Inquiry accepts it was Mr Stevenson’s role to ensure that information and advice was available to council members on their obligations. However, it was not the CEO’s role to ensure that council members met their obligations or protect them from harm.
116. In Ms Davidson’s CEO performance appraisal response, when assessing Mr Stevenson’s *“Knowledge of legislative and corporate governance/compliance requirements”*, she said *“with regard to dealing with EMs, e.g., CCC, Fols [Freedom of Information requests] ... not well handled”*.<sup>101</sup>

<sup>p</sup> The Inquiry notes that the Panel found *“the Printer was made available for the use of councillors including Cr Harley”*, *“there was no policy document which prescribed the limits on an elected member’s use of the Printer”* and *“while councillors may have historically refrained from publishing their own newsletter and limiting their use of the Printer, it has not been established what the limits of such customs were or that Cr Harley was aware of such limits”*. That appears to have been critical to the Panel’s finding there was no breach of reg 8 by Mr Harley, because the Panel concluded *“while Cr Harley’s use of the Printer appears to have been excessive, that usage was not so excessive as take it beyond the implied authorisation given by the Council or the CEO by making the Printer available for the use of councillors”*; Reasons for Findings, LGSP, Complaint SP 41 of 2015.

117. In her evidence to the Inquiry, Ms Davidson said “*dealings with EMs*” in relation to the CCC was a reference to Mr Stevenson referring council members’ use of their travel entitlements to the CCC. Ms Davidson said Mr Stevenson discussed with her a trip she took to Melaka, Malaysia, which she had not declared on her annual return, and identified this as a matter for the CCC. Mr Stevenson suggested Ms Davidson amend her annual return to include this trip, but Ms Davidson did not agree this could be done. Mr Stevenson later reported this non-disclosure to the CCC and the Department.<sup>102</sup>
118. The fact that Ms Davidson disagreed with Mr Stevenson’s advice or believed that Mr Stevenson’s referrals to the CCC were not well-handled was not a proper basis for negatively assessing his performance. Mr Stevenson was required by law to report to the CCC any matter in which he reasonably suspected that a council member had failed to disclose a contribution to travel in their annual return.
119. For the reasons described above, some council members did not properly consider Mr Stevenson’s role and obligations as CEO when assessing his performance. These comments demonstrate that the assessment of Mr Stevenson’s performance was inadequate and unfair to Mr Stevenson, contrary to section 5.40(c) of the LG Act.

#### Quality of Mr Gary Stevenson’s performance review: 2015

120. The 2015 survey was unlike the 2013 and 2014 surveys designed by Mr Blades.<sup>103</sup> Unlike the 2013 and 2014 surveys, the 2015 survey did not set out any expectations against which Mr Stevenson’s performance could reasonably be assessed. Nor did it provide a rating scale or rating against each heading.<sup>104</sup> Unlike the 2013 survey, it did not suggest any key documents that may be useful in reviewing Mr Stevenson’s performance. The 2015 survey simply contained brief headings for respondents to provide comments on aspects of Mr Stevenson’s performance.<sup>105</sup>
121. Ms Howells gave evidence on the summary of the 2015 performance review and said none of the headings in the review were sufficient or helpful.<sup>106</sup> Ms Howells gave the example of the heading “*Handling of LGSR (Local Government Structural Reform)*”, which Ms Howells considered to be:

*“... asking, by the way this is written, for an opinion, not an assessment of capabilities, or ... a quantitative question regarding the expectations and the outcomes that were to be achieved by Mr Stevenson’s handling the Local Government Structural Reform”.*<sup>107</sup>
122. The responses received from council members and directors under this heading both praised and criticised Mr Stevenson’s performance and the amount of time he spent on local government reform. Most respondents provided little explanation of the basis for their views.<sup>108</sup>
123. Ms Howells considered what was collected through the surveys was “*subjective*”, “*verbatim comments*” and “*just a bunch of feedback that doesn’t actually provide anything that you can walk away with*”. In Ms Howells’s view, if the summary document was being used as a performance review it was “*grossly unfair because it’s in no way a review*”.<sup>109</sup>



124. Mr Harley, who completed the 2015 review survey, shared Ms Howells's view that the performance review process was entirely subjective:  
*"There were no objective measurements, so it wasn't a question of, has the City expanded its revenue or decreased its spending by X amount over X period, yes or no. The questions that we were asked to answer were all subjective, personal observations".*<sup>110</sup>
125. In her evidence before the Inquiry, Ms Davidson said, at the time of undertaking the performance review, *"we were looking for an open-ended comment"* and believed that was adequate. However, Ms Davidson accepted the review was not adequate, because it contained no ratings, no measures, no outcomes, no competencies and purely called for comment from the respondents.<sup>111</sup>
126. Ms Davidson accepted that KPIs were a fair measure of performance and would provide a degree of objectivity when reviewing a CEO's performance. She agreed that without KPIs, the process of reviewing performance becomes more difficult, less objective and less fair in terms of definitive measurement.<sup>112</sup>
127. The Inquiry's concerns around this approach are borne out by what appears under the criterion *"Developing and managing good working relationships with staff"*, where Ms Scaffidi commented, *"Not demonstrated. Directors I'm hearing unhappy but not able to speak up"*.<sup>113</sup> This comment does not appear to be consistent with directors' responses to that criterion in the performance survey. Of the four directors employed at the time of the 2015 performance review, two directors rated Mr Stevenson highly,<sup>114</sup> one director rated Mr Stevenson as *"OK"*<sup>115</sup> and the final director was critical of Mr Stevenson's performance in this respect.<sup>116</sup>
128. The Inquiry considers that its findings about the deficiencies in the 2013 and 2014 performance reviews at paragraph 97-101 apply with even greater force to the 2015 review. The 2015 review conducted by Ms Davidson was patently less robust than the 2013 and 2014 reviews. The lack of any clear expectations provided greater scope for council members to assess Mr Stevenson's performance based on their subjective opinions and using inappropriate considerations. It was not an adequate assessment of Mr Stevenson's performance and was unfair to him, contrary to section 5.40(c) of the LG Act.
129. The Inquiry also considers that, having determined to conduct the 2015 performance review process without professional independent guidance or assistance, the CEO Performance Review Committee would have benefited from guidance from the Department or the Council in 2015 about how to conduct a CEO performance review properly.

## Mr Gary Stevenson's approach

### Mr Gary Stevenson's leadership style

130. Mr Stevenson gave evidence to the Inquiry that:

*"... it was only a very small number of conversations that I had with Councillors about their obligations, my obligations for reporting to CCC, and that was more about counselling them on how to stay out of trouble, than it was a threat".<sup>q</sup>*

131. Mr Stevenson considered that his approach to the CCC *"might be one of the things that were contributing to the view that I didn't have their back, so to speak"*. He considered council members unfavourably compared the *"nature of the way the former CEO went about his business compared to mine"*.<sup>117</sup>

132. Mr Blades gave evidence to the Inquiry that *"what came out [of the Performance Review process was that] Elected Members did not like Gary's style ... They didn't like the way he communicated, they didn't think he had a friendly, open, convivial style"*. In Mr Blades's experience, Mr Stevenson and Mr Edwards were *"chalk and cheese"*. Mr Stevenson was *"conservative, very cautious in his communications, not one of the boys"*, whereas Mr Edwards was *"convivial, light-hearted, friendly, slap on the back kind of guy ... one of the boys"*.<sup>118</sup> Mr Blades also gave his opinion that Mr Edwards:

*"ran a very different ship to Gary Stevenson and frankly, I don't think that would stand up to scrutiny in this day and age. I think Gary was tightening things up and things didn't want to be tightened up"*.<sup>119</sup>

133. Mr Blades also gave his opinion, as an experienced recruiter of local government executives, that:

*"a wise Local Government CEO doesn't become good friends with their Elected Member group ... Because one day they will be doing your Performance Review and/or one day they might be firing you and/or one day you might be reporting one of them to the CCC"*.<sup>120</sup>

134. It is clear the leadership style of Mr Stevenson differed from Mr Edwards, and not all council members adjusted to his different approach.<sup>121</sup> Although many of the council members agreed it was important for the City to have a CEO who was strong on governance,<sup>122</sup> they remained concerned about the way Mr Stevenson raised his reporting obligations with them.<sup>123</sup>

135. Mr Butler<sup>124</sup>, Ms Scaffidi<sup>125</sup> and Ms Chen<sup>126</sup> all told the Inquiry that Mr Stevenson had made threats in relation to the CCC. Mr Limnios agreed Mr Stevenson made veiled threats in relation to the CCC.<sup>127</sup>

136. From their evidence to the Inquiry, it appears the dissatisfaction of Ms Chen,<sup>128</sup> Mr Butler and Mr Limnios with Mr Stevenson's approach to the CCC arose from his communication style and the differences between him and his predecessor, Mr Edwards.

q Transcript, G Stevenson, private hearing, 28 February 2019, p 14. The Inquiry notes this is broadly consistent with Mr Blades's evidence as to what he was told by council members about Mr Stevenson's conversation with them regarding the CCC: Paragraph 45 of this Section.

137. Mr Butler gave evidence of the “*totally different*” leadership style of Mr Stevenson compared to that of Mr Edwards:

*“Everybody thought Frank was terrific because he was everybody’s friend but when it came down to the really basics and the nitty-gritty of the Local Government Act and what should be done ... Frank wasn’t there but when Gary came in, Gary was Local Government Act focussed. In fact in the very first week that Gary Stevenson took over and at one of the meetings where one of the Councillors arced up a little bit, he said, ‘Look, that’s nearly a CCC thing.’ We had never heard that from Frank Edwards in 10 years, and I can tell you now, that at least three times a month we would hear from Gary the words CCC. That got up every Councillor’s nose because where he was coming from, it just wasn’t necessary ... So I think that put a lot of Councillors off-side to Gary Stevenson. So his role, focussed, straight down the line, no left, no right, and it was all purely Local Government Act.*

...

*[Mr Stevenson] was just totally focussed on Local Government, whereas Frank had a bit more flexibility about him, as long as you kept on the straight and narrow ... With Stevenson, it was a matter of, ‘Well, you can’t do that, I’ll have to report you to the CCC’ ”.*<sup>129</sup>

138. Mr Limnios gave evidence that he was used to Mr Edwards as CEO, “*who would very much be someone who would embrace us, would guide us, would help us understand and navigate the sensitivities through Administration and Elected Members and I didn’t feel that Gary was doing that*”.<sup>130</sup> Mr Limnios recalled a number of occasions where he had raised issues with Mr Stevenson:

*“and his only response seemed to be, in a very monotone voice, ‘Would you like me to send it to the CCC’ or he would say something else ... ‘Would you like me to call an external expert to do a full investigation of this particular matter’ ... I didn’t feel any connection or guidance from him and I didn’t think that every matter was a matter for the CCC”.*<sup>131</sup>

139. This evidence is consistent with negative comments made by Mr Limnios in the 2013,<sup>132</sup> 2014<sup>133</sup> and the 2015<sup>134</sup> performance reviews regarding Mr Stevenson’s leadership, his interactions with council members and the way he dealt with conduct issues compared to Mr Edwards.

140. Mr Harley,<sup>135</sup> Mr Adamos<sup>r</sup> and Ms McEvoy<sup>136</sup> each gave evidence that Mr Stevenson never threatened them in relation to the CCC. However, Mr Harley said that he felt Mr Stevenson was “*threatening and a bit dramatic*” when Mr Stevenson made the complaint to the LGSP. Mr Harley viewed this as an example of Mr Stevenson’s “*demeanour to kind of go 100 miles an hour at something*”.<sup>137</sup>

<sup>r</sup> Transcript, J Adamos, public hearing, 9 September 2019, p 3. Notably, Mr Adamos held that view despite Mr Stevenson telling him that he may need to report him to the CCC: Transcript, J Adamos, public hearing, 9 September 2019, p 2.

141. Having regard to all relevant evidence before it, the Inquiry is not satisfied there was anything inappropriate in Mr Stevenson's reporting to the CCC or his discussions with council members about his and their obligations. Rather, it appears council members were accustomed to and liked Mr Edwards's leadership style better and did not appreciate the manner in which Mr Stevenson raised certain conduct matters with them.
142. It is important that a CEO develop and maintain a good working relationship with Council and that Council have trust and confidence in its CEO. However, it is equally important for Council not to prevent its CEO from, or penalise the CEO for, exercising his or her statutory functions to report alleged or suspected misconduct or breaches of policy or legislation.
143. The content of Mr Stevenson's performance reviews leads the Inquiry to find that Mr Stevenson did not meet the Council's behavioural expectations of a CEO.
144. Apart from Ms Scaffidi<sup>138</sup> and Mr Harley<sup>139</sup>, it is unclear whether, and to what extent, council members considered these matters when they moved to terminate Mr Stevenson's employment. The lack of clarity arises, in part, because Mr Stevenson's performance was not adequately assessed against agreed KPIs and other objectively measurable performance outcomes.
145. Ensuring the CEO's performance is assessed against KPIs and other objectively measurable performance outcomes, using relevant and accurate information, is critical to holding the CEO accountable for his performance in the role and treating him fairly in any such assessment. It is also how the Council should be held accountable for the decisions it makes on the CEO's remuneration and employment.

#### **Mr Gary Stevenson's report to the Corruption and Crime Commission**

146. Between 4 and 10 October 2013, Ms Scaffidi and Mr Mileham, then Director of Planning and Development at the City, travelled to New York and attended a "*City Lab: Urban Solutions to Global Challenges*" conference put on by Bloomberg Philanthropies and the Aspen Institute.
147. The Aspen Institute paid for business class air fares and accommodation for Ms Scaffidi and Mr Mileham.
148. Ms Scaffidi did not disclose these contributions in her 2013/2014 annual return.<sup>140</sup> Mr Mileham disclosed them retrospectively on 11 June 2015.<sup>141</sup>
149. In March 2015, the Australian Federal Police referred some information to the CCC. The information related to Ms Scaffidi accepting an Olympic hospitality package from BHP Billiton Ltd in 2008.
150. On 17 April 2015, the CCC commenced an investigation into whether Ms Scaffidi had engaged in serious misconduct in relation to her acceptance and non-disclosure of gifts and travel contributions.

151. In July 2015, Mr Stevenson began an *“internal review of gifted travel”*.
152. On 26 August 2015, Mr Stevenson referred his *“Report on Gifted Travel”* to the CCC, as required by section 28 of the CCM Act.
153. In his covering letter, Mr Stevenson referred to discussions he had previously had with a CCC investigator. It is clear that his inquiries were known by the CCC and arose from the matters being investigated by the CCC at that time (Figure 2.13).<sup>142</sup>
154. Mr Stevenson’s report identified 12 matters, including three that related to council members and one relating to a director. Those matters were:
- Ms Davidson, in relation to a contribution made to airfare and accommodation by the Melaka Historic City Council, when Ms Davidson attended a conference in Melaka, Malaysia in 2011/2012. The report stated this contribution had not been disclosed, but that it *“may be exempt (local government funded)”*.<sup>s</sup>
  - Mr Butler, in relation to a contribution made to airfare and accommodation by the Melaka Historic City Council, when Mr Butler attended a conference in Melaka, Malaysia in 2013/2014. The report stated this contribution had not been disclosed, but that it *“may be exempt (local government funded)”*.
  - Ms Scaffidi, in relation to a contribution made to flights and accommodation by Bloomberg Philanthropies, when attending a City Lab Event in New York in 2013/2014. The report stated this contribution had not been disclosed.
  - Mr Mileham, in relation to a contribution made to flights and accommodation by Bloomberg Philanthropies, when attending a City Lab Event in New York in 2013/2014. The report stated this contribution had been disclosed *“retrospectively”*.<sup>143</sup>
155. On 5 October 2015, the CCC issued its *“Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth”*. The report found that Ms Scaffidi had, in 2008 and 2009, engaged in serious misconduct in failing to disclose gifts and travel in relation to three instances of hospitality provided by different companies. The most serious of these involved an all-expenses paid trip to the Summer Olympic Games in Beijing.
156. The CCC report included a list of other travel taken by Ms Scaffidi for which she did not declare a contribution. This included the trip to New York.
157. On 6 October 2015, Ms Scaffidi sent a lengthy WhatsApp message to Mr Limnios, which opened with *“Dear Jim, Rob, Lily & Janet and James, Keith and Judy”*. Towards the end of the communication in a post-script, Ms Scaffidi wrote *“... there is a lot more about who referred me to the CCC which I’m very keen to share ...”*.<sup>144</sup> Ms Scaffidi sent an email, with the same content as the WhatsApp message, from her personal email account to the personal email accounts of Mr Adamos, Mr Butler, Ms Chen, Ms Davidson, Mr Limnios, Mr Yong and Ms McEvoy.<sup>145</sup>

<sup>s</sup> Council Members were not required to disclose financial contributions to travel if the contribution was made from *“local government funds”*: *Local Government Act 1995*, s 5.83(2)(a).

Chief Executive Officer

**CONFIDENTIAL**



26 August 2015

The Commissioner  
Corruption and Crime Commission  
PO BOX 7667, Cloisters Square  
PERTH WA 6850

Dear Commissioner

**RE: GIFTED TRAVEL**

Further to ongoing responses to the investigation into the Lord Mayor, Lisa Scaffidi's gifted travel by BHP Billiton in 2008 and as discussed with your investigator Mr Ben Smith several weeks ago, please find attached preliminary draft report on other gifted travel by officers/members of the City of Perth in the last few years.

I seek your advice regarding the circumstances outlined in each of the instances and whether or not their investigation may be warranted.

I appreciate that those instances pertaining to officers may be subject to jurisdiction of the Public Sector Commissioner but for the sake of completeness, the entire range of instances is included for your information.

I will await your further advice.

Yours sincerely

GARY STEVENSON PSM  
CHIEF EXECUTIVE OFFICER

cc: Ben Smith, CCC

Atts

*Council House*  
27 St George's Terrace, Perth  
GPO Box C126, Perth, Western Australia 6839  
Telephone (08) 9461 3269 - Facsimile (08) 9461 3006  
Web Site Address - <http://www.cityofperth.wa.gov.au>

Figure 2.13: Letter from Mr Gary Stevenson, Chief Executive Officer, City of Perth, to Commissioner, Crime and Corruption Commission, Gifted Travel, 26 August 2015.

158. The recipients told the Inquiry that either Ms Scaffidi did not tell them who had referred her to the CCC or that they could not recall Ms Scaffidi telling them.<sup>146</sup> However, Ms Scaffidi gave evidence that Mr Stevenson told her he had reported her to the CCC. Ms Scaffidi said this was before the CCC approached her and before 6 October 2015.<sup>147</sup>
159. On 10 and 11 October 2015, there were several email exchanges between Ms Scaffidi and Mr Stevenson. They centred around media articles in the weekend newspapers and a draft response to the media enquiries.
160. In one email exchange between Mr Stevenson and Ms Scaffidi they had the following conversation:

<b>Mr Stevenson:</b>	<i>"It will be cumbersome to send the journalist a third version ..."</i>
<b>Ms Scaffidi:</b>	<i>"... Cumbersome v truthful".</i>
<b>Mr Stevenson:</b>	<i>"Nothing I have said is not truthful. The questions from the journalist were about any non-disclosed travel found by the internal review. I have answered those questions ..."</i>
<b>Ms Scaffidi:</b>	<i>"Didn't say that Gary I'd say it's more of a case of convenience! But I'm noting it all and all will be sorted soon".<sup>148</sup></i>

161. Mr Stevenson gave evidence he was concerned by this email, because he had been told by a number of people, including the City's media advisor, that Ms Scaffidi had said she was intending to "roll" Mr Stevenson after the election, or had used words to that effect.<sup>149</sup>
162. Ms Scaffidi was asked whether she was planning to dismiss Mr Stevenson after the October 2015 election. She said, *"That was the conjecture and the answer is, no"*.<sup>150</sup>
163. It is clear that by October 2015 the relationship between Mr Stevenson and Ms Scaffidi was deteriorating. According to Mr Stevenson, by this stage the relationship between he and Ms Scaffidi was "toxic" and "at a very, very low ebb".<sup>151</sup> Ms Scaffidi described it as "unpleasant".<sup>152</sup>
164. On 10 October 2015, in a separate email thread, Ms Scaffidi wrote to Mr Stevenson:
- "It would be most unfortunate for the City if the investigation was reopened because of the selective provision of information to the press or CCC.  
Please urgently provide us with details of this external review you have commissioned, including the authority to undertake the review, and outline when it commences and who is doing it please?"<sup>153</sup>*



165. The following day, 11 October 2015, Mr Stevenson replied saying:

*“In late August I referred the results of the internal review to the CCC as I am obliged to do under sec 28 of the Corruption Crime and Misconduct Act. I have not yet received a reply so I understand that the matter is under ongoing assessment by that authority. As such I am not at liberty to disclose details. It should be noted however that I discussed the potential non-disclosures with each of the relevant Officers and Elected Members some months ago and provided advice to them at that time.”<sup>154</sup>*

166. In her evidence to the Inquiry, Ms Scaffidi recalled that Mr Stevenson discussed her accommodation and travel in New York with her some months before 11 October 2015, with Mr Mileham present.<sup>155</sup>

167. Ms Scaffidi replied to Mr Stevenson:

*“My lawyers advise there is nothing preventing you providing the Council immediately with the results of the internal review. Please do so immediately. In order for you to have referred it under s.28 of the CCM Act, I understand that you had to have reasonable grounds to suspect misconduct, otherwise the referral will be considered vexatious.*

*Please provide us immediately with the basis for the referral of the internal review and any advice you may have received on the matter.*

...

*I am instructing my lawyers to write in these terms to the CCC tomorrow, and obtain clarification on the publication of apparently preliminary findings.”<sup>156</sup>*

168. Mr Stevenson replied:

*“This matter is in the hands of the CCC. I will seek advice from that authority as to your request for me to release details of potential non-disclosures identified in the review.*

*However, you should be aware of the potential non-disclosures by Elected Members identified in the review as we have discussed them previously.*

...

*These are complicated and difficult circumstances and it is my earnest advice to you and all others to respect due statutory processes, for the sake of those who will deserve natural justice and procedural fairness if their own actions are subject to judicial or other scrutiny in the future.”<sup>157</sup>*

169. In the circumstances, Mr Stevenson’s reply was entirely appropriate.

170. On 14 October 2015, the Department directed Mr Stevenson to provide it with copies of the documents he had referred to the CCC. Mr Stevenson did so.<sup>158</sup>

### October 2015 elections and the creation of a “Team” WhatsApp group

171. Local government ordinary elections were held on 17 October 2015. Ms Scaffidi was returned to office as Lord Mayor. Dr Green was elected to Council. Mr Butler was not re-elected.
172. On 22 October 2015, Ms Scaffidi created a team WhatsApp group consisting of Mr Limnios, Mr Yong, Ms McEvoy, Ms Davidson, Ms Chen and Mr Adamos.
173. Dr Green and Mr Harley were excluded.<sup>159</sup>
174. Ms Scaffidi’s first team WhatsApp group message read:

**Ms Scaffidi**



*“Hey everyone. This is for mass communication. Use instead of text for all of us”.<sup>160</sup>*

175. On 29 October 2015, Ms Scaffidi exchanged messages in the team chat with other council members. In one exchange she said, *“They are the left-wing opposition Green bloody Unionists at that”*.<sup>161</sup> In her evidence before the Inquiry, Ms Scaffidi agreed that this was a reference to Dr Green and Mr Harley.<sup>162</sup>
176. In another message, Ms Scaffidi wrote:

**Ms Scaffidi**



*“We are a team  
All or nothing  
7 musketeers  
No new members  
No lone coffee dates  
If you are part of a footy team  
does the new member invite you  
to coffee  
No you just hang around and  
watch the older guys and listen  
and learn for a while  
That’s how it is  
Really clocking off now”.<sup>163</sup>*

177. The establishment of the team WhatsApp chat group, and these messages, show that shortly after the 2015 elections there was a clear division between Mr Harley and Dr Green and the rest of Council, and that was something Ms Scaffidi was willing to perpetuate.

### Aftermath of the second annual performance review

178. On 22 October 2015, at a Special Council Meeting following the ordinary local government election, Mr Limnios was elected as Deputy Lord Mayor and the CEO Performance Review Committee was reformed.
179. There were five nominations for the Committee. A vote was taken and its membership was confirmed as Ms Scaffidi, Ms Davidson and Mr Limnios, with Dr Green as first deputy and Ms McEvoy as second deputy.<sup>164</sup> Its terms of reference were to:
- “1. Undertake an annual review of the performance of the Chief Executive Officer as required by Section 5.38 of the Local Government Act 1995;*
  - 2. Establish annual performance objectives for the Chief Executive Officer;*
  - 3. Report the outcome of the review referred to in part 1 above to Council.”<sup>165</sup>*
180. On 30 November 2015, as part of his 2015 performance review process, Mr Stevenson sent an email to Ms Davidson, attaching his submission to the CEO Performance Review Committee.<sup>166</sup> In responding to the comments in the review about his relationships with council members, Mr Stevenson wrote:
- “Reference to CCC is very concerning, and indicates that some still do not acknowledge the statutory obligations of a CEO.*
- The term ‘have our backs’ is mentioned frequently. It is apparent that the majority of EM’s have expectations of me that either I do not understand, or am not able to meet”.*
181. Later in his submission Mr Stevenson addressed the future and wrote:
- “I look back on 2014/15 as a year of great reform and achievement. Dedicated Capital City legislation, major organisation structure reform and long-awaited boundary expansion are all achievements that City of Perth has wanted and needed for many years. My role in achieving these outcomes was instrumental.*
- Yet from the 2015 Review, I conclude that there is an unavoidable reality that almost all Elected Members do not like my personality or my leadership and communications style. I conclude that I do not meet expectations of the majority of Elected Members. I conclude that this is consistent with the 2014 Review.*
- ...
- It is my view that there are just two options to move forward, as clearly it is not acceptable to allow this situation to continue.*
- Option 1 – Council Terminates my Employment Contract*
- Council could elect to terminate my contract of employment under Clause 8.5 (Termination by the City; Any Reason). It can do so for any reason and at any time by giving notice (any notice period at its choice up to three months). If Council elects to do so it is obliged to pay compensation to me of twelve months’ remuneration.*

Option 2 – Council and Myself Confirm Commitment to Ongoing Collaboration

*By jointly agreeing to commit to a mutually negotiated Performance Agreement (as is required by Contract) and by both parties accepting that they have a shared responsibility to make necessary improvements, the difficult situation could be turned around.*

*At this time due to my commitment to fully implementing structural and other organisational development initiatives and in consideration of my family commitments, I am not seeking alternative employment, hence I do not intend to terminate the Employment contract under clause 8.4 (Termination by Officer; Any Reason).*

*Council does not have the grounds to terminate the Employment Contract under Clause 8.2 (Termination by the City; Officers Default), and any attempt by Council to do so would be vigorously defended.*

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

*If this is also Council's preference, I propose that a Performance Agreement should be negotiated as a matter of priority and that discussion is facilitated to resolve the various issues of concern. This Agreement should articulate Council's strategic and operational priorities along with the objective and achievable performance measures that will be the basis of future performance reviews.*

*It should be understood and agreed however that fundamentally I cannot change my personality and that my leadership and communication style is not something that can be adjusted significantly or easily.*

*If however, it is Council's preference to terminate my Employment Contract in accordance with Clause 8.5 (Termination by City; Any Reason), then I will respect that decision and I will work constructively with Council to ensure that such transition can be implemented in a respectful and efficient manner that minimises impact on the organisation and maintains its reputation".<sup>167</sup>*

**Ms Lisa Scaffidi requests Mr Gary Stevenson's "Report on Gifted Travel"**

182. Also, on 30 November 2015, a lawyer from Squire Patton Boggs, acting on behalf of Ms Scaffidi, emailed Mr Stevenson regarding the "Report on Gifted Travel" he had provided to the CCC. Her lawyer wrote:

*"I refer to the below email to my client, advising that the results of an internal investigation were referred by you to the CCC. Please immediately provide us with a copy of that same information, together with any relevant correspondence between the City and the CCC, and in any event, by close of business today".<sup>168</sup>*

183. McLeods Barristers and Solicitors were engaged to act on behalf of the City. They corresponded with Squire Patton Boggs on the request.<sup>169</sup>

### Mr Gary Stevenson meets with the Chief Executive Officer Performance Review Committee

184. On 30 November 2015 and after providing the CEO Performance Review Committee with his submission, Mr Stevenson met with Ms Scaffidi, Ms Davidson and Mr Limnios to discuss the future. Mr Stevenson made a contemporaneous note of what was discussed.<sup>170</sup>
185. Mr Stevenson said that Mr Limnios told him that he needed to communicate like Mr Edwards did and relayed a story where Mr Limnios had complemented Mr Edwards on a pair of cufflinks. Mr Limnios said *“Now, that CEO within a week came down to my office and presented me with a pair of those cufflinks. That’s the sort of communication that we like”*. Mr Stevenson was *“shocked by that sort of comment”* during a CEO performance review.<sup>171</sup>
186. Mr Stevenson recorded that Ms Scaffidi advised him he was not accessible or responsive in briefings and was not socially networking.
187. Mr Stevenson recorded Mr Limnios raising *“the veilled [sic] threat of CCC”* and stating *“a lot of EM’s have pulled back and do business because of CCC threat”*. Mr Stevenson recorded Ms Scaffidi saying *“don’t feel you have our back”* after Mr Limnios’s remarks.<sup>172</sup>
188. Mr Limnios and Ms Scaffidi also spoke to Mr Stevenson about a lack of respect from staff to council members, by them not saying *“hello”* and not calling council members by their titles and the gift register not having been updated in three years and the *“staff dress code falling on deaf ears”*.
189. Mr Stevenson described this meeting as a *“barrage”*. He said he *“couldn’t get a word in”*, although *“Throughout I endeavoured to speak to my submission”*.<sup>173</sup>
190. Mr Stevenson did not think he had been given a fair and proper opportunity to respond to these concerns about his performance and thought the purpose of the meeting was *“to dress me down, in colloquial terms, and ... to leave me with no doubt that there was dissatisfaction with my performance”*.<sup>174</sup>
191. Ms Scaffidi did not recall this meeting. Ms Scaffidi said she had raised the staff dress code with Mr Stevenson in one-on-one meetings, but did not recall if she had raised it with Mr Stevenson on this occasion.<sup>175</sup>
192. Mr Limnios did not remember the meeting or whether he raised the example of the gift of cufflinks. When asked if Mr Edwards gave him a pair of cufflinks, Mr Limnios said that he thought he may have in the early stages of being elected, but he could not clearly remember.<sup>176</sup>
193. The Inquiry accepts the evidence of Mr Stevenson, who presented as a witness of truth and whose evidence was corroborated by his contemporaneous note.

194. It was inappropriate, for reasons previously described, for Mr Limnios to criticise Mr Stevenson for using “*veilled [sic] threats*” in relation to the CCC and for Ms Scaffidi to criticise Mr Stevenson for “*not having our back*”. Other matters raised by Mr Limnios and Ms Scaffidi during the meeting (for example, staff members greeting and addressing council members by their titles and dress standards at the City) were trivial issues which should not have been given the significance they got.
195. The Inquiry considers these comments by Mr Limnios and Ms Scaffidi demonstrated a failure to properly understand Mr Stevenson’s role as the CEO.

### Way forward

196. When Mr Stevenson left the meeting on 30 November 2015, he believed it was most likely the CEO Performance Review Committee would choose “*Option 1*” and terminate his contract,<sup>177</sup> notwithstanding his preference for “*Option 2*”.
197. On the evening of 30 November 2015, Mr Stevenson sent an email to Ms Davidson, as presiding member of the Committee, expressing his preference for “*Option 2*” to be pursued, although he did “*not hold high hopes for that option following ... discussion at our meeting this afternoon*”. Mr Stevenson asked Ms Davidson for a “*very quick process of decision making*” for personal reasons.
198. In the same email, Mr Stevenson also set out a comprehensive plan should “*Option 1*” be chosen. Mr Stevenson proposed that the CEO Performance Review Committee meet “*tomorrow*”, following which Ms Davidson would then advise him “*immediately after that meeting and I would then work constructively with you to prepare a confidential report for Council’s consideration*”. A confidential Special Council Meeting could be convened for 3 December 2015 “*to terminate my contract in accordance with Clause 8.5*”. Mr Stevenson would then go on leave and on his return, he would constructively contribute to a transition until the date of termination.<sup>178</sup>
199. On 2 December 2015, Mr Stevenson called Ms Davidson to discuss his 30 November 2015 email.<sup>179</sup> He made a note immediately after the telephone call.
200. In his note, Mr Stevenson recorded:

*“I called JD to discuss my email of 30/11 (Option 1)  
She advised that Option 1 was **not** being considered”.*<sup>180</sup> [emphasis added]
201. As he was told “*Option 1*” was not being considered, Mr Stevenson booked a trip overseas for family reasons.<sup>181</sup>
202. Ms Davidson could not recall this conversation.<sup>182</sup> Mr Stevenson recalled the details of his conversation without the benefit of his notes.<sup>183</sup> The Inquiry accepts Mr Stevenson’s evidence and finds that on 2 December 2015, Ms Davidson spoke to Mr Stevenson and told him “*Option 1 was not being considered*”.

203. It appears that, despite Ms Davidson's comment, as at 2 December 2015 the members of the CEO Performance Review Committee were considering "Option 1". By this stage, rumours had been circulating that Ms Scaffidi wanted to "roll" him, and their relationship had deteriorated.<sup>184</sup> It seems likely that the CEO Performance Review Committee would be considering the termination of his contract of employment, especially in light of the fact that it had first been suggested only two days previously, and because of what happened on 3 and 4 December 2015.
204. The following day, 3 December 2015, Ms Scaffidi emailed Ms Davidson and said:
- "I think we tell Gary at tomorrow's meeting that we will be getting legal advice on his proposed option 1. You will be speaking to a lawyer while he is on leave and will talk to Gary about that process when he returns from leave".*<sup>185</sup>
205. On 4 December 2015, Mr Stevenson met with the members of the CEO Performance Review Committee. There was discussion about the performance review being reported to Council, although Mr Stevenson said there was "no clarity about their position".<sup>186</sup> Neither Ms Scaffidi,<sup>187</sup> nor Ms Davidson could recall the meeting.<sup>188</sup> Mr Limnios could not remember if he had spoken to any council members before 15 January 2016 about Mr Stevenson moving on,<sup>189</sup> nor whether he had spoken to Mr Stevenson about "Option 1" before 19 January 2016.<sup>190</sup>
206. On the evidence before the Inquiry, and in light of what eventually transpired, the Inquiry accepts Mr Stevenson's evidence that there was "no clarity" from the CEO Performance Review Committee about their position at the meeting on 4 December 2015.
207. If as at 2 December 2015, Ms Davidson was considering terminating Mr Stevenson's employment, or knew that Mr Limnios and/or Ms Scaffidi was considering terminating Mr Stevenson's employment, then it would have been dishonest for Ms Davidson to tell Mr Stevenson that "Option 1" was not being considered. That conduct would not be consistent with regulations 3(1)(b) and 3(1)(g) of the Conduct Regulations.
208. From 11 December to 28 December 2015, Mr Stevenson was on leave.
209. Nothing occurred in relation to Mr Stevenson's potential termination while he was on leave and there is no evidence to suggest Mr Stevenson had changed his mind about pursuing "Option 2" during this period.
210. Messages in the team WhatsApp group chat indicate that on 14 December 2015 council members had a meeting and discussed Mr Stevenson, but there is no evidence before the Inquiry about what was discussed, other than Mr Harley saying he would be "happy to see the back of the bastard [Mr Stevenson]".<sup>191</sup>
211. While Mr Stevenson was on leave, legal advisors for Ms Scaffidi and the City continued to correspond regarding release of Mr Stevenson's "Report on Gifted Travel".



On 4 December 2015, Squire Patton Boggs wrote to McLeods Barristers and Solicitors and requested:

- “a) the results of the internal review by the City, which were provided to the [Corruption and Crime] Commission; and*
- b) any further correspondence between the City and the Commission in relation to this matter ...”*<sup>192</sup>

212. On 17 December 2015, McLeods Barristers and Solicitors wrote to Squire Patton Boggs, stating:

*“I have been advised the CEO was unable to obtain responses from the Corruption and Crime Commission and the Department of Local Government and Communities prior to going on leave ... he will be pursuing the matter on his return to work on 28 December 2015”*.<sup>193</sup>

213. From 24 December 2015 until 18 January 2016, Ms Scaffidi was on a leave of absence.<sup>194</sup>

#### Discussions about Heirisson Island

214. While Ms Scaffidi was on a leave of absence, Mr Stevenson was involved in attempting to resolve a situation on Heirisson Island in which an exclusion zone was required for pyrotechnics (fireworks) on Australia Day. There were a number of people camped on the island as a protest. Ms Scaffidi emailed Mr Stevenson on 9 January 2016 stating *“Heard nothing more re meetings & discussions you had on Heirisson Island. What’s the game plan please? Is clearance of the exclusion zone proposed soon?”*<sup>195</sup>

215. Mr Stevenson replied, setting out a summary of the situation and the City’s plan. He made the following point, *“Note however that for once it won’t be City of Perth doing it, it would be WA Police and DMP [Department of Mines and Petroleum]. Hence timing is not under our control”*.<sup>196</sup>

216. Ms Scaffidi appears to have used this situation as an opportunity to criticise Mr Stevenson. She replied at 11.15 am the following day, 10 January 2016, copying in Ms Davidson, Mr Limnios and Ms McEvoy. She said they all felt that:

*“In particular you are acting very much off your own views from your ongoing discussions and have only updated me when I seek an update. Rather, we should be simply decamping from particularly the fireworks exclusion zone which you indicated has full Police support anyway ...*

*Proceed asap with decamping of (at least) the fire exclusion zone & please refrain from doing any brokering on behalf of the State Govt”*.<sup>197</sup>

217. Ms Scaffidi seemed to have missed, or ignored, the point made by Mr Stevenson that *“it won’t be City of Perth doing it, it would be WA Police and DMP. Hence timing is not under our control”*.

218. At 12.13 pm, Mr Stevenson replied, inviting the recipients of the email to call him to discuss the matter if they would like to do so.<sup>198</sup>

219. In a WhatsApp message to Mr Limnios at 12.15 pm, Ms Scaffidi wrote:

**Ms Scaffidi**



*"Trying to strike us one at a time now. He is a snake  
He should do what we say  
not what he thinks".<sup>199</sup>*

220. Ms McEvoy responded to Mr Stevenson's email at 12.42 pm, referring to a previous discussion in which she had suggested to him, on the second day the camp had been on Heirisson island, to remove them within 48 hours or *"they will be there forever!! (That is maybe 3 months ago) ... Maybe you need to listen to EM's a bit more"*.<sup>200</sup>

221. Mr Stevenson responded at 1.02 pm, thanking Ms McEvoy, and reminding her the City had:

*"... conducted nine forced de-camping exercises, confiscated 122 tents and over 500 other items of camping equipment, closed the toilets and the carpark, spent over \$120,000 (manpower and other costs but not including WA Police), moved through three iterations of the camp, defended legal challenges in the SAT, the Magistrates Court and the Equal Opportunity Commission, tried to place homeless in State housing and yet the camp remains. More of the same is unlikely to achieve a different result as our powers are limited and we need a game-changer which I have been advocating for several months and will be pleased to discuss. But I will also be pleased to discuss any new ideas that can be tried.*

*However as I have previously stated we will secure the compound area for the Australia Day pyrotechnics within the next week and we have plans for further exercises on the other side of the island which is complicated by legal processes but we are working though [sic] them".<sup>201</sup>*

222. At 1.10 pm, 10 January 2016, eight minutes after Mr Stevenson's email, Ms Scaffidi sent a WhatsApp message to Mr Limnios, which read:

**Ms Scaffidi**



*"Sed [sic] his reply & justification  
'we need a game-changer which I  
have been advocating for several  
months ...'  
I have been advocating  
It's not up to him to advocate –  
that's the point he doesn't get".<sup>202</sup>*

At 1.44 pm, Mr Limnios replied:

**Mr Limnios**



*"The time is now close ...".*<sup>203</sup>

223. These email exchanges suggest that Ms Scaffidi, Ms McEvoy and Mr Limnios were looking for opportunities to criticise Mr Stevenson and misunderstood what he was telling them. It seems that by this date, 10 January 2016, there was a sustained level of dissatisfaction with Mr Stevenson's performance as CEO.

#### **Mr Gary Stevenson speaks to Ms Janet Davidson**

224. On 13 January 2016, Mr Stevenson called Ms Davidson to offer his assistance in drafting a revised version of his performance review to take to Council. At this stage, Mr Stevenson assumed *"option 2 was on the table and that that was being pursued"*. According to Mr Stevenson, Ms Davidson said something to the effect of *"leave it with me"*. Mr Stevenson assumed that their next meeting would *"set that path of reconciliation or rebuild"*.<sup>204</sup>
225. Ms Davidson could not recall the telephone conversation, but said *"I would not have proffered Option 1 or 2 in a telephone conversation ... It was not my call to do so"*.<sup>205</sup> Accordingly, and having regard to the evidence as a whole, the Inquiry finds that, as at 13 January 2016, the Council and Mr Stevenson had not agreed on *"Option 1"*.
226. From this date until Mr Stevenson was told on 20 January 2016 that his employment was terminated, there was no correspondence between Mr Stevenson and any council members concerning the potential termination of his employment.

#### **Whether Mr Gary Stevenson's employment was terminated because he reported Ms Lisa Scaffidi to the Corruption and Crime Commission**

227. On 14 January 2016, Mr Stevenson provided Ms Scaffidi with an envelope containing a copy of his *"Report on Gifted Travel"* and some related CCC correspondence.<sup>206</sup>
228. Mr Stevenson's report included information about a gift of travel to New York and accommodation which Ms Scaffidi had received in 2013 and had not disclosed.<sup>207</sup> The CCC report dated 5 October 2015 had made a general critical comment about her failure to disclose gifts, including this matter.
229. At 3.07 pm on 14 January 2016, Ms Scaffidi emailed Mr Mark Cox, a Director of the law firm MDC Legal, using her personal email address and copied the email to Ms Davidson's personal email address. Her email was about the termination of Mr Stevenson's employment. It said, *"we intend for termination to occur at 2pm Mon afternoon"*, and *"We need assurance ... that we can 'send him off' that afternoon"*.<sup>208</sup>

230. Mr Cox replied at 4.13 pm. He thanked Ms Scaffidi for her email and referred to a possible meeting on Monday at 9.00 am. Ms Scaffidi replied at 5.27 pm, confirming the City was the client and asking Mr Cox to send a retainer letter to Ms Davidson, as chair of the “*Employment Cte*”.<sup>209</sup> The retainer letter was sent to Ms Davidson and she became the contact person for following up payment.<sup>210</sup>
231. The Council or the CEO of the City was required to authorise the use of funds before Ms Scaffidi and Ms Davidson could engage solicitors and incur legal costs on the City’s behalf. There is no evidence before the Inquiry that authorisation was obtained. In doing so, Ms Scaffidi and Ms Davidson may have contravened regulation 8(b) of the Conduct Regulations.
232. At 5.37 pm that day, Ms Scaffidi emailed Mr Stevenson advising him she was “*in receipt this evening of the documents (various letters CCC/you from 2015)*”. Ms Scaffidi asked Mr Stevenson to explain “*Why have you sent this to me under private / confidential cover today with no explanatory note now, when it was requested for last year by my lawyers in writing and you refused to provide and confirmed so in writing?*”<sup>211</sup>
233. The evidence before the Inquiry indicates that the report was in an envelope marked “*private/confidential*” and was left by a member of Mr Stevenson’s staff in Ms Scaffidi’s office while she was not there. The exact time it was left is not known by the Inquiry, but it was before 5.37 pm.
234. It is not clear whether Ms Scaffidi sought advice from MDC Legal regarding the termination of Mr Stevenson’s contract of employment before or after she viewed the documents that Mr Stevenson had provided to her.
235. Ms Scaffidi was examined in detail on that issue, but her evidence was not clear. At first, Ms Scaffidi said she “*did not see the envelope on [her] desk until very late in the day*” and was “*fairly certain*” she had seen it after 5.00 pm, believing it to be after she had sent Mr Cox her 3.07 pm email. Ms Scaffidi said she would have emailed Mr Stevenson as soon as she saw it. However, Ms Scaffidi also said she was unsure whether or not she looked at the material before she corresponded with Mr Cox.<sup>212</sup>
236. In considering the sequence of events on 14 January 2016, it is possible that Ms Scaffidi received the documents from Mr Stevenson, in which he reported her (and Ms Davidson) to the CCC, read them, decided that Mr Stevenson’s employment should be terminated and then wrote to MDC Legal for advice on doing this. It was clear that when she wrote to MDC Legal, she already had a short timeframe for Mr Stevenson’s termination of employment in mind.
237. On that basis, it may have been that Mr Stevenson’s report to the CCC was the reason or the catalyst for Ms Scaffidi to arrange the termination of his employment.
238. However, because the sequence of events on 14 January 2016 remains unclear, the Inquiry is not prepared to make a finding about whether there was any connection between Ms Scaffidi reading the documents and her decision to take steps to terminate Mr Stevenson’s employment.

239. Mr Stevenson replied the following day to Ms Scaffidi's 5.37 pm email, stating that he had not been able to provide the documents while they were before the CCC. The matters had been subsequently referred to the Department and the Department had advised him while he was on leave that they had no objection to the documents being released. He then waited for Ms Scaffidi to return from her leave of absence and left the documents for her.<sup>213</sup>
240. Later, on 15 January 2016, Ms Scaffidi arranged a meeting with Ms Davidson, Mr Limnios and Ms McEvoy.<sup>214</sup> According to Ms Scaffidi, it was agreed at that meeting they would accept Mr Stevenson's offer of "Option 1", termination of his contract.<sup>215</sup>
241. Mr Limnios made a contemporaneous note of the meeting,<sup>216</sup> which recorded:
- "Elected members: agreed on option 1*
- ...
- Step 1 Sun. 17th Jan.*
- J.D. to email G.S. to meet with us Mon. 18th. Jan @ 2pm LM. Office.*
- 2) Advise [sic] to Gary of outcome of discn of EM's all agreed accept your option 1 offer effective immediately".<sup>217</sup>*
242. Ms Scaffidi told the Inquiry that, following the meeting on 15 January 2016, other council members were called and gave their agreement to proceed with "Option 1".<sup>218</sup>
243. On the evening of Sunday, 17 January 2016, Ms Davidson attempted to arrange a meeting with Mr Stevenson in the Lord Mayor's office for the next day, Monday 18 January 2016, "to complete our discussions from the previous meeting". Mr Stevenson said he had commitments at that time and could not meet, noting that less than 24 hours notice was being provided. Accordingly, the meeting was set for 8.30 am on 20 January 2016. Mr Stevenson said, "OK but I have a meeting that I chair commencing at 9.30 so will need to leave before that".<sup>219</sup> Mr Stevenson appeared to have no idea what was coming.
244. On 18 January 2016, Mr Limnios and Ms Scaffidi exchanged WhatsApp messages:

Mr Limnios



"Are we still needing to meet at 9,30 due to Gary comments

Ms Scaffidi



Definitely meeting required  
See you at my office  
Make no mistake this is not going to be easy

Mr Limnios

Ok

Ms Scaffidi

You saw his reply re 24 hours notice  
Since when was 24 hours notice a policy

Mr Limnios *Yes that shows he's listening ...*

Ms Scaffidi *It shows he knows you mean?*

Mr Limnios *He's listening to your office as he's prepared*

Ms Scaffidi *You mean as in bugging you think?*

Mr Limnios *Yes ...*

Ms Scaffidi *He's buying time  
Tell you its like slaying Satan*

Mr Limnios *In the end even he was slayed".<sup>220</sup>*

245. Also, on 18 January 2016, Ms Davidson emailed the Western Australian Local Government Association (WALGA) with a draft Council resolution:

*"Special Council Meeting*

*ITEM: CEO CONTRACT*

*That the Council:*

*1 Accepts Mr Gary Stevenson's offer (known as Option 1) that relates to 8.5 of the Employment Contract 'Termination by the City; Any Reason' and terminates his appointment as CEO immediately, Wednesday 20 January 2016.*

*2 Appoints Mr Martin Mileham as Acting CEO.*

*Look forward to your wise counsel.*

*Janet".<sup>221</sup>*

246. By reply email that day, an officer of WALGA provided advice to Ms Davidson on Mr Stevenson's contract of employment and the requirements and process for terminating Mr Stevenson's employment under clause 8.5(a) of the contract.<sup>222</sup>
247. Read together, the terms of Ms Scaffidi and Mr Limnios's WhatsApp messages and Ms Davidson's email correspondence with WALGA, demonstrate a clear purpose on the part of the members of the CEO Performance Review Committee to terminate Mr Stevenson's employment, and to do so without Mr Stevenson's agreement. Ms Davidson's email to WALGA sets out clearly the intention to immediately terminate Mr Stevenson's appointment as CEO. That they intended to do so without Mr Stevenson's agreement is borne out by Ms Scaffidi's description of what was planned as a "slaying" in her WhatsApp message.

248. On Tuesday 19 January 2016, Mr Stevenson called Ms Davidson and asked about the purpose of the meeting on 20 January 2016. From a contemporaneous note Mr Stevenson made of the conversation, it appears Ms Davidson told him it was to *“take it to the next step”*. He thought the *“next step was to prepare precis document for Committee and then prepare 2015/2016 Performance Agreement”*.<sup>223</sup> Mr Stevenson was still not aware *“Option 1”* was being considered.<sup>224</sup>
249. Also, that day, the CEO Performance Review Committee met. The minutes include the following resolutions:
- “3a) *Accepts the Option 1\* offer on 30 November 2015 by the CEO Mr Gary Stevenson that relates to 8.5 of the Employment Contract ‘Termination by the City; Any Reason’,*
- (\* Option 1 – Council Terminates my Employment Contract Council could elect to terminate my employment contract under clause 8.5 (Termination by the City; Any Reason).*
- ...
- 4 *Calls a Special Council Meeting on Wednesday 20 January 2016 at 9 30 am to consider the Minutes/recommendations of the CEO Performance Review Committee.*
- 5 *Recommends to the Special Council Meeting that Mr Martin Mileham be appointed as Acting CEO for the City of Perth following the negotiated settlement”*.<sup>225</sup>
250. The Inquiry notes that there had been discussion between Ms Scaffidi and her team members well before 14 January 2016, which suggested they were contemplating terminating Mr Stevenson’s employment. Ms Scaffidi had sent an email to Ms Davidson on 3 December 2015 about the need for Council to get legal advice about Mr Stevenson’s proposed *“Option 1”*.<sup>226</sup>
251. Ms Scaffidi denied she mobilised the CEO Performance Review Committee and Ms McEvoy, and later Council, to terminate Mr Stevenson’s employment, because he had reported her to the CCC.<sup>227</sup>
252. As already noted above, it is unclear whether Ms Scaffidi took steps to terminate Mr Stevenson’s employment after and because she received a copy of Mr Stevenson’s report to the CCC. Accordingly, the Inquiry makes no such findings.



### Termination of Mr Gary Stevenson's employment

253. At 8.30 am on Wednesday 20 January 2016, Mr Stevenson met with Ms Scaffidi, Ms Davidson and Mr Limnios in the Lord Mayor's office for around five to 10 minutes.<sup>228</sup> Mr Stevenson made a contemporaneous note of what occurred (Figure 2.14).<sup>229</sup>

20/1/16 LM DLM JD

Option 1 agreed by Councillors  
 Me to prepare step by step - No time  
 Special Council meeting. today 9.30  
 CEO committee met yesterday  
 Positive messages mutual  
 Deed of settlement - I refused to sign  
 Don't want anything bad for me or my  
 career and will not say anything  
 bad (JK "and you can write that down")

Figure 2.14: Contemporaneous note, Mr Gary Stevenson, 20 January 2016.

254. In his evidence before the Inquiry, Mr Stevenson said:

*"Yes, it was a meeting in the Lord Mayor's office. Councillor Davidson I believe said 'Right, let's get to it, Gary. Option Y and Z', something to that effect. Very little explanation. And obviously I wasn't anticipating that, so the rest of the meeting was a bit of a blur. But I know when that was said I was thinking back to the process that I had mapped out in my advice to the committee back in November, if they were to pursue option 1, then I could respect that decision and for the best interests of myself and the organisation a proper respectful transition could or should be managed. So that was in my mind immediately. By the time I got out to say, 'Well, I'm happy to work with you'. I didn't say happy, 'I'm prepared to work with you to manage transition', it dawned on me that they were actually talking about summary dismissal, walking me out of the building that day.*

*How did you feel about that? I was shattered.*

...

*They put a deed of settlement in front of me which I refused to sign, I was under no obligation to sign. And that was it.*

*Do you know how long that meeting took?--From memory that would've been five, 10 minutes thereabouts. There wasn't a lot of discussion".<sup>230</sup>*

255. Neither Mr Limnios, nor Ms Davidson could remember the meeting in any detail.<sup>231</sup> A note made by Mr Limnios does not assist in adding to the detail provided by Mr Stevenson.<sup>232</sup> When asked how Mr Stevenson appeared at the end of the meeting, Mr Limnios said *“I don’t think he was very happy but he was very professional”*.<sup>233</sup> Ms Davidson said Mr Stevenson was *“Fairly silent and giving no response”* when he left the meeting.<sup>234</sup>
256. Ms Scaffidi agreed that Mr Stevenson had no notice that his employment was to be terminated and described Mr Stevenson as *“Disappointed”* when he was told.<sup>235</sup>
257. Ms Davidson suggested to the Inquiry that *“Option 1”* was accepted before 20 January 2016 in an informal meeting with Mr Stevenson. Ms Davidson could not say when this occurred and there is no record of any such meeting.<sup>236</sup> Ms Davidson later accepted that the first time Mr Stevenson was told *“Option 1”* would be accepted was the meeting with the CEO Performance Review Committee members on 20 January 2016.<sup>237</sup>
258. On balance, the weight of evidence indicates Mr Stevenson was not advised his employment was being terminated until his meeting with the CEO Performance Review Committee on 20 January 2016 and the Inquiry so finds.

### Special Council Meeting

259. At 9.21 am on 20 January 2016, Ms Scaffidi declared a Special Meeting of Council open. The meeting lasted for 19 minutes.<sup>238</sup> The meeting was closed to the public. The CEO performance review was the only item on the agenda.

#### Documentation before the Special Council Meeting

260. The agenda and minutes of the 20 January 2016 Special Council Meeting describe the resolution passed at that meeting in the following terms:
- “That the Council endorses the Minutes/recommendations of the CEO Performance Review Committee held on Tuesday 19 January 2016”*.<sup>239</sup>
261. Although this resolution refers to the minutes of the CEO Performance Review Committee meeting held on Tuesday 19 January 2016, it does not appear that these minutes were provided to the council members at the meeting. Ms Scaffidi said the minutes were put before the meeting,<sup>240</sup> but the balance of the evidence before the Inquiry does not support this view. Mr Limnios,<sup>241</sup> Ms Davidson,<sup>242</sup> Mr Adamos,<sup>243</sup> Mr Yong,<sup>244</sup> Dr Green,<sup>245</sup> Mr Harley,<sup>246</sup> Ms Chen<sup>247</sup> and Ms McEvoy<sup>248</sup> could not recall receiving any documents other than an agenda.
262. Neither the agenda nor the minutes for the Special Council Meeting refer to any additional documents or record any discussion.
263. The Inquiry finds that, other than an agenda, no documents were provided to the council members at the Special Council Meeting of 20 January 2016.

### What was said at the Special Council Meeting, 20 January 2016

264. As there were no documents, other than the agenda, presented to the Special Council Meeting, the only way council members could have informed themselves on how to vote was to have regard to what they were told by the CEO Performance Review Committee members either in conversation before the Special Council Meeting or at the meeting.
265. The meetings of Council were not electronically recorded at this time. Consequently, there is now no accurate record of what occurred during that meeting.
266. The Inquiry also observes that the minute-taker for this meeting was not a member of the Governance Unit, who would normally prepare the agendas and minutes of Council. Furthermore, the Manager Governance was not informed or in attendance. The minute-taker was the Lord Mayor's personal assistant.<sup>249</sup> This was both undesirable and irregular.
267. The Inquiry is in the unsatisfactory position of having to rely on the recollections of those who attended the meeting, recalled some three years after the event.
268. Council members were asked what happened at the Special Council Meeting on 20 January 2016. The council members with the most comprehensive memories of the events were Mr Harley, Dr Green and Mr Adamos. Each provided their account in reasonable detail.
269. Mr Adamos<sup>250</sup>, Mr Harley<sup>251</sup> and Dr Green<sup>252</sup> told the Inquiry they were given a verbal summary in the meeting.
270. Mr Adamos recalled that Ms Scaffidi said that Council was either to extend Mr Stevenson's contract for five years or alternatively to pay him out. He also said Ms Scaffidi indicated that Mr Stevenson had offered these options.<sup>253</sup> He told the Inquiry he did not consider Mr Stevenson was resigning. This is inconsistent with his WhatsApp message at the time, where Mr Adamos wrote "*... the west says that we terminated him. I thought WE accepted his resignation*".<sup>254</sup> When shown the message, Mr Adamos agreed that, at 20 January 2016, he believed Council had accepted Mr Stevenson's resignation.<sup>255</sup>
271. Mr Harley said Ms Scaffidi called him on 19 January 2016 and told him the CEO Performance Review Committee and Mr Stevenson had agreed by mutual consent to end the contract and that the meeting of 20 January 2016 was to ratify that. He also said that, at the Special Council Meeting, Ms Davidson told the members Mr Stevenson had agreed by mutual consent that he would leave and be paid out in line with his contract.<sup>256</sup>
272. Dr Green said that she received a call from Ms Davidson inviting her to a Council Meeting to discuss performance issues with Mr Stevenson. According to her, Ms Davidson and Ms Scaffidi both spoke at the meeting, although she could not remember all of what each of them said. She did recall that between them, Ms Scaffidi and Ms Davidson said, in effect, that Mr Stevenson had offered to terminate his contract by mutual consent. Dr Green also said she understood from what she was told that Mr Stevenson was offering his resignation.<sup>257</sup>

273. Ms Chen said she was told at the meeting that Mr Stevenson had resigned, although her memory of the meeting was poor.<sup>258</sup>
274. Mr Yong could not recall the meeting well, but remembered Ms Scaffidi and Ms Davidson speaking.<sup>259</sup>
275. Mr Limnios did not recall the meeting in detail, but said he did not believe Mr Stevenson left the City by mutual consent.<sup>260</sup> He did not recall who spoke at the meeting.<sup>261</sup>
276. Ms Davidson told the Inquiry she believed that Mr Stevenson ceased employment by mutual consent due to “*Option 1*”.<sup>262</sup> Although Ms Davidson believed she spoke at the meeting, she was not sure. She did not recall if anyone else spoke.<sup>263</sup> However, when Ms Davidson was asked whether, if Council were told Mr Stevenson was leaving by mutual consent were they misled, she disagreed and said: “*Not misled. The information given to them was Option 1 had been offered by the CEO Gary Stevenson and that the termination was by mutual consent*”. She agreed that, had they been told he resigned, they would have been misled.<sup>264</sup>
277. Ms McEvoy said Mr Stevenson’s employment was terminated “*at his request, when he put up Option 1*”.<sup>265</sup> There is no evidence from Ms McEvoy as to who spoke at the meeting.
278. Ms Scaffidi could not recall the specifics of the meeting or what she said to Council.<sup>266</sup> She was initially insistent the City had accepted “*Option 1*”. Although she eventually conceded Mr Stevenson’s employment was terminated,<sup>267</sup> Ms Scaffidi maintained it was by mutual consent.<sup>268</sup>
279. In a team WhatsApp message at 2.26 pm on 20 January 2016, Ms Scaffidi wrote:

Ms Scaffidi



“No Jim

*Please be assured it is termination  
8.5 termination for any reason with  
mutual consent.*

*It’s not a sacking.*

*But you need not speak*”.<sup>269</sup>

280. Shortly afterwards, in response to a message from Ms Chen, which read “*Not resignation?*”, Ms Scaffidi replied at 2.27 pm:

Ms Scaffidi



“CLOSE IT DOWN

*LILY read what I just said to Jim*

*It’s a mutually agreed with consent  
termination effective immediately*

*Remember what **we** told you he  
offered it as Option 1*”.<sup>270</sup>

[emphasis added]

281. It is clear from these team WhatsApp group messages that, following on from the Special Council Meeting of 20 January 2016, Ms Scaffidi wanted her team (a majority of council) to believe Mr Stevenson's employment had been terminated by mutual consent and that that was something they had already been told.<sup>271</sup> Given that these messages were on the same day as the Special Council Meeting, a very strong inference arises that at that meeting the team were told the termination of Mr Stevenson's contract of employment was by mutual consent.
282. The Inquiry finds that Ms Scaffidi and Ms Davidson both spoke at the Special Council Meeting on 20 January 2016.<sup>272</sup>
283. The Inquiry also finds that, in addressing the meeting, Ms Scaffidi and Ms Davidson created an impression that Mr Stevenson was leaving the City by mutual agreement,<sup>273</sup> or by resigning.<sup>274</sup> By creating an impression that Mr Stevenson's leaving was by mutual consent, or resignation, an obvious inference arises that Ms Scaffidi and Ms Davidson were seeking to minimise any resistance to their wish to see Mr Stevenson gone.
284. The impression created was false, because the termination of Mr Stevenson's employment was not by mutual agreement and he did not resign. The evidence before the Inquiry is:
- On 30 November 2015, Mr Stevenson expressed his preference to the CEO Performance Review Committee to continue to work with the City ("*Option 2*"). He advised he was not seeking alternative employment and would not be exercising his right to terminate the employment. He repeated his preference for "*Option 2*" by email that day to Ms Davidson and, up to 20 January 2016, did not change his position.
  - The CEO Performance Review Committee and Council took none of the steps towards transition that Mr Stevenson suggested in his email to Ms Davidson dated 30 November 2015.<sup>275</sup>
  - Mr Stevenson was given no notice his employment was being terminated, contrary to his proposal to Ms Davidson in his email dated 30 November 2015.<sup>276</sup>
  - Ms McEvoy and Mr Limnios, who attended the meeting on 15 January 2016, considered it was not by mutual agreement.<sup>277</sup>
  - The first time Mr Stevenson was told his employment would be terminated was in the meeting with the CEO Performance Review Committee on 20 January 2016, where Mr Stevenson was shattered and disappointed.
  - In WhatsApp messages to Mr Limnios on 18 January 2016, Ms Scaffidi described what was occurring as "*like slaying Satan*" and said that Mr Stevenson was "*buying time*" and that meeting with Mr Stevenson was "*not going to be easy*".<sup>278</sup>
  - In a WhatsApp message following the Special Council Meeting, Ms McEvoy described what had happened as an "*excellent execution*".<sup>279</sup>
  - In further WhatsApp messages on 26 January 2016, Ms Scaffidi said: "*It is unity that enabled us to rid ourselves of GS*".<sup>280</sup>

285. None of the things said in these WhatsApp messages are consistent with Mr Stevenson's termination of employment being by mutual agreement or resignation.
286. Having regard to all the circumstances, and in Ms Scaffidi's case her WhatsApp communications, it is apparent, and must have been apparent to Ms Davidson and Ms Scaffidi, that Mr Stevenson's termination was not by mutual agreement.
287. At the Special Council Meeting on 20 January 2016, Council was asked to consider the CEO leaving his employment. This is one of the most important matters a Council can consider. Any council member voting on this was entitled to clear, relevant and factually correct information about the matter being considered, in order to properly inform and support their decision. They were also entitled to be afforded an opportunity to ask questions and seek information if they desired.
288. Although the outcome may not have been different, had Dr Green and Mr Harley been aware that Mr Stevenson did not want to leave the City, they may have asked for further information and perhaps questioned the decision.<sup>281</sup>
289. By creating the impression that Mr Stevenson was leaving the City by mutual agreement or by resigning, Ms Scaffidi and Ms Davidson misled Council. That was unethical, dishonest and lacking in integrity, contrary to regulation 3(1)(b) of the Conduct Regulations.
290. The Inquiry finds that Council made its decision to terminate Mr Stevenson's employment based on incomplete and inaccurate information. This was not good government.
291. The Inquiry also finds Council's resolution, contained in the minutes of the Special Council Meeting of 20 January 2016 and concerning the termination of Mr Stevenson, was incomplete and inaccurate. The resolution fails to transparently document the decision of Council in the official record.

#### **Discussion between Ms Michelle Howells and Ms Lisa Scaffidi following Mr Gary Stevenson's termination**

292. Ms Howells told the Inquiry that in the week following Mr Stevenson's departure, she had a conversation with Ms Scaffidi in her office to discuss the appointment of the new CEO and about how to manage that process. Ms Howells recalled the timing of this conversation *"because I was still feeling quite raw and upset about the whole thing"*. Ms Howells said Ms Scaffidi told her:
- "she was glad that he [Mr Stevenson] had gone, that they should have done that sooner, that he was an extremely annoying individual, always complaining to the CCC and threatening them with the CCC. He wasn't what they needed within the City".<sup>282</sup>*
293. Ms Howells said Ms Scaffidi was *"very willing to share"* her views about Mr Stevenson.

294. Ms Scaffidi recalled speaking to Ms Howells in her office about what had happened to Mr Stevenson, but did not recall who was present or the specifics of what was discussed.<sup>t</sup> Ms Scaffidi denied she would have said those things to Ms Howells, because *“I don’t believe I would have spoken like that to a Human Resources Manager”*.<sup>283</sup>
295. When giving evidence on this matter, Ms Howells presented as a witness trying to assist the Inquiry. Ms Howells answered questions in a candid and direct manner, despite expressing concerns about the personal consequences for her in giving her evidence. Ms Howells had a clear recollection of the timing and the circumstances giving rise to the discussion and of what Ms Scaffidi said to her.
296. By contrast, Ms Scaffidi was often argumentative and combative when giving evidence to the Inquiry, including in relation to Mr Stevenson’s termination. Ms Scaffidi frequently gave unresponsive answers to Counsel Assisting’s questions, which required questions to be repeated. That is despite Ms Scaffidi being reminded on many occasions about her role and obligations as a witness. Ms Scaffidi did not have a clear recollection of what she discussed with Ms Howells following Mr Stevenson’s departure.
297. For these reasons, the Inquiry prefers the evidence of Ms Howells to Ms Scaffidi on this matter. The Inquiry finds that Ms Scaffidi, in the week following Mr Stevenson’s departure, told Ms Howells that she was glad that Mr Stevenson had gone; that they should have done that sooner; that he was an extremely annoying individual, always complaining to the CCC and threatening them with the CCC; and that he was not what they needed within the City.
298. The Inquiry is satisfied that Mr Stevenson’s approach to the CCC was one of the reasons (but not the only reason) for Ms Scaffidi taking steps to bring about the termination of Mr Stevenson’s employment, given that Ms Scaffidi:
- felt strongly dissatisfied with Mr Stevenson’s approach to her about CCC matters from at least 2014;
  - commented on Mr Stevenson’s approach to the CCC in the meeting on 30 November 2015; and
  - made the comments set out in paragraph 297 within a week of Mr Stevenson’s termination.
299. The Inquiry notes that Mr Stevenson’s attitude to, and contact with, the CCC appears to be one of a number of reasons (including, for example, his handling of issues on Heirisson Island) as to why Ms Scaffidi was dissatisfied with Mr Stevenson. Nevertheless, it was improper for Ms Scaffidi to have regard to Mr Stevenson’s discharge of his statutory obligations in deciding to terminate his employment.

<sup>t</sup> Transcript, L Scaffidi, public hearing, 28 August 2019, p 18. The Inquiry notes Counsel Assisting put the details of this conversation to Ms Scaffidi on the basis that the conversation occurred *“on the day Mr Stevenson departed”* but Ms Howells’s evidence was the conversation took place *“The following week”* after Mr Stevenson’s departure.



### Mr Reece Harley's reason for terminating Mr Gary Stevenson's employment

300. At 10.56 am on 21 May 2016, Mr Limnios sent a text message to Mr Harley. The message included copied text messages sent by Mr Adamos and Ms Scaffidi in the team WhatsApp group:

Mr Limnios



*"14/12/2015, 6:10:02 PM:*

*Jim Adamos: Team*

*I am still VERY unsure of Reece's honesty in that meeting.*

*I really believe that he is in cahoots with Gary and he will contact Gary about what we discussed. I didn't believe him when he so vehemently bagged Gary when he said 'I'll be happy to see the back of the bastard'.*

*That doesn't sound like Reece language, he wouldn't speak like that. I think it was an act. Anyway for what it's worth remember how much of a politician he is.*

*Remember a coin has two sides.*



*14/12/2015, 6:11:34 PM:*

*Scaffidi Lisa*

*Hmmm*

*Possibility for sure".<sup>284</sup>*

301. Mr Harley replied to Mr Limnios's text message one minute later:

Mr Harley



*"FFS! I wanted Stevenson out as much as anyone for what he put me through last year. \$4k worth of legal expenses and all the worry for no reason. Adamos is a slimeball".<sup>285</sup>*

302. Mr Harley told the Inquiry that the message referred to Mr Stevenson making the complaint about Mr Harley to the LGSP in 2015. Mr Harley agreed that this incident “weighed heavily” on his mind when he voted the way he did at the Special Council Meeting on 20 January 2016. However, Mr Harley also said that he was very unhappy with Mr Stevenson’s performance for a range of reasons and denied that the LGSP complaint had greater weight for him than other factors.<sup>286</sup>
303. The Inquiry finds it was improper for Mr Harley’s decision to vote in favour of what he understood was a motion to end Mr Stevenson’s employment to be motivated, in part, by Mr Stevenson’s decision to make a complaint about him to the LGSP. However, the Inquiry considers Mr Harley’s conduct is significantly mitigated by his understanding that the CEO Performance Review Committee and Mr Stevenson had agreed by mutual consent for Mr Stevenson to leave his employment.<sup>287</sup>
304. The Inquiry accepts that it would have been difficult for Mr Harley and Ms Scaffidi, as with any other council member, to disregard matters about which they felt strongly and to put them to one side when making decisions on Mr Stevenson’s employment.
305. However, as council members voting on the exercise of Council’s statutory functions, they were obliged, as a matter of law, to consider only relevant matters when deciding whether to terminate Mr Stevenson’s employment.

## Findings

### Finding 2.3.1 – 1

The Inquiry makes the following findings:

- i. The 2013, 2014 and 2015 performance reviews did not adequately assess Mr Stevenson's performance, which was unfair to Mr Stevenson and contrary to section 5.40(c) of the LG Act. The reviews were inadequate and unfair, because:
  - Some council members<sup>u</sup> referred to Mr Stevenson's approach to the CCC as unsatisfactory and thereby demonstrated a continued lack of appreciation for Mr Stevenson's role as CEO and his statutory obligations to report certain conduct issues to the appropriate authorities.
  - There were no KPIs or agreed and objectively measurable outcomes against which Mr Stevenson's performance could be measured. It invited council members to assess Mr Stevenson's performance based on their subjective opinions and to have regard to inappropriate considerations.
- ii. The failure to adequately review Mr Stevenson's performance was a failure on the part of the Council to discharge one of its primary functions, namely, to properly hold the CEO responsible and accountable for his and the City's performance.
- iii. The CEO Performance Review Committee failed to establish annual performance objectives or KPIs for Mr Stevenson. The Inquiry considers that Ms Davidson, as Presiding Member of that Committee and as the person who had assumed the responsibility to work with Mr Stevenson to agree KPIs, was primarily responsible for this failure.
- iv. Ms Scaffidi and Ms Davidson did not obtain the CEO's or Council's authorisation before engaging solicitors and incurring legal costs on the City's behalf, which may have been contrary to regulation 8(b) of the Conduct Regulations.
- v. At the Special Council Meeting on 20 January 2016, Ms Scaffidi and Ms Davidson acted unethically by leading council members to believe Mr Stevenson's employment was being terminated by mutual agreement or by his resignation. It was also dishonest and lacking in integrity, contrary to regulation 3(1)(b) of the Conduct Regulations.
- vi. The Council decided to terminate Mr Stevenson's employment on 20 January 2016, based on incomplete and inaccurate information.

<sup>u</sup> That is, Mr Limnios in the 2013 and 2014 reviews, Mr Butler in the 2014 review, Ms Davidson and Ms Scaffidi in the 2014 and 2015 reviews, and Ms Chen and Mr Harley in the 2015 review. There were also comments in the 2013 review which the Inquiry was unable to attribute to any council member.

**Finding 2.3.1 – 1 (contd)**

- vii. Ms Scaffidi and Mr Harley considered Mr Stevenson’s approach to reporting certain conduct issues to the appropriate authorities, as he was required to do, when they voted to end Mr Stevenson’s employment. This was improper.
- viii. The Inquiry finds that Council’s resolution, contained in the minutes of the Special Council Meeting of 20 January 2016 and concerning the termination of Mr Stevenson, was incomplete, inaccurate and failed to transparently and properly document Council’s decision.

**Finding 2.3.1 – 2**

The Inquiry makes no finding that Ms Scaffidi acted to terminate Mr Stevenson’s employment because he reported her to the CCC.

## Appointment of a new Chief Executive Officer

### Introduction

1. On the morning of 20 January 2016, shortly after Mr Gary Stevenson was dismissed as Chief Executive Officer (CEO) of the City of Perth (City), Mr Martin Mileham was called into the Lord Mayor's office and asked to act in the position of CEO.
2. Despite some misgivings, Mr Mileham agreed.
3. After a little over six months acting in the position, he was the successful applicant for the substantive CEO position.
4. His appointment was endorsed by the City of Perth Council (Council) at a Special Council Meeting on 1 September 2016.
5. Mr Mileham's contract as CEO was signed on 21 September 2016 by him and Ms Lisa Scaffidi. He was appointed to the position from 3 October 2016 to 1 October 2021, subject to a six-month review.
6. The CEO Performance Review Committee met on 7 and 8 March 2017 to conduct his six-month review. At that meeting, Mr James Limnios argued that all of Council should be involved in the review process, but he was overruled by Ms Scaffidi and Ms Janet Davidson who voted in favour of a recommendation to Council *"That Council approves the satisfactory conclusion of the review period of six months for Martin Mileham, Chief Executive Officer"*.
7. On 14 March 2017, Council approved the satisfactory conclusion of Mr Mileham's review period.

### Legislative background

#### Council's responsibility for the Chief Executive Officer's employment

8. A local government must employ a CEO.<sup>288</sup> A person is not to be employed as a CEO unless Council believes he or she is suitably qualified and is satisfied with the provisions of the proposed contract of employment.<sup>289</sup> A CEO's contract of employment cannot be for a term of longer than five years, but can be terminated *"on the happening of an event specified in the contract"*.<sup>290</sup>
9. A CEO's contract of employment is of no effect unless the contract specifies performance criteria for the purpose of reviewing the CEO's performance.<sup>291</sup> The CEO's performance must be reviewed at least once in relation to every year of employment.<sup>292</sup> A local government must consider each review of the CEO's performance and either accept the review, with or without modification, or reject the review.<sup>293</sup>

10. The appointment of a CEO and the review of a CEO's performance are important statutory functions. The exercise of those functions should not be tainted or influenced by improper considerations, such as the fact that the CEO has complied with his or her legal obligations by reporting a council member to the Corruption and Crime Commission (CCC) or another body. These functions should be exercised, so far as is practicable, based on agreed objective criteria and not the personal opinions of council members.
11. In effect, Council is responsible for employing, reviewing the performance of and dismissing the CEO. In doing so, Council is to treat the CEO fairly and consistently.<sup>294</sup>

#### Role and specific responsibilities of the Chief Executive Officer

12. The CEO is, among other things, responsible for:
  - managing the day-to-day operations of the local government;<sup>295</sup>
  - advising the Council on the local government's functions under the *Local Government Act 1995* (LG Act) and other laws;<sup>296</sup>
  - ensuring that advice and information is available to Council, so that informed decisions can be made;<sup>297</sup>
  - causing Council decisions to be implemented;<sup>298</sup> and
  - liaising with the Lord Mayor on the local government's affairs and the performance of the local government's functions.<sup>299</sup>
13. Consequently, the position of CEO, like the position of Lord Mayor, is one of the most important positions in a local government. Furthermore, the relationships between the CEO, on the one hand, and Council and the Lord Mayor, on the other hand, are crucial to the proper functioning of the local government. As Mr Andrew Hammond, the Chair Commissioner of the City of Perth, said in his evidence to the Inquiry:<sup>300</sup>

*"A decision to appoint and obviously a decision to dismiss, or a decision to not renew a contract, the engagement or otherwise of a CEO is the most critical decision that a Council can make".*
14. The CEO has specific responsibilities in relation to handling complaints and allegations of misconduct. Where a CEO suspects on reasonable grounds that a matter concerns or may concern serious misconduct, including serious misconduct by council members, the CEO must notify that matter to the CCC in writing as soon as reasonably practicable after the CEO becomes aware of the matter.<sup>301</sup> A CEO's duty to notify the CCC is "*paramount*": the CEO must notify the CCC even if that may contravene another Act or if they are otherwise obliged to keep the matter confidential.<sup>302</sup>

15. The CEO is also designated by the LG Act as the complaints officer for the local government<sup>303</sup> and in that capacity is required to:
  - send complaints of “*minor breaches*” by council members to the Local Government Standards Panel (LGSP), for the LGSP to address;<sup>304</sup>
  - provide the LGSP with anything that it requires to help the LGSP deal with a complaint against a council member;<sup>305</sup>
  - keep a register of all complaints in which the LGSP has made orders against a council member;<sup>306</sup> and
  - send any complaints that a council member has committed an offence to the Director General of the Local Government, Sport and Cultural Industries (Department).<sup>307</sup>
16. As the complaints officer, the CEO may make a complaint of a “*minor breach*” by a council member to the LGSP.<sup>308</sup>
17. There are statutory protections for a CEO reporting matters to the CCC. Section 175 of the *Corruption, Crime and Misconduct Act 2003* provides that a person must not threaten to prejudice the safety or career of any person or do any act that is, or is likely to be, to the detriment of any person, because that person helped the CCC in the performance of its functions under that Act. There are no equivalent protections for a CEO reporting matters to the Department or the LGSP.
18. The reporting obligations and functions of a CEO may sometimes place the CEO in an unenviable position by obliging him or her to report the alleged or suspected improper behaviour of a council member:
  - with whom he or she must work closely; and
  - who, as a member of Council, is responsible for the CEO’s ongoing employment and may be in a position to influence or prejudice that employment.<sup>309</sup>



## Timeline

2016	20 January 9:21am	A Special Council Meeting endorsed the termination of Mr Stevenson's employment as CEO and the appointment of Mr Mileham as Acting CEO.
	29 January	The Acting CEO position was offered to Mr Mileham for six months with a possible extension up to 12 months in total.
	7 June	Council decided to recruit a CEO. The CEO Performance Review Committee membership formed the CEO Recruitment Committee (Committee), with the same members. Mr Mileham's appointment was extended.
	23 and 24 June	CEO position advertised. Applications closed on 22 July 2016.
	22 July	Mr Limnios sent a complaint to Mr Mileham alleging minor breaches of the LG Act by Ms Scaffidi, Ms Davidson and Ms Judy McEvoy.
	25 July	Mr Mileham advised Mr Limnios his complaint was being lodged with the LGSP.
	26 July	Ms Scaffidi called Mr Mileham. She criticised Mr Mileham's response to Mr Limnios's complaint and raised other matters of concern.
	15 and 16 August	The Committee interviewed six candidates for CEO, including Mr Mileham. Three candidates, including Mr Mileham, were selected for second-round interviews.
	29 August	Mr Mileham and another candidate each gave a second-round interview presentation to council members.
	30 August	The Manager, Human Resources sent a memorandum to the Committee and Mr Mark Ridgwell, setting out the checks and other tasks to be done in relation to Mr Mileham, and suggested the relevant Council Meeting take place on 6 September. The Committee met and recommended the appointment of Mr Mileham.
	1 September	Council met and accepted the recommendation to appoint Mr Mileham as CEO.
	21 September	Mr Mileham's contract as CEO signed by him and Ms Scaffidi. He was appointed for a term of five years.
2017	3 October	Mr Mileham commenced in the position from 3 October 2016, subject to a six-month review.
	7 and 8 March	The CEO Performance Review Committee met to conduct the six-month review. The Committee was split, but recommended Council approve the conclusion of Mr Mileham's six-month review period.
	14 March	Council approved the satisfactory conclusion of Mr Mileham's review period.

## Issues considered by the Inquiry

19. Consistent with A.1(i), A.3(ii), A.3(iii), A.3(v) and A.3(vi) of the Inquiry's Terms of Reference, the Inquiry has considered:

- whether Ms Scaffidi acted with integrity and treated Mr Mileham fairly during a telephone conversation on 26 July 2016;
- the circumstances in which Mr Mileham was recruited to be CEO;
- the circumstances in which Mr Mileham's appointment was endorsed;
- the terms of the contract of employment between Mr Mileham and the City and the circumstances in which Mr Mileham's contract of employment was executed; and
- the management of Mr Mileham's performance within the first six months of his appointment.

## Investigation by the Inquiry

20. The Inquiry interviewed, and held private and public hearings, involving a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section:

- Council members involved in decisions concerning the appointment of Mr Mileham: namely, Mr Jim Adamos, Ms Lily Chen, Ms Davidson, Dr Jemma Green, Mr Reece Harley, Mr Limnios, Ms Judy McEvoy, Ms Scaffidi and Mr Keith Yong.
- Mr Mileham, CEO.
- Mr Robert Mianich, Director, Corporate Services.
- Mr Mark Ridgwell, Manager, Governance.
- Ms Michelle Howells, Manager, Human Resources.

## Evidence obtained by the Inquiry

### Appointment of Mr Martin Mileham as Acting Chief Executive Officer

21. On 19 January 2016, the CEO Performance Review Committee, made up of Ms Scaffidi, Ms Davidson and Mr Limnios, met and passed the following resolution:  
*“5 Recommends to the Special Council Meeting that Mr Martin Mileham be appointed as Acting CEO for the City of Perth ...”*<sup>310</sup>
22. The terms of reference for the CEO Performance Review Committee did not include a remit to do anything other than undertake and report on an annual review of the performance of the CEO and establish annual performance objectives.<sup>311</sup>
23. At a Special Council Meeting on 20 January 2016, Council unanimously resolved:  
*“That the Council endorses the Minutes/recommendations of the CEO Performance Review Committee held on Tuesday 19 January 2016”*.<sup>312</sup>
24. The matter was dealt with as a confidential item and no details of any discussion are contained in the minutes.
25. After the Special Council Meeting, Mr Mileham was called to the office of Ms Scaffidi, where she asked him to act in the role of CEO. He accepted.
26. At his hearing before the Inquiry, Mr Mileham said he accepted the acting role as CEO subject to the condition that his acceptance would not contribute to the termination of the then CEO and on his understanding that if he refused, an external person would be appointed as Acting CEO. Mr Mileham said he discussed the matter with his wife and told her that taking the role would likely be a *“poisoned chalice”*.<sup>313</sup> Mr Mileham said that Mr Stevenson’s termination was *“the most concerning matter”* to him on the morning of 20 January 2016.<sup>314</sup>

### Recruitment process begins

27. On 28 January 2016, Mr Tony Brown, an officer of the Western Australian Local Government Association (WALGA), provided advice to Ms Scaffidi about, among other things, whether Mr Mileham could be appointed as permanent CEO or whether the City was compelled to advertise and interview in order to fill the position.<sup>315</sup>
28. Mr Brown informed Ms Scaffidi the Council was required to advertise the position state-wide, even if it was happy with the performance of the Acting CEO. He also advised that there was a requirement for the Council to approve a process to be used for the selection and appointment of a permanent CEO, before the position was advertised.
29. On 29 January 2016, a higher duties allowance was arranged for Mr Mileham for a period of six months and the Acting CEO position was offered to him with the possibility of an extension for a further period of up to 12 months in total.<sup>316</sup>
30. On 8 April 2016, Mr Harley wrote to Ms Scaffidi and council members, expressing a view that Mr Mileham was “*doing a fine job*” as Acting CEO. Mr Harley asked whether Mr Mileham’s term of acting could be extended to 12 months and whether the City could advertise the position.<sup>317</sup>
31. Mr Limnios replied, agreeing Mr Mileham was “*doing a great job*” and supporting an extension of Mr Mileham’s contract.<sup>318</sup>
32. At an Ordinary Council Meeting on 7 June 2016, Council unanimously endorsed a recommendation to undertake an internally managed recruitment process to recruit a CEO and “*transformed*” the CEO Performance Review Committee into the CEO Recruitment Committee, with the same membership.
33. At the same meeting, Mr Mileham’s appointment as Acting CEO was extended to 19 January 2017, or until the commencement of a new CEO.<sup>319</sup>
34. There was a meeting scheduled for the CEO Recruitment Committee on 8 June 2016 in the Lord Mayor’s office. At that meeting, and in subsequent discussions, a timetable for the advertising and recruitment process was agreed.<sup>320</sup>
35. The position of CEO was advertised on 23 and 24 June 2016.<sup>321</sup>
36. Applications closed on 22 July 2016. At 5:25 pm on the same day, Ms Howells emailed a list of the 53 applicants (which included Mr Mileham) to the members of the CEO Recruitment Committee, being Ms Scaffidi, Ms Davidson and Mr Limnios.<sup>322</sup>

### Did Ms Lisa Scaffidi act with integrity and treat Mr Martin Mileham fairly in a telephone conversation on 26 July 2016?

37. On 22 July 2016, Mr Limnios sent a complaint alleging minor breaches of the LG Act by Ms Scaffidi, Ms Davidson and Ms McEvoy to Mr Mileham.<sup>323</sup>
38. Mr Mileham sent Mr Limnios an email on 25 July 2016, advising him that his complaint, along with supporting materials, *“is now being lodged”* with the LGSP.<sup>324</sup>
39. On 26 July 2016, some days before interviews for the CEO position were to be held, Ms Scaffidi called Mr Mileham. The following day Mr Mileham wrote a file note of the conversation (Figure 2.15).<sup>325</sup>
40. Mr Mileham said Ms Scaffidi’s telephone call was initially *“In response to ‘LM concern’ re my lack of follow up in awarding key to the city to lone [Russian] balloonist”*.
41. Ms Scaffidi then raised a complaint Mr Limnios had lodged with the LGSP and said she agreed with Ms Davidson, who felt that Mr Mileham could have *“headed Limnios off at the pass”*.
42. The Inquiry has been unable to identify any other complaints made by Mr Limnios to the LGSP regarding Ms Davidson and/or Ms Scaffidi prior to 22 July 2016. The Inquiry therefore infers that the complaint to which Ms Scaffidi referred is the complaint described in paragraph 37.
43. Ms Scaffidi then said *“‘a strong CEO’ and ‘the next CEO’ will do this sort of thing & will keep me fully informed, eg who is commencing work and when, why etc (eg new manager in ED)”*.
44. Mr Mileham’s note also recorded that Ms Scaffidi said, *“This and issues like it are a test for you”*. Although he did not put this in quotes, Mr Mileham told the Inquiry he assumed Ms Scaffidi had said it (if he wrote it down).
45. The note also recorded that Ms Scaffidi said *“People are still ‘slouching about’ and not dressing well, i.e ‘your fault’ ”*. Mr Mileham said he drew an inference that Ms Scaffidi believed he was partly to blame, because people were not dressing well at the City.
46. The note also referred to an issue about meetings becoming less frequent and Mr Mileham wrote that Ms Scaffidi commented *“‘lack of communication’ disturbing”*.
47. Mr Mileham wrote *“At end of call I believed my application for CEO would not receive fair review & that my substantive role @ risk”*. Mr Mileham told the Inquiry that his immediate feeling at the time was his role as Director was at risk, because the telephone call was adversarial, in the sense that he *“did not back down, the Lord Mayor did not back down”*.
48. Mr Mileham advised the Inquiry at his hearing that he would have put words he heard Ms Scaffidi say directly in quotes, but also noted it was a *“pretty hastily drafted note”*.<sup>326</sup>

26/7 (recorded 27/7) / COP

0744 am 26.7 outgoing call mobile

In response to "LM concern" re my lack of follow up in answering key to the city to lone RTW balloonist.

↳ Comments made by LM included:

- 1) Cr Davidson feels & I agree that you could have "headed Limnios off at the pass" in respect to his lodgement of a formal complaint to the stats panel.
- 2) "A strong CEO" and "the next CEO" will do this sort of thing & will keep me fully informed, eg who is commencing work and when, why etc (eg new manager in EP)
- 3) This and issues like it are a test for you.
- 4) People are still "stagnating about" & not doing well, ie "your fault"
- 5) I asked "what happened to your message of thanks for support & it never being forgotten"? If the support still instinctively offered?  
→ No response was given.
- 6) LM when we "used to meet" once a week (\*only stopped following A/CEO 1 week leave). Commented that "lack of communication" disturbing. → (\*since reestablished weekly only)
- 7) At end of call I believe my application for CEO would not receive fair review & that my substantive role @ risk

Figure 2.15: Conversation notes, Mr Martin Mileham with Ms Lisa Scaffidi, Lord Mayor, 26 July 2017.



49. At the time Mr Mileham had this conversation with Ms Scaffidi, he had applied for the position of CEO and was hoping to be appointed as the next CEO.
50. Mr Mileham believed the comment *“This and issues like it are a test for you”*, to mean his handling of the key to the City matter with the Russian balloonist was a test for him and *“believed that it may”* have been a test to see whether or not he could be CEO. When asked further questions about what *“issues”* he was referring to, Mr Mileham agreed it was a reference to what appeared before it, namely: *“‘A strong CEO’ and ‘the next CEO’ will do this sort of thing & will keep me [the Lord Mayor] fully informed, eg who is commencing work and when, why etc (eg new manager in ED)”* (Figure 2.15).<sup>327</sup>
51. Mr Mileham’s evidence in relation to the telephone conversation came across as sincere. His note was made the day after the conversation, and his evidence in relation to the conversation was largely consistent with its contents. Although Mr Mileham occasionally prevaricated, he recounted the conversation and his reaction to it in some detail.
52. By contrast, Ms Scaffidi did not recall the conversation at all, even after she made efforts to jog her memory by Googling some of its content after reading Inquiry transcript.<sup>328</sup> As she had no memory of the telephone call, Ms Scaffidi could not say whether it was adversarial.<sup>329</sup>
53. Ms Scaffidi had no memory of saying, but nonetheless denied saying, to Mr Mileham *“‘A strong CEO’ and ‘the next CEO’ will do this sort of thing and will keep me fully informed”* and *“this and issues like it are a test for you”*.<sup>330</sup>
54. Given that Ms Scaffidi had no memory of the telephone call and Mr Mileham’s note was detailed, made contemporaneously and consistent with his evidence under oath, the Inquiry accepts Mr Mileham’s note as being an accurate record of the conversation and Mr Mileham’s feelings at the end of the telephone call. The Inquiry accepts Mr Mileham’s evidence that the conversation was adversarial and that he believed Ms Scaffidi may have been testing him to see whether or not he could and should be the next CEO when she said *“this and issues like it are a test for you”*.
55. The Inquiry does not accept Ms Scaffidi’s denials in circumstances where she could not recall the conversation and there is no evidence before the Inquiry as to why Ms Scaffidi would not have said those things to Mr Mileham.
56. The Inquiry finds it was improper for Ms Scaffidi to say to Mr Mileham that *“‘a strong CEO’ and ‘the next CEO’ will do this sort of thing & will keep me fully informed”* and *“this and issues like it are a test for you”* when:
  - Mr Mileham was Acting CEO and had applied for the role of CEO;
  - Ms Scaffidi, by virtue of Ms Howells’s email on 22 July 2016, had been provided with the information that Mr Mileham had applied for the position; and
  - Ms Scaffidi was a member of the CEO Recruitment Committee.



57. Viewed in context, the Inquiry considers Ms Scaffidi's remarks to be an attempt to influence how Mr Mileham would perform his role as CEO (including his functions as the City's complaints officer) by creating the impression that Mr Mileham's application for the role of CEO and/or his ongoing employment may be prejudiced. That was an abuse of Ms Scaffidi's position.
58. It was particularly inappropriate for Ms Scaffidi, as one of the subjects of the complaint, to tell Mr Mileham that she agreed that he could have "*headed [Mr] Limnios off at the pass*" in relation to the latter's LGSP complaint: in other words, that Mr Mileham could have forestalled or prevented Mr Limnios's complaint to the LGSP.
59. Ms Scaffidi's conduct during the telephone call with Mr Mileham on 26 July 2016 was inconsistent with:
  - The principles affecting employment by local governments, under which:
    - employees are to be selected and promoted in accordance with the principles of merit and equity;<sup>331</sup>
    - no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage;<sup>332</sup> and
    - employees are to be treated fairly and consistently.<sup>333</sup>
  - The *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations), which required Ms Scaffidi to act with integrity<sup>334</sup> and to treat others with respect and fairness.<sup>335</sup>

### Selection process

60. On 3 August 2016, Mr Mianich, Director, Corporate Services raised concerns about the CEO recruitment process with Ms Scaffidi, sending her an email to that effect. He advised Ms Scaffidi to appoint a City officer to be present at the interviews and suggested Mr Ridgwell, Manager, Governance.<sup>336</sup>
61. Ms Scaffidi replied, "*happy to see such governance concerns and rigour*" and agreed to raise the matter with Ms Davidson, the Chair of the CEO Recruitment Committee.<sup>337</sup>
62. On 4 August 2016, Ms Howells drafted a memorandum to the committee members, updating them on the process and providing a summary of candidates.<sup>338</sup> Five candidates met part of the selection criteria and were identified as a "*maybe*", and seven, including Mr Mileham, were identified as a "*yes*" for an interview, because they met all of the selection criteria.<sup>339</sup>
63. On 9 August 2016, the committee met. Afterwards, Ms Howells wrote to the committee members. She confirmed first-round interviewees, including Mr Mileham, set out the process to be followed in the interviews and attached a list of draft questions.
64. Ms Howells noted that after the first-round of interviews, some candidates would be selected for a second-round interview, being a 15-minute presentation before the Council, followed by questions.

65. Ms Howells also noted a Special Council Meeting would be arranged by Mr Ridgwell for 1 September 2016 for Council to appoint the successful candidate.
66. At that time, the CEO's contract was in development "*in line with the WALGA/LGMA recommended contract template*" and Ms Howells offered to provide the committee members with a draft contract on 24 August 2016.<sup>340</sup>
67. On 15 and 16 August 2016, six candidates were interviewed by a panel, made up of CEO Recruitment Committee members, Ms Scaffidi, Ms Davidson and Mr Limnios. Mr Ridgwell attended as an observer. Mr Mileham was interviewed last.
68. Interview grids were completed by Mr Ridgwell, Mr Limnios and Ms Davidson and comprehensively set out the observations of each interviewer.<sup>341</sup> The Inquiry was unable to locate any interview grids completed by Ms Scaffidi, nor a grid completed by Mr Ridgwell during Mr Mileham's interview. Ms Davidson recorded her notes in shorthand.<sup>342</sup>
69. A "*CEO Recruitment Panel Shortlisting Report*", prepared by Ms Davidson and Mr Ridgwell, set out the first three preferences of each panel member. Mr Mileham was ranked first by each.<sup>343</sup>
70. Three candidates, including Mr Mileham, were selected for second-round interviews.<sup>344</sup> One of these candidates later withdrew from the process.
71. On a reading of the records of the first-round interviews, it is not possible to ascertain how Ms Scaffidi assessed the candidates.
72. On 23 August 2016, Mr Mileham sent an email to the Executive Leadership Group (ELG) requesting information to use as part of his preparation for his second-round interview. Mr Mileham wrote:

*"As part of my prep, I would appreciate it (if you wish) if you would provide me with your (repeat your) single most important operational imperative and your single most desired strategic objective for the 0 to 5 year horizon.*

*A few words on the (1) operational imperative and (2) strategic objective – as a statement of intent or target would be great".*<sup>345</sup>
73. The following day, Mr Mileham's Personal Assistant reminded the ELG to provide the information.<sup>346</sup>
74. Mr Mileham was shown his email dated 23 August 2016 and denied that he had asked the ELG for help for his interview. Mr Mileham thought it was appropriate to ask the ELG for information that he could use in his application and believed that task would be an appropriate use of their time.<sup>347</sup>
75. Mr Mileham could not recall if he had asked his Personal Assistant to follow up on his email. He could not comment on whether it was "*more likely than not*" that his Personal Assistant had followed up, because he had asked her to do so. Mr Mileham said that his Personal Assistant may have followed up on his email without him asking, because it may have been part of his Personal Assistant's "*action list*". On the basis of Mr Mileham's evidence, it is open to infer this action list would at least in part be a consequence, if not a direct result, of Mr Mileham's instructions.<sup>348</sup>

76. Ms Annaliese Battista gave evidence to the Inquiry about this email. She said Mr Mileham *“was very open about ... seeking our [the ELG’s] support for his interview process and asking us to dedicate a time to provide various things at various points in time, and as I said, this is one of a few such requests”*.<sup>349</sup>
77. On the basis of the evidence before it, the Inquiry is not satisfied that this email correspondence amounted to a direction from Mr Mileham to the ELG. However, the Inquiry considers that it was inappropriate for Mr Mileham to ask the ELG, who reported directly to him, to provide him with information to assist him in preparing for his interview. Mr Mileham cannot be criticised for using the knowledge and experience he gained in his employment with the City, including as Acting CEO, during the application process but it was not appropriate for him to request his subordinates carry out work for the purpose of assisting his preparation for his interview.<sup>v</sup>
78. On 29 August 2016, Mr Mileham and the other candidate gave their second-round presentation to council members and answered questions.<sup>350</sup>
79. Council members were asked about this process during their examinations by the Inquiry.
80. Ms Davidson, who was the chair of the CEO Recruitment Committee, confirmed that all council members were given an opportunity to attend the candidates’ presentation and ask unscripted questions. She said this was *“a convention within the City of Perth”*. She said that a grid was available to make notes, but it was not compulsory to fill it in.<sup>351</sup>
81. Ms Davidson agreed the process was not transparent, because there were no complete sets of interview grids for the presentations and no record of the discussions among council members after the presentations. However, she said the decision to select Mr Mileham was unanimous and it was in her view transparent to the people who attended.<sup>352</sup>
82. Dr Green recalled attending presentations by Mr Mileham and another candidate.<sup>353</sup> Dr Green said Mr Mileham’s presentation was more lively and productive and there were more questions asked of him than of the other candidate. Dr Green told the Inquiry that Ms Scaffidi led the discussion and afterwards expressed the view that both candidates were very good, but it *“made sense to stay with Mr Mileham rather than change the CEO position again”*.
83. Dr Green told the Inquiry she recalled a *“round up session”* prior to the appointment of Mr Mileham, where she suggested that it may be appropriate to pay Mr Mileham on a lower band and gradually increase his pay, because it was his first appointment as CEO. Ms Scaffidi replied that Mr Mileham should be on the highest salary band, because Perth is the capital city (of the State).<sup>354</sup>
84. Other council members had varying memories of the session. Most agreed that both candidates were good, but that Mr Mileham was chosen by consensus.

<sup>v</sup> That is notwithstanding Mr Mileham’s evidence that he expected *“a few words, not a treatise or a very great deal of work”* in response to his request: Transcript, M Mileham, public hearing, 28 August 2019.

85. On a reading of the documentation concerning the second-round interviews, there are a number of failings. It is not possible to determine who assessed the candidates, an attendance list was not kept. Nor can an assessment be made of how the candidates' presentations were rated. Only one interview grid for each candidate was completed in full and there are no other notes which allow a comprehensive comparison between the applicants to be undertaken.<sup>355</sup> On a reading of the records, it is unclear whether, following their presentations, any questions were asked of the candidates. Any questions which were asked were not recorded, and nor were any answers.
86. Many of the council members had incomplete or no meaningful memory of the second-round interview process. Ms Chen said she did not attend<sup>356</sup> the presentations and some other council members also had no memory of attending.<sup>357</sup> As the evidence before the Inquiry demonstrates, there is now no meaningful and objective way in which the remaining candidate's performance in the second-round interview can be compared to Mr Mileham's.
87. As a result of these deficiencies, it is not possible to identify, let alone assess, the conclusions reached by the council members about the respective merits of the applicants. Nor is it possible to draw a comparison between them, or to assess the decision to prefer Mr Mileham over the other candidate. It is, therefore, very difficult to assess whether the appointment of Mr Mileham was a meritorious one.
88. By way of example, the other candidate interviewed during the second-round interviews had 15 years of experience working for local governments in Western Australia, including nine years as the CEO of two local governments.<sup>358</sup> By contrast, Mr Mileham's only experience in local government was less than four years as the City's Director, Planning and Development and less than a year as the City's Acting CEO. He had no other experience as a CEO.<sup>w</sup>
89. Given the significant external and internal challenges faced by the City at that time, the Inquiry is of the view that local government experience, particularly as a CEO, was an important factor for the Council to consider. Given the lack of documentation, the Inquiry cannot now reliably ascertain what, if any, weight or consideration was given by council members to that factor.
90. The City's then Procedure "*PR0007 – Recruitment and Selection Procedure*", required that:
- "All recruitment decisions are made on the basis of equity, merit and procedural fairness.*
- *Recruitment and selection processes are open, competitive and free of bias, unlawful discrimination, nepotism or patronage.*
  - *Decisions are transparent and capable of review".<sup>359</sup>*

w Application, CEO City of Perth, M Mileham, undated. Mr Mileham gave evidence that he was Vice President of Operations in Dubai for a multi-national company that "was in effect CEO" and "was a director and founder of my own company which again was, in effect, in my view, not altogether different from being a CEO": Transcript, M Mileham, private hearing, 22 July 2019, p 23.

91. The principles set out in section 5.40(a) of the LG Act require employees to be *“selected and promoted in accordance with the principles of merit and equity”*.
92. The recruitment process leading to the appointment of Mr Mileham was not transparent. The decision to select Mr Mileham is not capable of proper review. It is, therefore, difficult to determine whether the decision to select Mr Mileham was based on the principles of merit and equity.

### Appointment of Mr Martin Mileham

93. On 30 August 2016, Ms Howells sent a memorandum to Ms Scaffidi, Ms Davidson, Mr Limnios and Mr Ridgwell. She confirmed that Council had decided Mr Mileham was the preferred candidate and set out the checks and other tasks to be done. She stated she would have a recommendation paper to the CEO Recruitment Committee on Thursday 1 September 2016 and noted:  
*“Due to the need for reference checks and the negotiation with Mr Mileham on his contract which needs to commence it is recommended by the Manager Governance that a special council meeting be held on Tuesday 6 September”*.<sup>360</sup>
94. Ms Howells attached a recommendation for a CEO contract, based on a WALGA template.
95. On 30 August 2016, the CEO Recruitment Committee met. Ms Scaffidi, Ms Davidson, Mr Limnios, Ms Howells and Mr Ridgwell attended.
96. The meeting passed the following motion:  
*“That Council, in accordance with Section 5.36 of the Local Government Act 1995, BY ABSOLUTE MAJORITY DECISION, appoints Mr Mileham to the position of Chief Executive Officer for a period of five years, under the contract of employment for a Chief Executive officer”*.<sup>361</sup>
97. However, this was not the motion put to Council at its Special Council Meeting to appoint the CEO.
98. Despite the suggestion by Ms Howells that the Special Council Meeting be postponed to 6 September 2016, that meeting was scheduled for 1 September 2016. This meant the administration staff did not have enough time to complete the proposed tasks, including the reference checks, before the meeting.<sup>362</sup>
99. Ms Scaffidi<sup>363</sup> and Ms Davidson<sup>364</sup> were asked about this in their examinations and agreed there were sound reasons to allow the administration staff to complete the tasks described by Ms Howells, particularly in relation to the contract of employment and salary. Although Ms Davidson believed they needed to complete the tasks, neither she nor Ms Scaffidi could say why more time was not allowed for that to occur.

100. The minutes of the Special Council Meeting on 1 September 2016 record:

*“The Council agreed that there would be no discussion on Confidential Item 334/16 [appointment of Chief Executive Officer] therefore it was not deemed necessary to close the meeting (as detailed 333/16)”[matters for which the meeting may be closed].<sup>365</sup>*

101. Confidential schedule 1 to the meeting minutes contained a report summarising the recruitment process and setting out some of the proposed details for the contract of employment.

102. The officers report stated:

*“That Council, in accordance with Section 5.36 of the Local Government Act 1995, and subject to the satisfactory completion of reference checks, by an Absolute Majority Decision, appoints Mr Martin Mileham to the position of Chief Executive Officer and approves the CEO Recruitment Committee to negotiate the terms of the Contract provisions with Mr Martin Mileham”.<sup>366</sup>*

103. The report did not include a draft contract, but stated:

*“CONTRACT PROVISIONS:*

- *Five (5) year term;*
- *Six (6) month review period;*
- *Remuneration package breakdown:*
  - *Cash: \$310,000*
  - *Car allowance: \$25,000*
  - *Superannuation: \$29,450*
- *Total Remuneration total package: \$364,450*
- *WALGA/LGMA CEO contract model base document”.<sup>367</sup>*

104. The council members at the meeting voted in favour of motions that Council:

- “1. in accordance with section 5.36 of the Local Government Act 1995, by an absolute majority accepts the CEO Recruitment Committee’s recommendation to appoint the preferred candidate as detailed in Confidential Schedule 1 to the position of Chief Executive Officer for a period of five years under the contract of employment for a Chief Executive Officer;*
- 2. subject to the completion of satisfactory reference checks approves the CEO Recruitment Committee to negotiate the terms of the Contract provisions”.*

105. Mr Mileham attended the Special Council Meeting, but believes he left the room while the motion to appoint him as CEO was voted on.<sup>368</sup> The minutes record he left the room for one minute between 5.04 pm and 5.05 pm.<sup>369</sup>

### Mr Martin Mileham's appointment as Chief Executive Officer

106. One question which arises on these facts is whether Mr Mileham was ever validly employed by the City.
107. The power and responsibility to employ a CEO, and to do so properly, rests with the Council. A person is not to be employed in the position of CEO unless the Council:
  - “believes that the person is suitably qualified for the position”<sup>370</sup>, which requires a simple majority of Council<sup>371</sup>; and
  - “is satisfied with the provisions of the proposed employment contract”, which requires an absolute majority of Council<sup>372</sup> and cannot be delegated to a committee.<sup>373</sup>
108. In requiring Council to be “satisfied with the provisions of the proposed employment contract”, the LG Act requires Council to be satisfied with the stipulated provisions of the proposed contract between the prospective CEO and the Council and vote on it.
109. Council was never asked to vote on the proposed contract of employment for Mr Mileham.
110. When Mr Stevenson was appointed, the proposed contract of employment was presented to Council and the following motion was moved and carried:

*“in accordance with section 5.36 of the Local Government Act 1995 BY AN ABSOLUTE MAJORITY DECISION, appoints Mr Gary Stevenson to the position of Chief Executive Officer for a period of five years, under the contract of employment detailed in Schedule 2 with a total annual remuneration package valued at \$327,034.”*<sup>374</sup>
111. While human resources staff, Mr Ridgwell and Mr Mianich, may have checked the terms of Mr Mileham's contract, it was not their responsibility to settle the final contract. It is a statutory function of Council to ensure that it is satisfied with the stipulated provisions of the proposed contract of employment for its CEO. If they are not so satisfied, the person is not to be employed as CEO.
112. As long as the contract of employment between Mr Mileham and the City was subject to negotiation, Council could not have been satisfied with the provisions, because they had not been stipulated for consideration and the Council could not, therefore, be satisfied with them.
113. To employ a CEO in these circumstances contradicts the prohibition in section 5.36(2)(b) of the LG Act. Mr Mileham should not have been employed by the City as CEO without the provisions of the proposed contract being stipulated and Council being satisfied with them. For him to be employed contrary to the prohibition is an untenable position. The Inquiry finds there was a significant failure by Council in employing Mr Mileham where the prohibition was so clear. There was no basis on which Council could be satisfied of the provisions of the contract. The matter on which the Council was required to exercise its mind and be satisfied did not exist in a form which would allow that satisfaction to be formed.



114. Not only had the provisions of Mr Mileham's contract not been stipulated, his references had not been checked before Council was asked to endorse his appointment.<sup>375</sup>
115. In addition to the terms of Mr Mileham's employment contract, Council was advised that reference checks were outstanding at the time they voted to appoint Mr Mileham. Although no criticism is levelled at council members for voting in favour of the appointment of Mr Mileham based on their various beliefs regarding his qualification for the position,<sup>376</sup> it would have been better had those checks been completed before Council was asked to vote. They would have informed the exercise of the discretion.
116. Ms Howells had asked for the Special Council Meeting to occur on 6 September 2016 to allow a reference check to occur and the terms of the contract to be negotiated.<sup>377</sup> The explanations offered by the members of the CEO Recruitment Committee as to why the Special Council Meeting was held on 1 September 2016 and not 6 September 2016, do not provide any logical, plausible or convincing explanation for why a delay of five days could not be allowed.<sup>378</sup> The failure to allow sufficient time for the provisions to be stipulated and the reference checks to be made was always going to result in a non-compliant and ill informed decision.
117. The failure to allow enough time for these things to happen is even more unsatisfactory given that each of the members of the CEO Recruitment Committee agreed it was important for the reference checks to be completed, and the contract terms negotiated, before Council was asked to vote on Mr Mileham's appointment.<sup>379</sup>

#### **Mr Martin Mileham's contract of employment**

118. On 16 September 2016, the CEO Recruitment Committee met and Ms Scaffidi, Ms Davidson and Mr Mileham were present. Mr Limnios was absent. It was resolved that specified key performance indicators (KPIs) would be applied to Mr Mileham's contract of employment.<sup>380</sup>
119. There is no reference to contract negotiations in the minutes of the committee meeting.
120. Council met on 20 September 2016. Mr Mileham attended. Neither Mr Mileham's contract of employment, nor his KPIs were presented to that meeting.<sup>381</sup>
121. Mr Mileham's contract was signed on the following day, 21 September 2016.<sup>382</sup> The contract provided for remuneration above the maximum determined by the Salaries and Allowances Tribunal and allowed under the LG Act.
122. Although the Council had authorised the CEO Recruitment Committee to negotiate the terms of the contract on 1 September 2016, the Inquiry has not been able to discern from the evidence available to it how the contract came to be negotiated.
123. Mr Mileham did not recall discussing the content of the contract with Ms Scaffidi. Nor did he recall a great deal about the negotiation of its terms. His best recollection was that the contract was in a form presented to him by Ms Howells. He did not recall requesting any changes to it.<sup>383</sup>

124. Ms Howells said that she had no input into the employment contract between Mr Mileham and the City. She just produced the contract based on information provided by the CEO Recruitment Committee. She recalled a meeting with the committee, where a decision was made to pay Mr Mileham at the top of the pay scale, but she did not recall being asked about whether he could be paid above the advertised range. Ms Howells did not know if someone could be paid above the cap of the Salaries and Allowances Tribunal salary band.<sup>384</sup>
125. Mr Ridgwell said he had no input into establishing the terms of Mr Mileham's contract or his salary. As Ms Howells was relatively new to her role, he offered support for Ms Howells in the process. Mr Ridgwell said he could not recall being asked for advice by any member of the CEO Recruitment Committee during the appointment process.<sup>385</sup>
126. Mr Limnios had no recollection of being involved in any negotiations himself. He said that in September 2016 the terms of the contract with Mr Mileham were to be negotiated by Ms Scaffidi and Ms Davidson.<sup>386</sup> According to him, they were the "*prime*" people involved in the negotiation.<sup>387</sup>
127. Ms Davidson could not recall whether she, Ms Scaffidi, or another council member negotiated the terms and conditions of the contract with Mr Mileham. At first, she said that the person responsible for determining what was offered to Mr Mileham was the "*Director of Corporate Services and human resource management*", but she later accepted that Council was responsible.<sup>388</sup>
128. Ms Scaffidi told the Inquiry she did not settle the terms of the contract with Mr Mileham, although she agreed that she would have read the contract.<sup>389</sup>

#### Circumstances in which Mr Martin Mileham's contract was executed

129. Mr Mileham's contract of employment was dated 21 September 2016.
130. The contract was for a period of five years, from 3 October 2016 until 1 October 2021. It had a review period, effectively a probation period, of six months.
131. The signing page states:  
*"THE COMMON SEAL of the City of Perth was affixed by authority of a resolution of the Council in the presence of:  
The Rt Hon the Lord Mayor".*<sup>390</sup>
132. Ms Scaffidi signed, but the common seal was not affixed and there was no corresponding resolution of the Council (Figure 2.16).
133. Mr Mileham signed, and a witness also signed. The signatures were not dated.
134. Section 9.49A of the LG Act sets out how documents should be lawfully executed by a local government. Mr Mileham's contract was not executed in a way which complied with this section.

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**EMPLOYMENT CONTRACT**

Signing page

**EXECUTED** by the parties

THE **COMMON SEAL** of the City of Perth  
was affixed by authority of a resolution of the  
Council in the presence of -

*Lisa M. Scaffidi*  
The Rt Hon the Lord Mayor

LISA-M. SCAFFIDI  
Name  
(print)

**Signed** by Employee  
in the presence of -

*M. Mileham*  
Employee  
M. MILEHAM.  
Name  
(print)

*Gail R. Wicking*  
Witness  
GAIL R. WICKING  
Name  
(print)

Figure 2.16: City of Perth Employment Contract, Mr Martin Mileham, p 12 of 16, 21 September 2016.

135. The contract between the City and Mr Mileham was not duly executed, because Ms Scaffidi was not authorised to sign the contract of employment on behalf of the City.<sup>391</sup> In these circumstances the common seal of the City should have been affixed.<sup>392</sup> However, the common seal was not affixed, and could not be affixed in circumstances where there was no authority from Council to do so.<sup>393</sup>
136. Ms Scaffidi agreed Mr Mileham's contract was not put to a resolution by Council, as was required by section 5.36(2)(b) of the LG Act. She also agreed that the contract was not properly executed and that, as a result, Mr Mileham was not properly appointed.<sup>394</sup>
137. Ms Scaffidi signed the contract, which indicated on its face that the common seal was affixed by authority of a resolution of Council, knowing that it was not. She agreed she was responsible for ensuring that such a resolution was passed.<sup>395</sup>
138. The Inquiry finds it was irresponsible of Ms Scaffidi to purport to execute Mr Mileham's contract of employment in the manner she did. In the absence of Ms Scaffidi being authorised to sign the document on behalf of the City, the whole of Council should have been given the opportunity to authorise the affixing of the common seal. By failing to do this, the City failed to comply with section 9.49A of the LG Act.

#### Mr Martin Mileham's remuneration

139. The advertised salary package for the CEO position was in the range of \$247,896.00 to \$375,774.00 per annum.<sup>396</sup> This was the range for a CEO Band 1 determined by the Salaries and Allowances Tribunal.<sup>397</sup>
140. Mr Mileham's contract provided for a total annual remuneration package of \$379,950.00 per annum.<sup>398</sup>
141. Mr Mileham said he discussed his contract with the Manager of Human Resources, who compiled his contract, but he did not discuss the "*dollar value*" of his contract with any council member. While he discussed KPIs with the council members, he did not discuss his salary with them. He said he did not negotiate the salary. He said he accepted what was offered.<sup>399</sup>
142. The Inquiry has been unable to determine on the evidence and the available materials how the final remuneration figure offered to Mr Mileham was decided. It was the responsibility of the Council.
143. According to the City's records, during the 2016/2017 financial year, Mr Mileham was paid \$315,461.00.<sup>400</sup> He also received \$29,968.78 in superannuation contributions<sup>401</sup> and \$17,672.00 in a reportable fringe benefits amount.<sup>402</sup> In addition, Mr Mileham used the option of the City providing him with a motor vehicle for work and private use under his contract of employment. The "*private benefit value*" estimated was up to \$2,757.00.<sup>x</sup> These amounts totalled \$365,858.78. In the 2017/2018 financial year, Mr Mileham was paid \$310,000.00.<sup>403</sup> He also received \$29,449.94 in superannuation contributions<sup>404</sup> and \$15,709.50 in a reportable fringe benefits amount.<sup>405</sup> The "*private benefit value*" estimated is up to \$1,919.00.<sup>406</sup> This totalled \$357,078.44.

x WA Government Gazette, Salaries and Allowances Tribunal, 12 April 2016 *Determination for Local Government CEOs and Elected Members*, 21 April 2016. The private benefit value for a motor vehicle is defined in Part 5 of the determination; Table, CEO car – operational budget and actual 2015/2016 to 2017/2018.

144. Mr Mileham did not take up the non-compulsory superannuation option, which would have seen him receive an additional \$15,000.00 in superannuation.<sup>407</sup>
145. The final agreed total annual remuneration package of \$379,950.00 offered to Mr Mileham was above the allowable Salaries and Allowances Tribunal bandwidth, which stipulated a maximum of \$375,774.00.
146. However, this is not what Mr Mileham was actually paid. In the 2016/2017 financial year this totalled \$365,858.78. In the 2017/2018 financial year it was \$357,078.44.
147. Section 5.39(7) of the LG Act states that a CEO is to be “*paid or provided with*” remuneration as determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*, section 7A. Although Mr Mileham was offered a total remuneration package of more than the (permissible) maximum amount, it was never “*paid or provided*” to him. For this reason, there was no breach of the Act.
148. Regulation 18F of the *Local Government (Administration) Regulations 1996* provides the remuneration and other benefits paid to a CEO on the appointment of the CEO are not to differ from the remuneration and benefits advertised for the position under section 5.36(4) of the LG Act. Although the amount offered to Mr Mileham was in excess of the advertised amount, Mr Mileham was not paid more than the maximum of the advertised total annual remuneration range. Consequently, there was no breach of this regulation.

#### **Chief Executive Officer six-month performance review**

149. Mr Mileham’s six-month review period was due to expire on 3 April 2017.
150. The process adopted for managing Mr Mileham’s review period was not in keeping with the requirements of clause 4.3 of his contract of employment.
151. Clause 4 of Mr Mileham’s contract dealt with its review period. Clause 4.3 provided that, within four weeks of the commencement date, the “*City of Perth Council*” and the employee must discuss and agree the KPIs for the first six months, the measures which the KPIs will be assessed against and how the review of the KPIs will be conducted.<sup>408</sup> Clause 4.2 provided that satisfactory completion of the review period<sup>409</sup> would be determined on the employee’s performance against the KPIs. No mechanism was specified.
152. The Inquiry considers that a reference to “*the City of Perth Council*” in Mr Mileham’s contract of employment is a reference to the Council and does not include a committee.
153. On 16 September 2016, during a CEO Recruitment Committee meeting attended by Ms Scaffidi and Ms Davidson, KPIs were settled and applied to Mr Mileham’s contract. Mr Mileham attended the meeting and was a party to the discussions.<sup>410</sup> No recommendation was made to place the KPIs before Council.
154. Mr Mileham’s contract of employment was made on 21 September 2016, after his KPIs had been determined by the CEO Recruitment Committee.<sup>411</sup>

155. Council was not asked to discuss and agree on the KPIs. There were no measures against which the KPIs would be assessed. There was no agreement on how the review of the KPIs would be conducted. This was in breach of clause 4.3 of the contract of employment.

#### Confirmation of Chief Executive Officer Performance Review Committee minutes

156. The CEO Performance Review Committee met on 7 March 2017. Mr Mileham and Mr Ridgwell were also present.<sup>412</sup>
157. At that meeting, the minutes of the CEO Performance Review Committee meetings on 28 October 2014 and 19 January 2016 were confirmed.
158. The LG Act requires that the minutes of a meeting of a committee are to be submitted to the next ordinary meeting of the committee for confirmation.<sup>413</sup>
159. The 28 October 2014 minutes should have been confirmed at the 19 January 2016 meeting. At their hearings before the Inquiry, Ms Scaffidi,<sup>414</sup> Mr Limnios<sup>415</sup> and Ms Davidson<sup>416</sup> agreed.
160. The Inquiry finds the members of the CEO Performance Review Committee should have confirmed the minutes from 28 October 2014 at the meeting of 19 January 2016 and did not. The failure to do so was in breach of section 5.22(2) of the LG Act.
161. In addition, Mr Mileham's contract of employment was put before the CEO Performance Review Committee as part of its papers for the meeting.<sup>417</sup> There appears from the minutes of that meeting to have been no discussion of the terms of that contract.

#### Performance review process

162. The Inquiry notes there was no guidance for council members on how to make an assessment of the performance of the CEO.
163. On 7 March 2017, Mr Mileham completed a self-assessment for his probationary period.<sup>418</sup> Ms Scaffidi, Ms Davidson and Mr Limnios each completed a "*probation period review*" for him.<sup>419</sup> The review was conducted against the established KPIs.
164. The KPIs which were recommended for Mr Mileham are in stark contrast with the criteria used to assess Mr Stevenson's performance. They include objective matters, which can be measured, and specify time frames, within which achievements should and could occur. A variety of weighted competencies were established in the areas of governance, organisational development, stakeholder management, strategic planning, protocol and public relations.

165. However, some of the “*measures*” to assess Mr Mileham’s performance do not appear to have been appropriate for the CEO of a large, sophisticated organisation. For example, the measures used to assess Mr Mileham’s performance for:
- “*Stakeholder Management*” were:
    - “*1:1 meetings with EM’s*” to occur within “*6 weeks*” of 1 October 2016;
    - “*Ongoing 1:1 [council members] or preferred arrangement as agreed*” to occur “*Ongoing*” from 1 October 2016; and
    - “*Feedback from EM’s and CEO*” to occur “*At 6 month review*”.
  - “*Public Relations*” included ensuring “*Information on CoP’s [City’s] website is correct and up to date*”.<sup>420</sup>
166. At the CEO Performance Review Committee meeting on 7 March 2017, Mr Limnios had not had the opportunity to conduct “*individual feedback*” and the meeting was adjourned to the following day.<sup>421</sup>
167. At the CEO Performance Review Committee meeting on 8 March 2017, completed probation period review forms were tabled by Ms Davidson,<sup>422</sup> Ms Scaffidi<sup>423</sup> and Mr Limnios.<sup>424</sup>
168. At that meeting Mr Limnios expressed concerns about Mr Mileham’s performance review and advocated for Council to be consulted and involved in providing feedback on Mr Mileham’s performance.<sup>425</sup> He said he felt “*railroaded*” at the meeting and felt like the processes of the CEO Recruitment Committee and CEO Performance Review Committee had been dominated by Ms Scaffidi and Ms Davidson from “*day dot*”. Mr Limnios said he was reminded by Ms Scaffidi and Ms Davidson that he did not have experience in the sub-committee.<sup>426</sup> Neither Ms Scaffidi nor Ms Davidson shared his concerns and his vote against a motion to approve the CEO’s performance was in the minority.<sup>427</sup>
169. Ms Scaffidi<sup>428</sup> and Ms Davidson<sup>429</sup> found Mr Mileham had satisfied every one of his KPIs, while Mr Limnios found Mr Mileham had satisfied none of them.<sup>430</sup> Given that Mr Mileham’s KPIs contained objective measures and clear timeframes for when those measures had to be achieved, that mixed and contradictory set of results is difficult to understand.
170. In this context, the Inquiry notes that during 2016 there appears to have been a falling out between Mr Limnios and Ms Scaffidi and her team. Mr Limnios gave evidence that “*I wouldn’t allow the Lord Mayor to push me around and I don’t think she liked it either, that I would stand my ground, and that was why. So she turned on me and so did her friends*”,<sup>431</sup> namely, Ms Davidson, Ms McEvoy, Mr Adamos and Mr Yong.



171. At an Ordinary Council Meeting on 17 May 2016, Ms Davidson moved a motion of no confidence in Mr Limnios as Deputy Lord Mayor. Ms Scaffidi and her team members (except Ms Chen) voted in favour. Mr Limnios made complaints about Ms Scaffidi's and Ms Davidson's conduct in relation to the motion to the LGSP.
172. Mr Limnios then appears to have aligned himself with Dr Green and Mr Harley.
173. On 9 March 2017, Dr Green asked Ms Davidson for details as to why the approach taken with respect to Mr Mileham was different from that undertaken for Mr Stevenson and why it was different from the process used by the City for its performance reviews.<sup>432</sup>
174. On 10 March 2017, Dr Green asked Ms Davidson to respond to her assertion that there were "*material deficiencies with the process*", which needed to be rectified before a decision of Council was made on Mr Mileham's probation.<sup>433</sup> Dr Green suggested an out of session Council Meeting to review the proper process before the 4 April 2017 meeting was held.<sup>434</sup> She received no response.<sup>435</sup>
175. On the morning of 14 March 2017, before a Council Meeting on the same day, Mr Harley raised a number of concerns with Ms Davidson about the process. Mr Harley pointed out to Ms Davidson and Ms Scaffidi and the remainder of Council that the process did not comply with clause 4 of the contract of employment.<sup>436</sup> He was right.
176. As explained at paragraph 151-155, the City had breached clause 4.3 of Mr Mileham's contract of employment by not having Council discuss and agree the KPIs for the first six months, the measures against which each KPI would be assessed and how the review would be conducted.
177. Ms Davidson and Ms Scaffidi, who developed and applied the KPIs to Mr Mileham's contract,<sup>437</sup> contributed to the City's contractual breach, exposing the City to an unnecessary risk of litigation.
178. The Inquiry also notes that Mr Mileham's March 2017 performance review was not an annual review, it was a six-month probationary review. The terms of reference of the CEO Performance Review Committee make it clear that it should establish annual performance objectives for the CEO and report on them to Council. They also provide for the committee to undertake an annual review of the CEO. The committee's terms of reference do not provide any guidance as to how to manage the performance of a CEO within a probationary period.<sup>438</sup> There was no other guidance provided for council members on this subject.
179. Consequently, the committee was unsupported in its work. As Ms Scaffidi said "*It's a shame the City didn't have a template or a process there*".<sup>439</sup>

### Council Meeting of 14 March 2017

180. An Ordinary Council Meeting was held on 14 March 2017. All council members attended, as did Mr Mileham, Mr Ridgwell, the directors and a number of City employees.<sup>440</sup>
181. The meeting considered an item *“Confidential 13.20 CEO Probation Review”*.
182. A report from Mr Mianich was tabled as a confidential item and included all of the information that had been before the CEO Performance Review Committee on 7 and 8 March 2017.
183. Three completed key performance assessment sheets were put before Council. They were from Ms Scaffidi,<sup>441</sup> Ms Davidson<sup>442</sup> and Mr Limnios.<sup>443</sup> There was considerable variation between the assessments. Ms Scaffidi and Ms Davidson generally gave Mr Mileham positive assessments. Mr Limnios’s assessments were generally negative.
184. For example, Mr Limnios commented that Mr Mileham’s most important achievement was *“Surviving the environment surrounding the Lord Mayor, publicity issues, public perception of the City”* and that he needed to develop *“people skills, putting effort to understand the various personalities. Not being so defensive, reducing the perception of aggression when feeling under pressure or challenged”*.<sup>444</sup>
185. Ms Scaffidi and Ms Davidson gave Mr Mileham an overall rating of *“satisfactory”*. Mr Limnios gave an overall rating of *“... not yet satisfactory – further review needed”*.<sup>445</sup>
186. As the item was a confidential one, there is no record of any Council debate about this CEO Probation Review.
187. In the face of what Dr Green believed were *“wildly differing views”* on whether Mr Mileham had met his KPIs,<sup>446</sup> Dr Green moved a motion to refer the matter back to committee, but it was not carried. It was not recorded in the Council minutes.
188. The Council’s minutes of this meeting record a motion by Mr Harley to amend the motion in the following terms:  
*“That Council notes the initial probationary review period and extends the probationary period for up to a further six months to allow for the satisfactory completion of all KPIs”*.<sup>447</sup>
189. However, the motion was defeated. Mr Limnios, Dr Green and Mr Harley were in the minority.
190. The primary motion was put and carried, namely, *“That Council approves the satisfactory conclusion of the review period of 6 months for Martin Mileham, Chief Executive Officer”*.<sup>448</sup>

## Findings

### Finding 2.3.1 – 3

The Inquiry makes the following findings:

- i. On 26 July 2016, Ms Scaffidi spoke to Mr Mileham and attempted to influence how he would perform the role of CEO by creating an impression that Mr Mileham's application for the position of CEO and/or his ongoing employment may be prejudiced. This was an abuse of her position as Lord Mayor and was inconsistent with regulation 3(1)(b) and 3(1)(g) of the Conduct Regulations. It was also inconsistent with several overarching employment principles (set out at paragraph 59).
- ii. On 23 August 2016, Mr Mileham emailed the ELG, asking them to provide information to assist him in his preparation for his second-round interview. That was inappropriate.
- iii. The recruitment process to recruit a CEO in 2016 was not transparent and capable of review. There was a lack of records relating to Ms Scaffidi's assessment of candidates at the first-round of interviews in the CEO selection process, and of documentation of the second-round presentations to the Council. This was contrary to the requirements of the City's then Procedure "*PR0007 – Recruitment and Selection Procedure*".<sup>449</sup> It is, therefore, difficult to determine whether the decision to select Mr Mileham was based on the principles of merit and equity as required by section 5.40(a) of the LG Act.
- iv. The stipulated provisions of Mr Mileham's proposed contract of employment were not provided to the Council for an absolute majority decision and consequently the City did not comply with the requirements of section 5.36(2)(b) of the LG Act.
- v. Although Ms Scaffidi was not authorised by Council to sign Mr Mileham's contract of employment, she signed it and failed to ensure the contract was put before Council so it could authorise the affixing of the common seal in accordance with section 9.49A of the LG Act.
- vi. Clause 4.3 of Mr Mileham's contract of employment provided that the KPIs must be discussed and agreed between the City of Perth Council and the employee. Contrary to this, Mr Mileham's KPIs were agreed only between Mr Mileham and two members of the CEO Performance Review Committee, Ms Scaffidi and Ms Davidson.

## Endnotes

- 1 *Local Government Act 1995*, s 5.41.
- 2 *Local Government Act 1995*, s 5.40.
- 3 *Local Government Act 1995*, s 5.36, 5.38.
- 4 *Local Government Act 1995*, s 5.41.
- 5 *Local Government Act 1995*, s 5.38(3).
- 6 *Corruption, Crime and Misconduct Act 2003*, s 28, 45H.
- 7 Report, Western Australia Local Government Professionals Association and the University of Western Australia, From workplace stress to workplace wellness: An assessment of the health and well-being of local government Chief Executive Officers in WA, 16 October 2019; Report, Australian Centre of Excellence for Local Government, Leadership in Local Government: Factors affecting the appointment of CEOs, April 2014; Report, Australian Centre of Excellence for Local Government, Political Management in Australian Local Government: Exploring Roles and Relationships between Mayors and CEOs, September 2012.
- 8 Report, Local Government Inspectorate (Victoria), Protecting integrity: Leading the way, Managing the employment cycle of a council CEO, February 2019; Website, Corruption and Crime Commission Queensland, Media statement – Seven Logan councillors and the suspended mayor to be charged today by the CCC, 26 April 2019.
- 9 Report, Local Government Inspectorate (Victoria), Protecting integrity: Leading the way, Managing the employment cycle of a council CEO, February 2019.
- 10 Report, Protecting integrity: Leading the way, Managing the employment cycle of a council CEO, Local Government Inspectorate (Victoria), February 2019.
- 11 Transcript, A Hammond, public hearing, 10 October 2019, p 14-37.
- 12 Transcript, A Hammond, public hearing, 10 October 2019, p 19.
- 13 Transcript, A Hammond, public hearing, 10 October 2019, p 19.
- 14 Transcript, A Hammond, public hearing, 10 October 2019, p 20.
- 15 Personal communication, WhatsApp, the team group chat, L Scaffidi, 8.03 pm 29 October 2015.
- 16 Transcript, A Hammond, public hearing, 10 October 2019, p 19.
- 17 Terms of Reference, Part A.2.
- 18 *Local Government Act 1995*, s 5.36(1).
- 19 *Local Government Act 1995*, s 5.36(2).
- 20 *Local Government Act 1995*, s 5.39(2)(b), 5.39(6).
- 21 *Local Government Act 1995*, s 5.39(3)(b).
- 22 *Local Government Act 1995*, s 5.38.
- 23 *Local Government (Administration) Regulations 1996*, reg 18D.
- 24 *Local Government Act 1995*, s 5.40(c).
- 25 *Local Government Act 1995*, s 5.41.
- 26 Transcript, A Hammond, public hearing, 10 October 2019, p 19.
- 27 *Corruption, Crime and Misconduct Act 2003*, s 28.
- 28 *Corruption, Crime and Misconduct Act 2003*, s 29.
- 29 *Corruption, Crime and Misconduct Act 2003*, s 31.
- 30 *Corruption, Crime and Misconduct Act 2003*, s 3 (definition, “minor misconduct”).
- 31 *Corruption, Crime and Misconduct Act 2003*, s 45H.
- 32 *Local Government Act 1995*, s 5.120(2).
- 33 *Local Government Act 1995*, s 5.107(3), 5.108(2).
- 34 *Local Government Act 1995*, s 5.107(3), 5.110(3).
- 35 *Local Government Act 1995*, s 5.121.
- 36 *Local Government Act 1995*, s 5.115.
- 37 *Local Government Act 1995*, s 5.109.
- 38 Minutes, Ordinary Council Meeting, 6 September 2012.
- 39 Contract of Employment, G Stevenson, 19 September 2012.
- 40 Contract of Employment, G Stevenson, 19 September 2012.
- 41 Minutes, Ordinary Council Meeting, 1 April 2014.
- 42 Agenda, Ordinary Council Meeting, 28 October 2014; Minutes, Ordinary Council Meeting, 28 October 2014.
- 43 Contract of Employment, G Stevenson, 19 September 2012.
- 44 Agenda, CEO Performance Review Committee Meeting, 11 March 2014.
- 45 File note, G Stevenson, 12 March 2014.
- 46 Transcript, R Butler, private hearing, 11 July 2019, p 105; Transcript, R Butler, private hearing, p 4, 12 July 2019.
- 47 CEO Performance Review Outcome of Survey 2013, Lester Blades.
- 48 CEO Performance Review Outcome of Survey 2013, Lester Blades.

- 49 Transcript, G Blades, private hearing, 26 June 2019, p 17.
- 50 Transcript, J Davidson, public hearing, 9 September 2019, p 50-51.
- 51 Report, CEO Performance Review, City of Perth, September 2014.
- 52 CEO Performance Review 2014, J Davidson, p 14.
- 53 Handwritten note, G Blades, 11 August 2014.
- 54 Handwritten note, G Blades, 20 August 2014.
- 55 Transcript, L Scaffidi, public hearing, 26 August 2019, p 16; Transcript, G Blades, private hearing, 26 June 2019, p 30.
- 56 Handwritten note, G Blades, undated.
- 57 Report, CEO Performance Review, City of Perth, September 2014.
- 58 Transcript, L Scaffidi, public hearing, 26 August 2019, p 17, 19.
- 59 Transcript, L Scaffidi, public hearing, 26 August 2019, p 17-18.
- 60 Transcript, L Scaffidi, public hearing, 26 August 2019, p 18.
- 61 Transcript, L Scaffidi, public hearing, 26 August 2019, p 17-18.
- 62 Report, CEO Performance Review, City of Perth, September 2014.
- 63 Transcript, L Scaffidi, public hearing, 26 August 2019, p 19-21.
- 64 Transcript, L Chen, public hearing, 27 August 2019, p 18.
- 65 Transcript, L Chen, public hearing, 27 August 2019, p 16.
- 66 Paragraph 130-145 of this Section.
- 67 Handwritten notes, G Blades, undated.
- 68 Submission to CEO Performance Review Committee, 2014 CEO Performance Review, G Stevenson.
- 69 Minutes, CEO Performance Review Committee Meeting, 6 October 2014, p 1.
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- 400 PAYG payment summary, M Mileham, Year ending 30 June 2017.
- 401 Table, City of Perth payments to M Mileham 2016/2017.
- 402 PAYG payment summary, M Mileham, Year ending 30 June 2017; Table, City of Perth FBT April 2016/March 2017: Motor vehicles – large sedans.
- 403 PAYG payment summary, M Mileham, Year ending 30 June 2018.
- 404 Table, City of Perth payments to M Mileham 2017/2018.
- 405 Table, City of Perth FBT April 2017/March 2018: Motor vehicles – large sedans.
- 406 Table, CEO car – operational budget and actual 2015/2016 to 2017/2018.
- 407 Contract of employment, The City of Perth and M Mileham, 21 September 2016, Schedule A.
- 408 Contract of employment, The City of Perth and M Mileham, 21 September 2016.
- 409 A period of six months from the date of commencement.
- 410 Minutes, CEO Recruitment Committee Meeting, 16 September 2016.
- 411 Contract of employment, The City of Perth and M Mileham, 21 September 2016.
- 412 Minutes, CEO Performance Review Committee Meeting, 7 and 8 March 2017.
- 413 *Local Government Act 1995*, s 5.22(2).
- 414 Transcript, L Scaffidi, public hearing, 28 August 2019, p 30-31.
- 415 Transcript, J Limnios, public hearing, 5 September 2019, p 33.
- 416 Transcript, J Davidson, public hearing, 10 September 2019.

- 417 Minutes, CEO Performance Review Committee Meeting, 7 and 8 March 2017, Memorandum – Confidential Attachment 6.1A, 7 March 2017.
- 418 Minutes, CEO Performance Review Committee Meeting, 7 and 8 March 2017.
- 419 Minutes, Ordinary Council Meeting, Confidential item – Probation period review, J Limnios, J Davidson and L Scaffidi, 14 March 2017.
- 420 Minutes, Ordinary Council Meeting, Confidential item – Probation period review, J Davidson, 14 March 2017.
- 421 Minutes, CEO Performance Review Committee Meeting, 7 and 8 March 2017; Transcript, J Limnios, public hearing, 5 September 2019, p 33.
- 422 Minutes, CEO Performance Review Committee Meeting, Confidential Attachment 13.20B, Probation period review, J Davidson, 7 March 2017.
- 423 Minutes, CEO Performance Review Committee Meeting, Confidential Attachment 13.20B, Probation period review, L Scaffidi, 7 March 2017.
- 424 Minutes, CEO Performance Review Committee Meeting, Confidential Attachment 13.20B, Probation period review, J Limnios, 7 March 2017.
- 425 Minutes, CEO Performance Review Committee Meeting, 7 and 8 March 2017.
- 426 Transcript, J Limnios, public hearing, 5 September 2019, p 35.
- 427 Minutes, CEO Performance Review Committee Meeting, 7 and 8 March 2017; Transcript, L Scaffidi, public hearing, 17 September 2019, p 48; Transcript, J Davidson, public hearing, 11 September 2019, p 61.
- 428 Probation Period Review, L Scaffidi, 7 March 2017.
- 429 Probation Period Review, J Davidson, 7 March 2017.
- 430 Probation Period Review, J Limnios, 7 March 2017.
- 431 Transcript, J Limnios, public hearing, 5 September 2019, p 73.
- 432 Email, J Green to M Ridgwell and others, 7.00 pm 9 March 2017.
- 433 Email, J Green to J Davidson, 2.12 pm 10 March 2017.
- 434 Email, J Green to J Davidson, 2.12 pm 10 March 2017.
- 435 Transcript, J Davidson, public hearing, 11 September 2019, p 56, 58; Transcript, J Green, public hearing, 2 September 2019, p 34.
- 436 Email, R Harley to J Davidson, 9.21 am 14 March 2017.
- 437 Minutes, CEO Performance Review Committee Meeting, 16 September 2016.
- 438 Minutes, Special Council Meeting, 22 October 2015, Schedule 2, CEO Performance Review Committee, terms of reference.
- 439 Transcript, L Scaffidi, public hearing, 17 September 2019, p 43.
- 440 Minutes, Ordinary Council Meeting, 14 March 2017.
- 441 CEO Probation Period Review, L Scaffidi, 7 March 2017.
- 442 CEO Probation Period Review, J Davidson, 7 March 2017.
- 443 CEO Probation Period Review, J Limnios, 7 March 2017.
- 444 CEO Probation Period Review, J Limnios, 7 March 2017.
- 445 Minutes, Ordinary Council Meeting, 14 March 2017.
- 446 Email, J Green to M Mileham, 10.10 am 15 March 2017.
- 447 Minutes, Ordinary Council Meeting, 14 March 2017.
- 448 Minutes, Ordinary Council Meeting, 14 March 2017.
- 449 Procedure, City of Perth, PR0007, Recruitment and Selection, 20 May 2013.

## 2.3.2 People management

The purpose of this Chapter is to examine elements of the people management practices at the City of Perth (City) during the period of the Inquiry's Terms of Reference, 1 October 2015 to 1 March 2018.

The City has a workforce of more than 700 employees that provide services and facilities to residents, businesses, workers and visitors. Costing more than \$70 million annually, the work of employees is supported by volunteers, labour hire employees and external contractors.

The Chief Executive Officer (CEO) is responsible for employment matters at the City. The City's CEO was supported by the Executive Leadership Group (ELG), comprising five directors. At the suspension of the City of Perth Council (Council) on 2 March 2018, the City's organisational structure had five directorates and 30 business units (Figure 2.17).

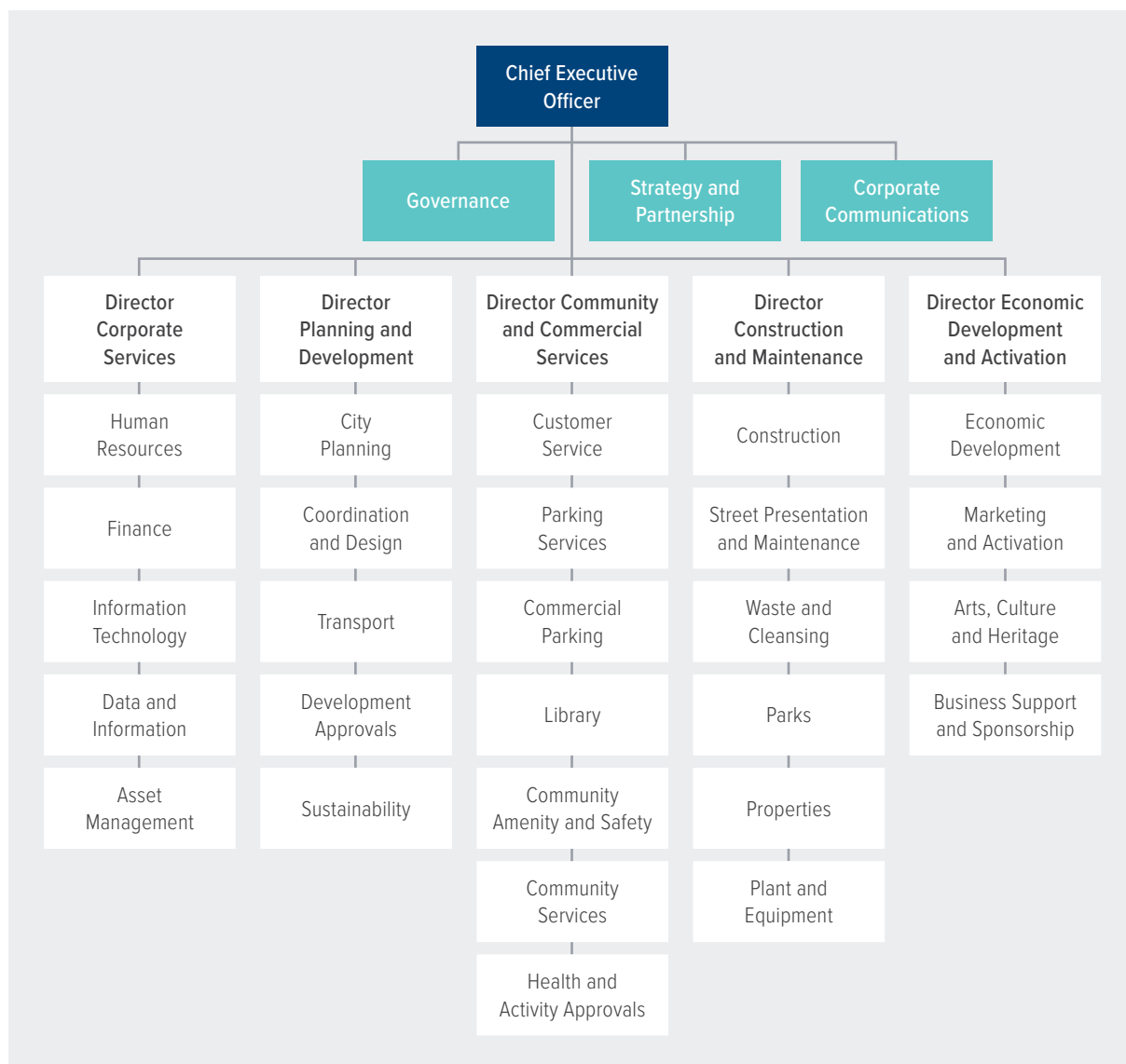


Figure 2.17: City of Perth organisational chart as at 5 June 2018.

Employees bring to the City knowledge, expertise, abilities, skill sets and experience that are an invaluable asset into the future. Every employee goes through a series of stages from the day they apply for a job through to the day they leave. Each interaction, whether it be with leaders or colleagues, shapes their behaviours and performance.



One of the City's greatest assets and possibly often the neglected asset is the people themselves.



Mr Murray Jorgensen  
CEO

Mr Murray Jorgensen, CEO, told the Inquiry on 10 October 2019, that *“the very vast majority of those are outstanding, dedicated individuals and professionals that have been trying to do the right thing in a very difficult environment”*. A view the Inquiry does not dispute.

## Values

Expectations in terms of performance and standards of behaviour are articulated through the City's values. The City's values were set out in Council Policy *“CP10.1 – Code of Conduct”*. They applied to council members and employees:

1. Trust and Respect	<ul style="list-style-type: none"> <li>• Be honest</li> <li>• Keep your promises</li> <li>• Respect others</li> <li>• Be fair</li> <li>• Support each other</li> <li>• Appreciate each other's contributions</li> <li>• Recognise that we are all different</li> <li>• Share information and communicate openly</li> </ul>
2. Strive for excellence	<ul style="list-style-type: none"> <li>• Do your best</li> <li>• Be enthusiastic</li> <li>• Be outcome-focussed</li> <li>• Take ownership (be accountable and responsible)</li> <li>• Take pride</li> </ul>
3. Be Creative	<ul style="list-style-type: none"> <li>• Look for new ways</li> <li>• Think laterally</li> <li>• Seek opportunities</li> <li>• Be flexible and adaptive</li> <li>• Be receptive to ideas and feedback</li> </ul>



The Code of Conduct also articulated three ethical principles which govern how the City operates – “Justice”, “Respect for Persons” and “Responsible Care”.

### Good people governance

Good people governance<sup>1</sup> in local government is achieved when:

- Integrity in decision-making occurs.
- Interests are transparently disclosed and managed.
- Decisions are transparent and capable of review.
- Decisions are procedurally fair.
- Processes and decisions are free of nepotism, patronage or unlawful discrimination.
- Employees are selected and promoted on the basis of merit and equity.
- Employees are suitably qualified for their roles.
- Council members do not become involved in people management matters, unless specifically authorised by Council or the CEO.
- Most importantly, people are treated fairly and consistently.

Good people governance also includes sound policies, procedures and practices.

The ‘3 lines of defence’ model<sup>a</sup> assists an organisation achieve clarity regarding risks and controls and helps improve the effectiveness of governing systems. People management practices can be addressed using this model. In doing so, the overall governance of an organisation can be strengthened.

In the first line of defence, policies and procedures support the establishment of sound governance practices. They ensure legislative compliance and demonstrate best practice people management. Capability development, including training on the procedures, ensures that City employees act in an appropriate way when undertaking human resource related activities.

People risks are identified by the organisation through risk management. Risk management can assist with the identification, assessment and monitoring of risks related to the workforce, including those connected with people and processes, the business activity and the human resources function. This is the second line of defence.

Audits and reviews provide the final line of defence. These can provide advice to leaders about compliance levels and areas for improvement. They also have the ability to detect areas of misconduct within those processes. At a more serious level, this line of defence can include external audits or reviews where the performance of the organisation may be exposed publicly. Reputation and confidence in the organisation can be affected.

<sup>a</sup> A ‘3 lines of defence’ model: The first line of defence – functions that own and manage risk; the second line of defence – functions that oversee or specialise in risk management, compliance; and the third line of defence – functions that provide independent assurance, above “all interna” audit. Refer to Chapter 2.3.3 – Financial management and planning of this Report.

In this context, the Inquiry primarily examined activities at the first line of defence. The adequacy of the second and third lines of defence are dealt with elsewhere within this Report.<sup>2</sup> Process and decisions relating to the City's selection and recruitment, performance management, complaint handling and separations including disciplinary processes were specifically examined by the Inquiry, including instances of involvement by council members.

## Investigations by the Inquiry

The Inquiry's Terms of Reference specifically provides for it to consider, inquire into and report on:

*"(i) whether there was improper or undue influence by any member, as defined by section 1.4 of the Act (member) of the Council of the City of Perth in administrative tasks, such as recruitment, employee management and grants administration".<sup>3</sup>*

The Inquiry received a considerable amount of information about human resources decisions and practices at the City. Some matters have been investigated by the Inquiry and were subject to private and/or public hearings. The Inquiry examined people management decisions by both the Council and the CEO.

The Inquiry has received information about human resources issues at the City by interviews, private hearings and submissions from current and former employees. Complaint records and reports of the City were also considered by the Inquiry. This included allegations about the following situations:

### Selection and recruitment

- Participation by council members on recruitment panels for the selection of directors and managers.
- Potential interference by council members in recruitment processes, by questioning why a specific applicant was not shortlisted for interview and requesting that another person be interviewed.
- Potential interference by council members advocating, for reasons not related to the merits of applicants, for the appointment of a different applicant to a position instead of the applicant recommended by a recruitment panel.
- Potential appointment by managers of 'favourites' to either temporary or permanent positions, unrelated to the merit of the applicant.
- Inclusion of an officer working for an external organisation on a recruitment panel to choose a person for a position which would be responsible for managing funding to the same external organisation.

### Performance management

- Abuse of position by an Acting CEO who amended a report to award an unwarranted pay increase to a manager (who reported to that person in that person's director role).
- Potential interference by a council member in performance management and disciplinary action by the City for alleged serious misconduct by an employee.

### Termination

- Immediate termination, without warning, of employees at meetings, with the employee then being escorted from the City's premises.
- Failure to provide employees with procedural fairness – an explanation of the reasons for the dismissal and an opportunity to respond to them.
- Use of deeds of settlement to circumvent potential unfair dismissal claims.
- Use of deeds of settlement to end employment with an employee (that is, resignation), where there may be a suspicion of or evidence of serious misconduct, rather than termination.
- Dismissal of employees just prior to the conclusion of the employee's probationary period, where the employee may not be eligible to make an unfair dismissal claim.
- Use of workers' compensation processes to manage employee performance and facilitate the end of employment with the City. Thereby shifting the costs from the City's employee costs to the workers' compensation system and the insurer.

### Payments

- Termination payments not consistent with the relevant Award or contract provisions, including a situation where an acting level was paid out on termination or additional weeks paid where it was not required.
- Contract of employment conditions may not have been in accordance with legislative requirements.

### Complaints and grievances

- Adequacy of the investigation process for suspected misconduct by employees in a procurement/tender processes.

### Matters examined by the Inquiry

The Inquiry was unable to examine and report on every allegation made to it. Instead, a selection of human resource matters was examined covering the principal people management practices at the City. Some matters were the subject of preliminary investigations but, for resource reasons, were not the subject of hearings.

The Inquiry also engaged Crowe who, in their *"Review of Governance and Financial Matters"*, conducted a review of two elements of people governance, including an audit of a sample of termination payments and a review of workers' compensation.

In relation to termination payments, Crowe found:

*“Based on our sampled review of four termination payments, we found two instances of payment beyond the entitlements prescribed by the employment contract. The City was unable to supply documentary evidence to explain the nature of the amounts in question”.<sup>4</sup>*

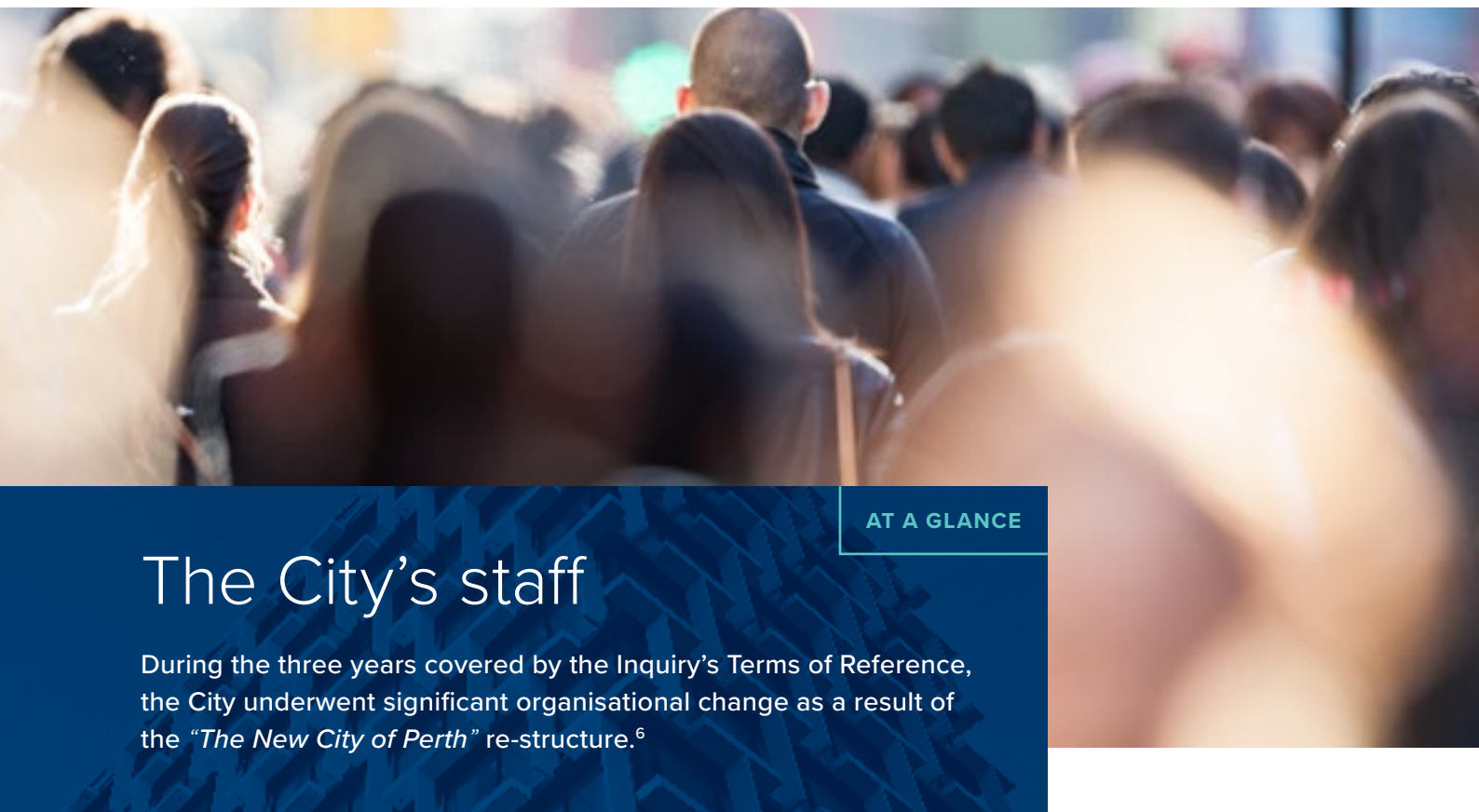
In relation to an examination of workers’ compensation related information, Crowe found:

*“From our analysis, we make the following factual observations:*

- There has been an upward trend of workers compensation claims, peaking in 2017 financial year;*
- The City’s claims consistently approached the maximum contribution levels;*
- A change in insurer in 2018 financial year appears to have caused a decrease in premiums; and*
- Claims financial data has not been accurately maintained by the City”.<sup>5</sup>*

Matters subject to full examination by the Inquiry include:

- Termination of a CEO (**Chapter 2.3.1: Chief Executive**).
- Appointment of a new CEO (**Chapter 2.3.1: Chief Executive**).
- Probation of directors (this **Chapter 2.3.2: People management**).
- Recruitment of a new Director, Economic Development and Activation (this **Chapter 2.3.2: People management**).
- Performance management and termination of employment of an employee (this **Chapter 2.3.2: People management**).
- The resignations of two employees under settlement deeds following an investigation into a tender process for civil construction works (**Chapter 2.3.4: Procurement and contracting**).
- The employment by the City of the Executive Director of Perth Public Art Foundation, who, although funded by the City, took direction from the external organisation (**Chapter 2.3.3: Financial management and planning**, Section: *Perth Public Art Foundation and the 2016 CowParade*).
- Shortcomings in an investigation coordinated by Human Resources into an allegation of serious misconduct by a City employee in relation to a tender process (**Chapter 2.3.4: Procurement and contracting**, Section: *The award of irrigation tender 031-17/18 to Western Irrigation Pty Ltd*).
- Direction of an employee, by a council member, during the course of that employee’s duties (**Chapter 2.2.2: Decision-making**, Section: *Inclusion of the Grand Central Hotel, 379 Wellington Street, Perth on the City of Perth Heritage List*).



## AT A GLANCE

# The City's staff

During the three years covered by the Inquiry's Terms of Reference, the City underwent significant organisational change as a result of the "*The New City of Perth*" re-structure.<sup>6</sup>

## Employee facts and figures

Changes in the workforce during this time were characterised by an increase in staff numbers (also known as full-time equivalents or FTEs), an increasing turnover rate of people, higher employee costs and a culture of dysfunction and inefficiency. The City's employee costs are further examined in **Chapter 2.3.3 – Financial management and planning**.

### 3%

Increase in staff numbers



2015/2016	743	3.2% ▲
2016/2017	752	1.2% ▲
2017/2018	765	1.7% ▲

### \$7.4m

Increase in employee costs\*



2015/2016	\$69,579,000	4.4% ▲
2016/2017	\$77,866,000	11.9% ▲
2017/2018	\$76,990,000	1.1% ▼

### \$6,995

Increase in the average cost per employee



2015/2016	\$93,646	1.2% ▲
2016/2017	\$103,545	10.6% ▲
2017/2018	\$100,641	2.8% ▼

### 7%

Decline in employee costs per 1,000 City residents




2015/2016	\$3,016,649	4.5% ▼
2016/2017**	\$2,895,400	4.0% ▼
2017/2018	\$2,816,020	2.7% ▼

\* Includes costs capitalised.

\*\* The *City of Perth Act 2016* can into effect growing the boundaries and number of residents in the City.

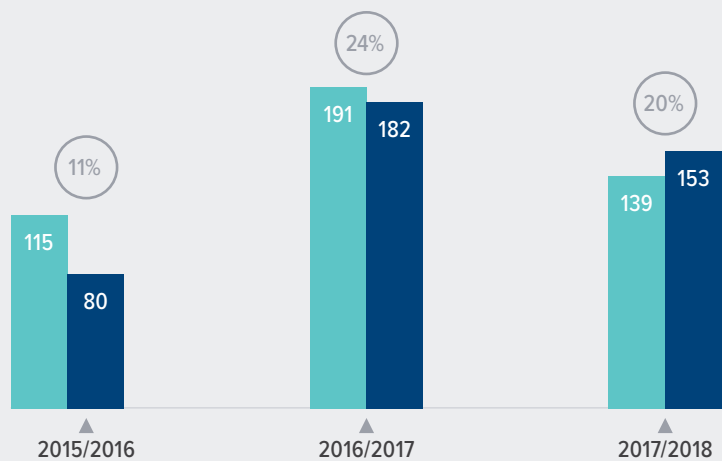
## Changes in the workforce

 **445**  
Employee arrivals

 **415**  
Employee departures

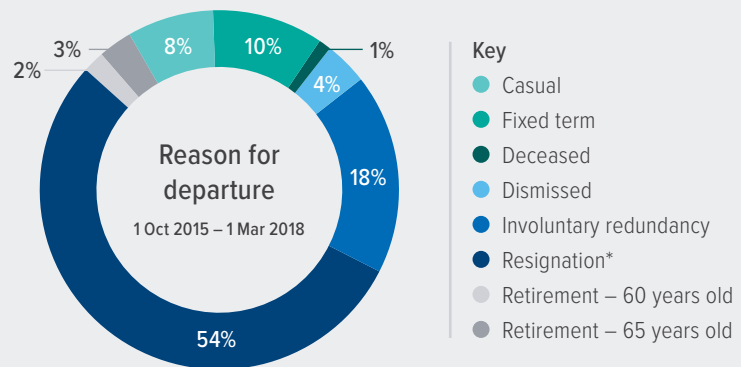
## Key

-  Casual
-  Fixed term
-  Turnover rate



How could I recommend the City as a place to work for anyone when I see so many of my ... co-workers in tears on a regular basis.

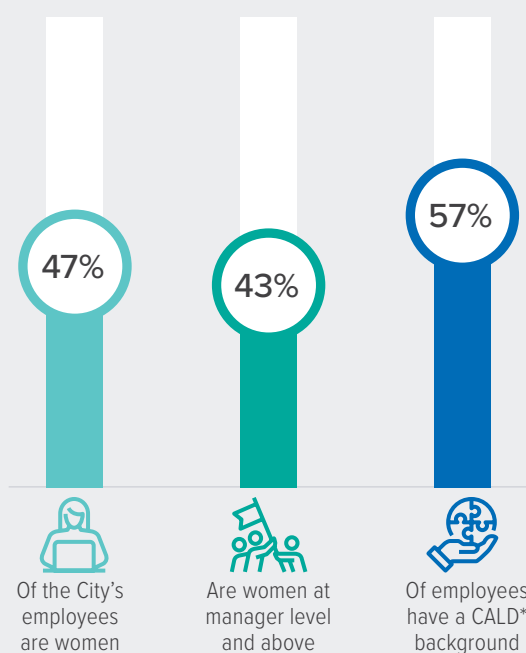
City employee (2017)



\* Includes those employees who elected to accept a voluntary redundancy arising from the organisational restructure during that period.

## Diversity

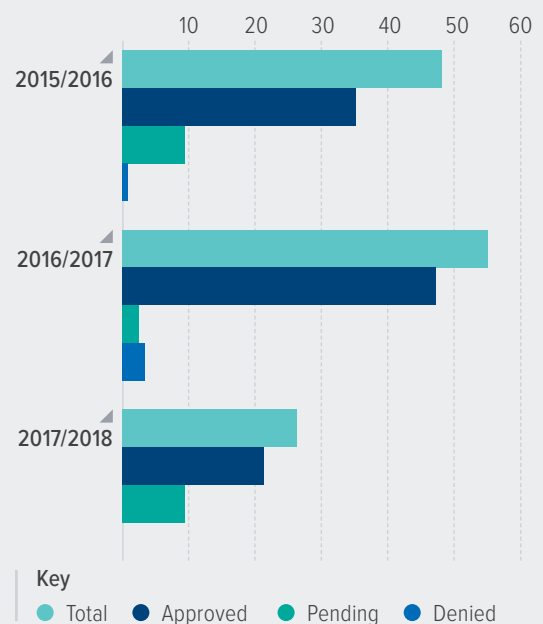
As at 30 June 2018



## Health and safety

2015/2016 – 2017/2018

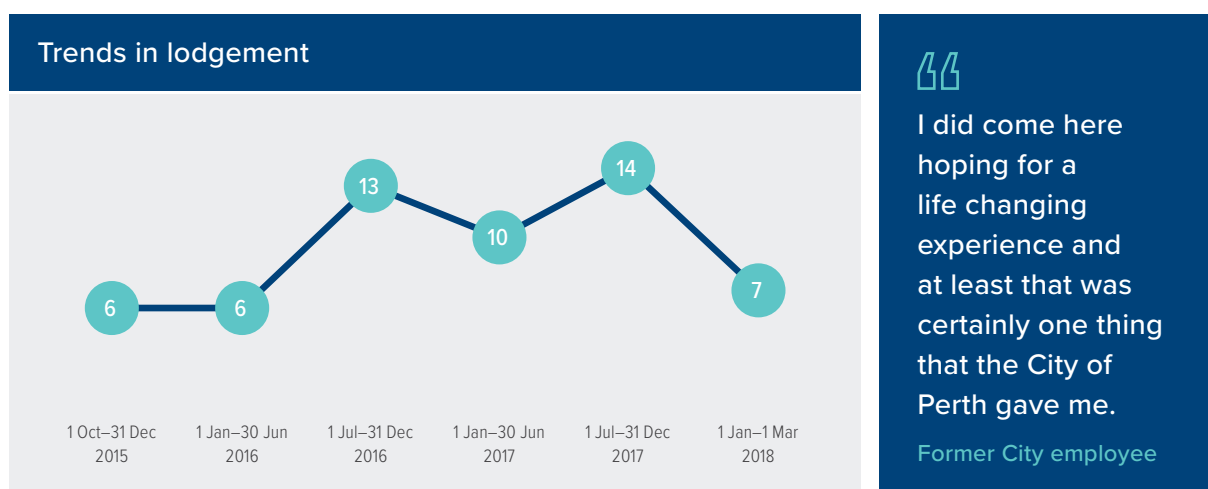
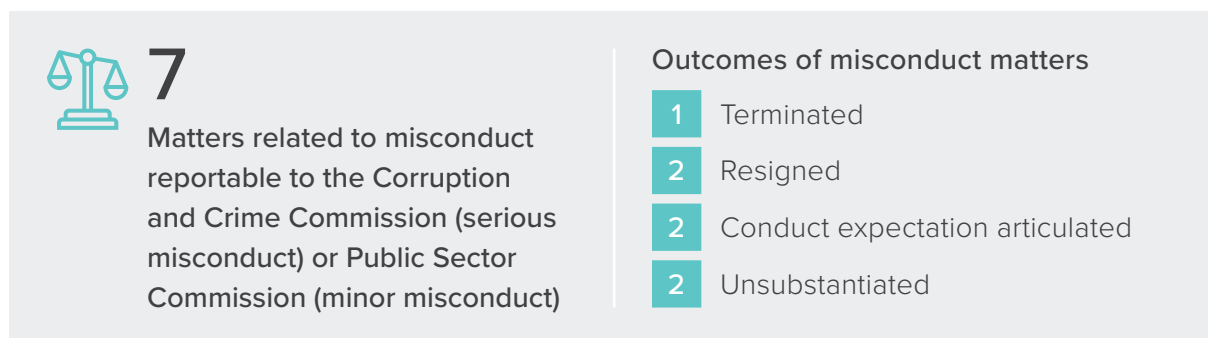
## Compensation claims



\* Culturally and linguistically diverse.

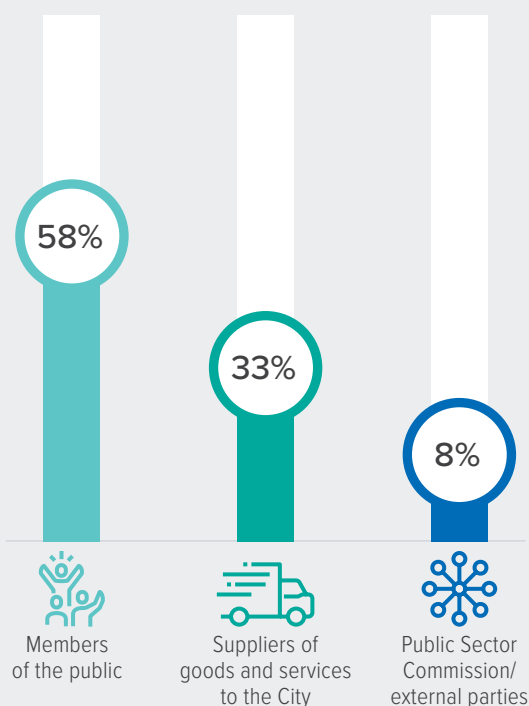
## Complaints and grievances

The City provided the Inquiry with an “*Issue Register*”,<sup>7</sup> maintained by the Human Resources Unit, which listed 56 formal complaints and grievances lodged for the period 1 October 2015 to 1 March 2018.





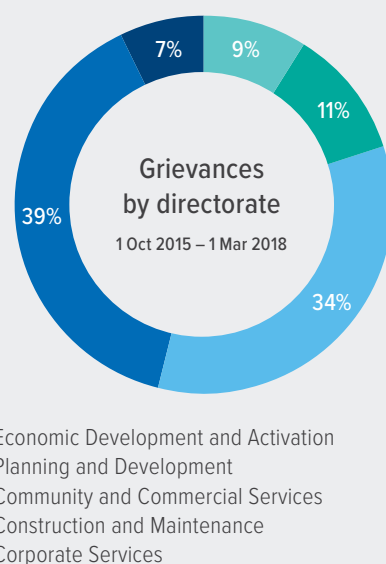
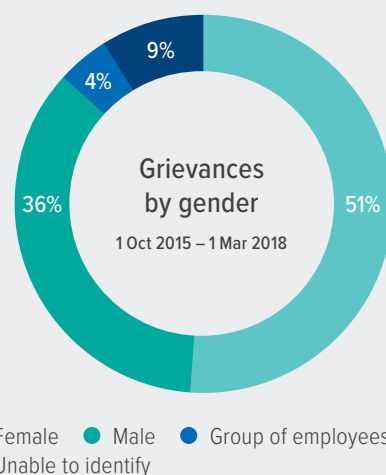
## Source of complaints by external parties



## Outcomes of investigation

- 2 Terminated
- 1 Resigned
- 4 Conduct expectation articulated
- 3 Caution letter to employee
- 2 Not substantiated

## Profile of employee lodged complaints



**Most complaints by employees were made against another staff member, rather than a supervisor or manager.**

There were some complaints and grievances made by employees against a supervisor or manager, but the Issue Register did not record any that were substantiated. In one instance, several employees made complaints of bullying against the same manager.



**Two matters in the Issue Register related to allegations of discrimination contrary to the *Equal Opportunity Act 1984*.**

These were referred to the Equal Opportunity Commission by the complainant. One matter was resolved by agreement between the parties with the Commission's assistance, while the second was dismissed by the Commission.

## Trends in employment at the City

### Organisational change



In 2015, the then CEO, Mr Gary Stevenson, initiated a significant organisational and structural change programme called '*The New City of Perth*', which was endorsed by the Council (Figure 2.18). It included an increase in the number of directorates from four to five by the creation of the Economic Development and Activation Directorate, with consequential reductions in other directorates. Business units also grew from 20 to 30.

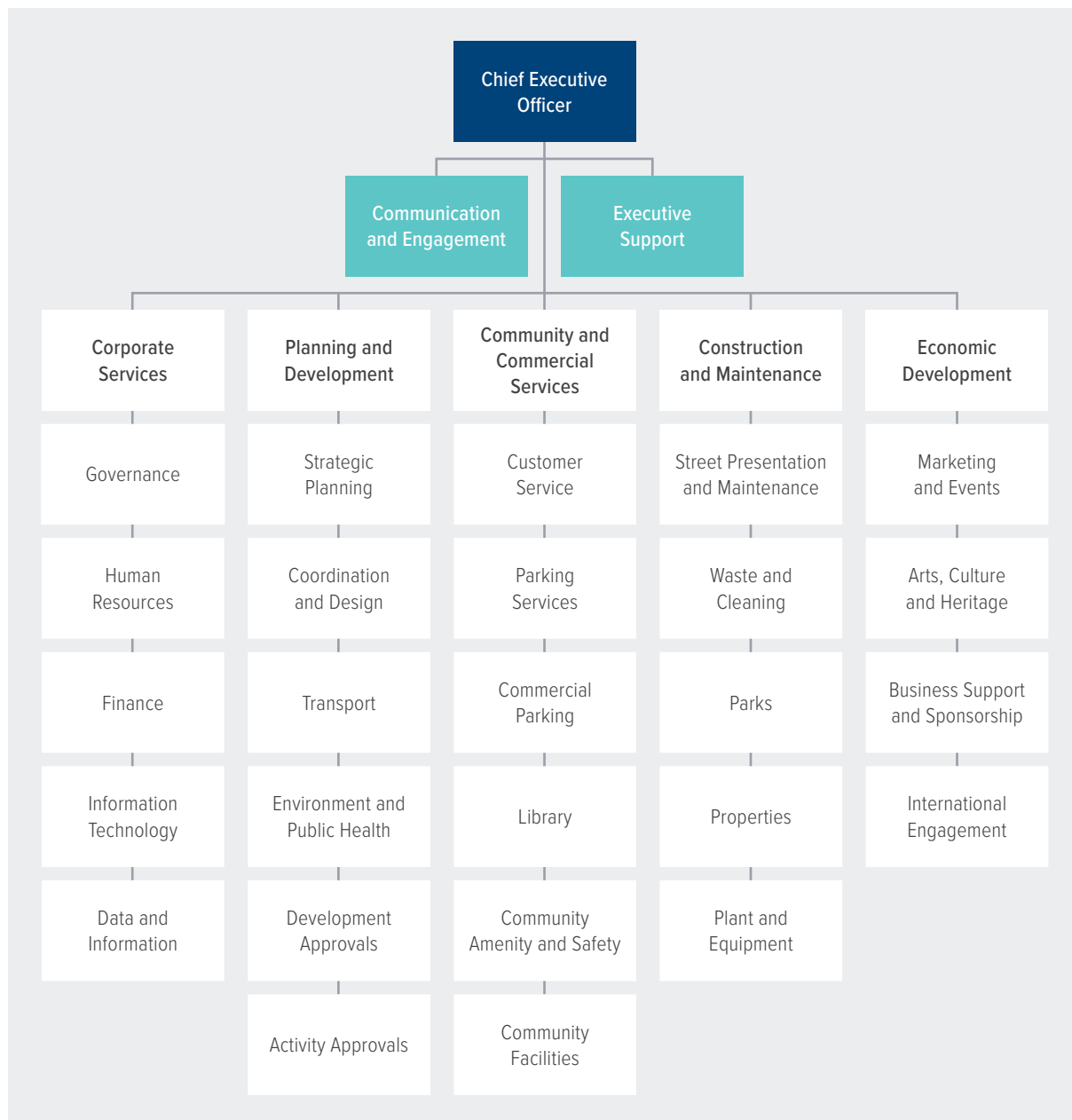


Figure 2.18: City of Perth organisational chart, '*The New City of Perth*', 1 July 2015.



During the period in which the new structure was being implemented, Mr Stevenson's employment was terminated by Council and he was replaced by Mr Martin Mileham as Acting CEO on 20 January 2016. The organisational change programme continued under Mr Mileham's leadership. This change programme had a significant impact on the City. It created instability (Figure 2.19).<sup>8</sup>

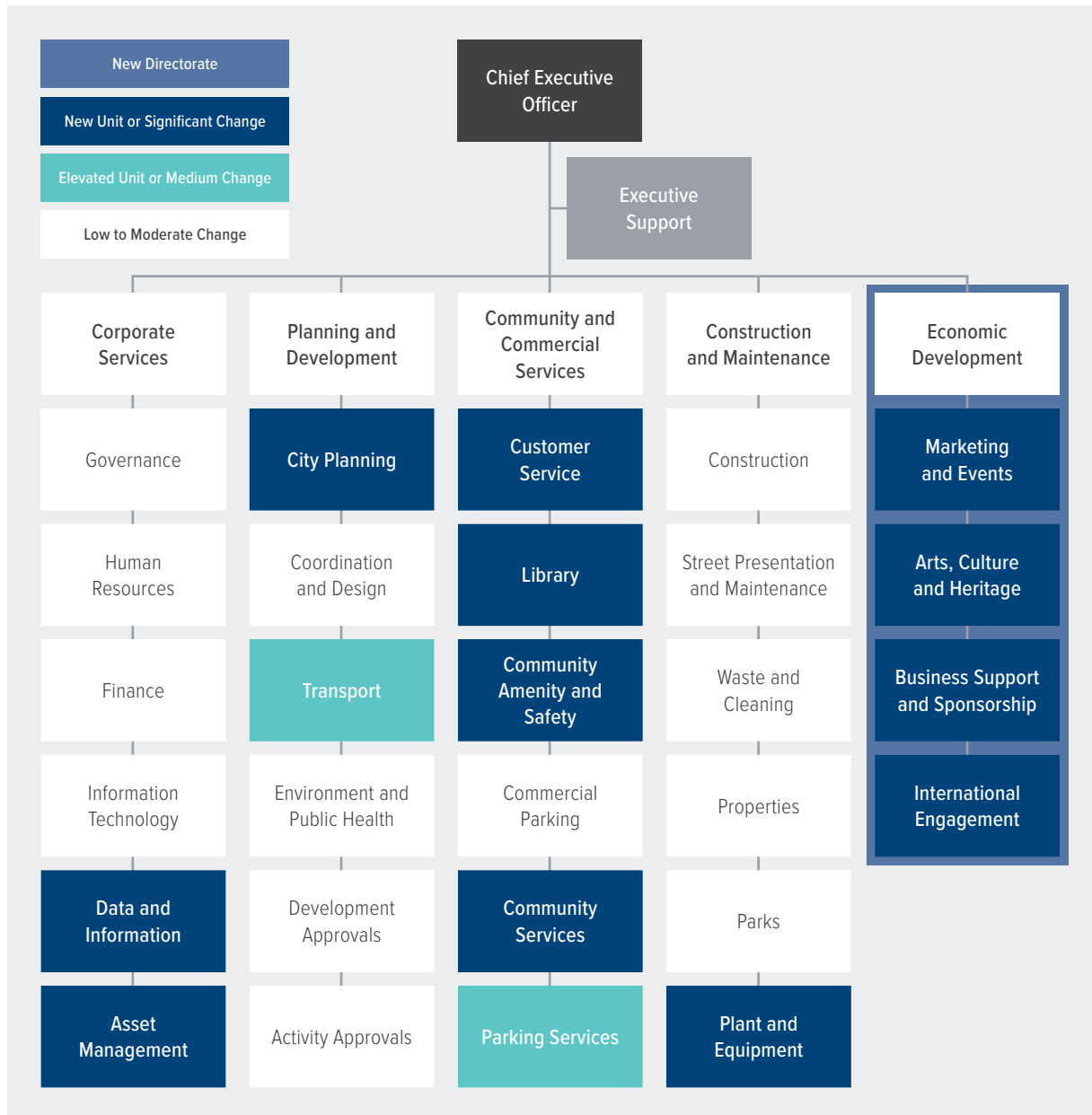
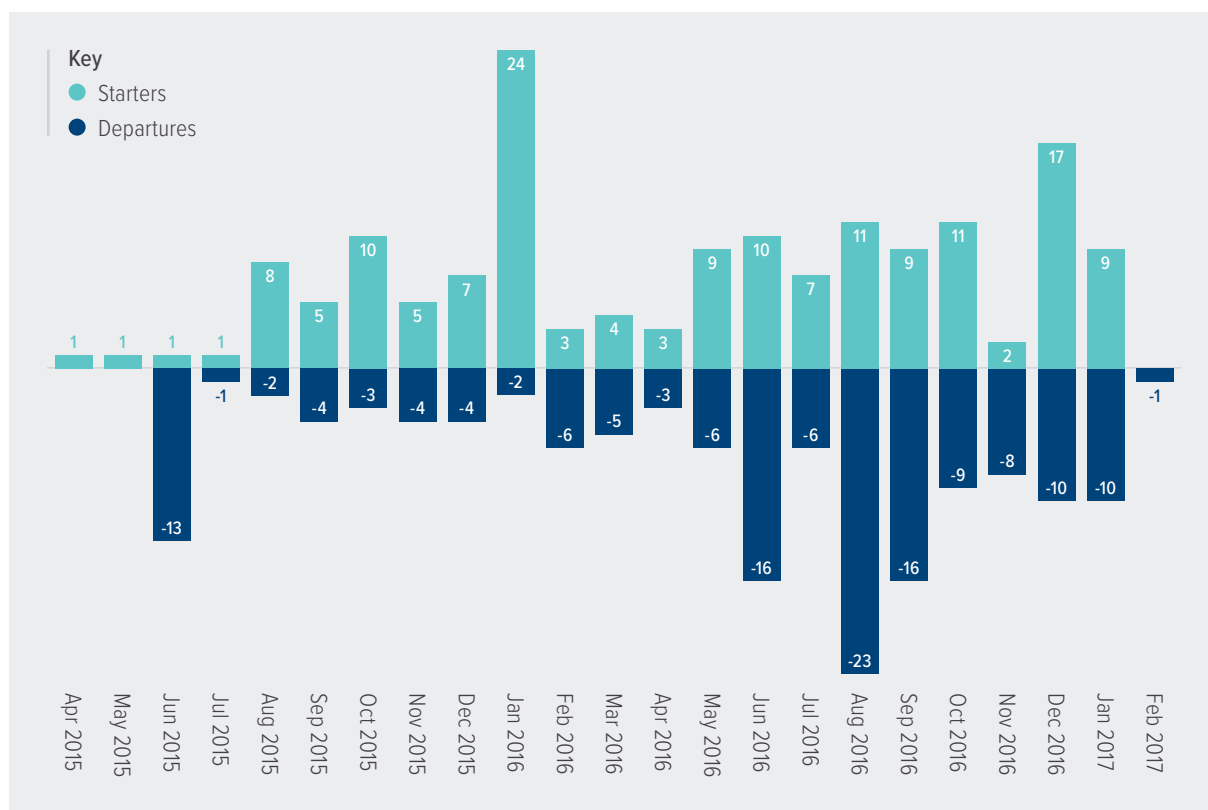


Figure 2.19: City of Perth organisational chart, levels of change since 'The New City of Perth', Deloitte Report, 6 June 2017.

According to Deloitte, in the “*City of Perth Organisational Capability and Compliance Assessment Report*” (Deloitte Report), “*The new structure and the approach to its implementation has led to additional complexity, and increased silos between business units and directorates*”. Furthermore, there was duplication of roles and responsibilities between business units, potentially increasing complexity and costs, while reducing productivity.<sup>9</sup>

The associated restructure led to a significant turnover in the City’s workforce with the departure of 152 employees and appointment of 158 new permanent and fixed term employees between April 2015 and February 2017. Deloitte graphed the monthly changes (Figure 2.20).



**Figure 2.20:** City of Perth monthly staff departures and new starters between April 2015 to February 2017, Deloitte Report, 6 June 2017.

Deloitte concluded that “*These organisational changes have increased the risk of non-compliance, loss of organisational knowledge with staff leaving and new staff joining the organisation, often from outside of the local government sector*”.

Deloitte found that this was compounded by the new staff receiving insufficient induction on the City’s policies and procedures which “*led to a reliance on existing employees to educate new starters about the City’s ways of working, such as the navigation and application of legislative obligations, policies and procedures, systems and execution of daily activities*”.

Deloitte noted, *“This change has introduced new diversity of expertise and talent but risks diluting organisational understanding of public service operations, with a number of managers new to local government”*.<sup>10</sup>

In relation to implementation of the new organisational structure, Deloitte found:

*“The restructure was implemented independently within business units, with managers responsible for designing their own structure based on an allocated headcount. The new structure and the approach to its implementation has led to additional complexity, and increased silos between business units and directorates.*

...

*Managers have indicated that there is some duplication of roles and responsibilities between business units, potentially increasing complexity and costs, while reducing productivity”*.<sup>11</sup>

### Organisational culture

The Deloitte Report also made observations and findings related to strategy; people and organisation; process; and governance. Several organisational culture surveys were also conducted during the period of the Inquiry’s Terms of Reference, and demonstrated deteriorating trends in the employment environment at the City. The Australasian Local Government Performance Excellence Program reports also provided valuable insights into the performance of the City in comparison with other local governments around Australia and New Zealand.

*So, what is culture?* As indicated at the commencement of this Volume, culture is *“the shared values and beliefs that guide how members of that organisation approach their work and interact with each other”*.<sup>12</sup> It is expressed and evidenced through the *“behaviours, customs and practices”* that are collectively displayed. The custodians of organisational culture are the leaders, employees, the community and other stakeholders, who all have a role in shaping it.<sup>13</sup>

Behaviours attributed to individuals and groups within the City determine the collective culture, including an individual’s ability to identify, understand, escalate and act. The culture of the Administration is explored through the employee’s experience.


In 2015, 2016 and 2017 organisational employee surveys were conducted. Catalyse was commissioned to undertake this work.


The most recent, the 2017 Catalyse survey, provided observations against 10 areas relating to the City's culture.<sup>14</sup> Specific employee feedback within that survey provides further insights into the culture at the time. Most notable were the following:

### Team spirit

Employees feel that the culture of the City has deteriorated, with trust, staff morale and positive engagement decreasing across the organisation.


 Culture within – respecting all, regardless of position.


 The City of Perth will have to spend a lot of time regaining the trust of their workforce ... During our restructure, and still now, we had to deal with a manager who has shown very little regard for others' experience, opinion and knowledge.<sup>15</sup>


 There needs to be a strong overhaul of culture – break down silos between teams & work on improving relationships between both directorates and individual teams.

### Policies, systems and processes

Respondents suggest that certain processes and policies are complicated, unnecessary and distract from main objectives.


 Refine and improve internal workings across departments; ensure strategies and position roles are aligned and communicated for effective cross-departmental collaboration.

 Document effective, simple, transparent policies & procedures that are easy to locate and ensure everyone receives structured, job specific training. Not only does this assist the leaders to performance manage their teams it also ensures the employee feels empowered because they have the skills, tools and knowledge.

 The City needs to focus on process improvement and role/activity clarity so that all employees are clear on their roles and the roles of other employees and units.

### Communication across the organisation

Inter-departmental communication is a concern. At present, departments do not appear to communicate or collaborate positively leading to a 'siloed' environment where teams are distanced from each other, they do not work together and they are unclear about each other's roles and functions.

 Communication across different teams, sometimes the left hand doesn't know what the right hand is doing.

### Professionally managed organisation

There is a perception that certain management roles are not being carried out professionally or with the necessary expertise to manage their teams. In addition, respondents feel that more needs to be done to address work-place bullying at management level and to encourage a less hierarchical management system.

- “ I personally have witnessed and experienced bullying on numerous occasions from Management. The support from HR is poor, so no one has anywhere to go. People come to work feeling victimised, and not good enough for their role.

### Job security

Long-term casual employees feel insecure about their current positions at the City while salaried staff feel uncertain about their future prospects due to recent restructuring and redundancies. Respondents would like more to be done to assure them of their current positions at the City and to assist them to feel more valued as employees.

- “ Staff morale, it is very low after all the redundancies, and the use of temporary staff to full [sic] the positions that were made redundant.

- “ Make all employees feel secure. Recent redundancies left me uncertain of my job security.

- “ Do not feel as secure in this job as I did 4 or 5 years ago.  
This is due to management change.

### Top-down communication

Employees perceive that there is a lack of effective communication between the leadership and general staff. Respondents want open channels and clear, concise and relevant messages that provide useful knowledge and information. Respondents also want greater opportunities for open dialogue with their superiors, allowing staff to be honest without fear of retribution.

- “ To have a clear direction and communication from top down



### Training and development

Respondents desire a commitment to the training and development of staff and management. The creation of a learning culture is sought to motivate staff, provide career development opportunities through the acquisition of new or improved skills and knowledge, and increase cross pollination of ideas via attendance at courses and conferences.

- Training on collaboration. The organisation assumes staff know how to collaborate. In general they do not know how to collaborate across units

### ELG provides inspirational leadership

Employees want an inspiring leadership group who they aspire to emulate. Qualities of such leaders include honesty, integrity, leading by example and adherence to the morals, values and ethos that they espouse.

- The City needs to focus on getting the ELG members to communicate with each other better and act as better role models for the organisation as a whole. Their behaviour dictates the behaviour of everyone below them in the organisation.

- Directors also need to be accessible and not to promote a culture of fear.

### Silos/competition between business units

Silos continue to be seen as a challenge to effective and collaborative work practices. Respondents want a more cooperative and inclusive work environment that aims to produce the best possible outcomes for all stakeholders.

- Breaking the silo, as was promised. Finding the 'silo' culture is worse than previous 2 years.

### Feeling appreciated and respected at work

Employees want to feel that they are appreciated and respected. The ability and want of respondents to take pride in their work is being impacted by the perception of a poor organisational culture that has allowed bullying, harassment and micro-management free reign.

- Be nice if the employees were still valued and respected.

- To appreciate, empower and encourage employees that quietly work hard to inspire them to help the City be a strong, happy and vibrant team.

As is evident from this survey, leadership is a key to setting not only the direction of the organisation, but also the values and behaviours. Establishing and maintaining a strong, ethical and accountable culture where the organisation's values are lived and modelled is essential to the organisation's success in achieving its legislative and strategic outcomes.

The Administration's culture is evident through this survey. It showed an organisation with significant challenges across a number of areas including people management. This affected all levels of the City. The culture appears characterised by a lack of trust, insecurity and fear. However, despite this, the results show a clear appetite by employees to improve and better the City's culture.

### Workforce planning

Deloitte further found that *"The City is limited in its ability to make informed decisions on workforce management"*.<sup>16</sup> Specifically, deficiencies related to accurate and stable estimates of the City's workforce establishment, reporting workforce information, the structure of the position hierarchy and development of key workforce indicators. This ultimately affects the quality of decision-making, both by the Administration and Council, on people-related matters.

As explored in **Chapter 2.3.3 – Financial management and planning** of this Report, the City's workforce planning was not adequate or integrated. This was also observed by Deloitte in its Report in 2017. ACIL Allen Consulting specifically stated that one of the City's Workforce Plans was *"of limited value as a planning document"*.<sup>17</sup> The plan should have articulated the desired organisational culture, the organisational structure and the recruitment and retention strategy to support a productive and inclusive workforce.<sup>18</sup>

### Role of the human resources function

The role of the human resources function has also been subject to a number of external reviews in recent years. Deloitte, and Tower Human Capital Group, both commented on aspects of the function and its value to managers and leaders at the City.

Deloitte, in 2017, commented on the information provided by the City's human resources function to other business units:

*"Human Resources is currently unable to support business unit managers with timely data to optimise the workforce. The process for reporting workforce information is manual and time intensive, collating data and information from a number of sources ... Issues with the accuracy of the data provided have been identified by the ELG leading to a lack of trust and reducing the likelihood of use to support decision making at a senior level"*.<sup>19</sup>

In 2018, Tower Human Capital Group was engaged by the City of Perth Commissioners to conduct a *"Performance Analysis, Assessment and Review of the HR function"*. The report found the following in relation to the overall performance of the function:

*"HR is not broken; It is seen to be performing at an Average level in difficult circumstances. However, a more strategic, planned and disciplined approach to its own planning and execution is required as is greater interface and transparency"*.<sup>20</sup>

Given the number of problematic matters raised in this Report, the capability and capacity of the business unit to support the City's leaders and managers with people management practices requires ongoing attention.

### Legislation, policy and procedures

The City is established as a body corporate by the *Local Government Act 1995* (LG Act).

Employees of a local government fall into three categories under the LG Act:

- the CEO;
- senior employees; and
- other employees.

At the City, directors were designated as “*senior employees*” for the period of the Inquiry’s Terms of Reference. Until 19 December 2017, when the policy was changed, three managers were also designated as senior employees.

In relation to employment and termination of employment, different provisions apply under the LG Act:

- A CEO is appointed by the Council pursuant to section 5.36 of the LG Act.
- Senior employees are appointed and terminated by the CEO, but the Council has what amounts to a power of veto.

Section 5.37(2) of the LG Act states:

*“The CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee referred to in s 5.39(1a) [applying to an employee acting in a position], and the council may accept or reject the CEO’s recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so”.*

The CEO is responsible for employing and dismissing other employees. In accordance with section 5.41 of the LG Act, one of the CEO’s functions is to:

*“(g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees)”.*

Section 5.36(3) of the LG Act states:

*“(3) A person is not to be employed by a local government in any other position unless the CEO –*

- (a) believes that the person is suitably qualified for the position; and*
- (b) is satisfied with the proposed arrangements relating to the person’s employment”.*

Section 5.39 of the LG Act requires that the employment of a person who is a CEO or senior employee must be governed by a written contract.

Section 5.40 of the LG Act prescribes the principles which apply to a local government in respect of its employees:

*“(a) employees are to be selected and promoted in accordance with the principles of merit and equity; and*

*(b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage; and*

*(c) employees are to be treated fairly and consistently; and*

*(d) there is to be no unlawful discrimination against employees or persons seeking employment by a local government on a ground referred to in the Equal Opportunity Act 1984 or on any other ground; and*

*(e) employees are to be provided with safe and healthy working conditions in accordance with the Occupational Safety and Health Act 1984; and*

*(f) such other principles, not inconsistent with this Division, as may be prescribed”.*

### Relationship between council members and employees

The relationship between council members and employees is regulated by law.

Regulation 9(1) of the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations) states:

*“A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task”.*

Regulation 10(1) states:

- “(1) A person who is a council member must not –*
- (a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person’s capacity as a local government employee; or*
  - (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person’s capacity as a local government employee”.*

In the Inquiry’s view council members had the right to ask questions of, and about, the administration of the City, but any attempt to direct an employee in relation to human resources matters, or influence an employee by means of threat or reward, even if implied, may be a breach of the Conduct Regulations.

Sections 5.36 to 5.41 of the LG Act are explicit in that the Council appoints a CEO, but the CEO is then responsible for employing and dismissing other employees. The Council has the power to accept or reject the CEO’s recommendation about the employment or dismissal of a senior employee, but that is the limit of its role. Council members have no lawful authority to interfere in recruitment, probation, termination, or any other human resources matter.

Involvement by council members of the City in human resources matters suggest that during the period of the Inquiry’s Terms of Reference the City failed in its obligations to ensure that:

- employees should be *“selected and promoted in accordance with the principles of merit and equity”*;
- no power should *“be exercised on the basis of nepotism and patronage”*; and
- *“employees are to be treated fairly and consistently”*.<sup>21</sup>

### **Additional payments**

Regulation 19A of the *Local Government (Administration) Regulations 1996* prescribes limits on payments made to an employee in addition to their contract or award.

Section 5.50 of the LG Act requires a local government to prepare a policy in relation to payments made to employees in addition to a contract or award. The Council Policy Manual had a policy which set out the circumstances in which the CEO could agree to make a severance payment of up to 26 weeks pay.<sup>22</sup> The policy stated that in some circumstances severance payments must be approved by the Council. In accordance with section 5.50(2) of the LG Act, the policy also allowed the Council to decide to pay an additional amount as a severance payment, within a limit. Public notice was to be given of such a payment.

### **Fair Work Act 2009 (Commonwealth) and dismissals**

The Commonwealth *Fair Work Act 2009* (Fair Work Act) provided the terms and conditions of employment and set out the rights and responsibilities of employees and the City in relation to employment.

In addition to establishing terms and conditions of employment by way of Industrial Agreements, the Fair Work Act established the framework for a City employee to make an unfair dismissal application to the Fair Work Commission if the employee had completed the minimum employment period of six months and earned less than the high income threshold, or an enterprise agreement applied to that employee's employment.

An unfair dismissal occurs where the Fair Work Commission finds that the:

- employee was dismissed;
- dismissal was harsh, unjust or unreasonable; and
- dismissal was not a case of genuine redundancy.

Section 387 of the Fair Work Act states:

*"In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the FWC must take into account:*

- (a) whether there was a valid reason for the dismissal related to the person's capacity or conduct (including its effect on the safety and welfare of other employees); and*
- (b) whether the person was notified of that reason; and*
- (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and*
- (d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and*
- (e) if the dismissal related to unsatisfactory performance by the person – whether the person had been warned about that unsatisfactory performance before the dismissal; and*
- (f) the degree to which the size of the employer's enterprise would be likely to impact on the procedures followed in effecting the dismissal; and*
- (g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and*
- (h) any other matters that the FWC considers relevant".*

A standard probationary period of six months, which corresponds to the minimum employment period specified by the Fair Work Act, was included in the City's employment contracts. If an employee was dismissed just before the end of their probation, then the ability of the employee to make an unfair dismissal application to the Fair Work Commission was limited.

The Inquiry notes that the City appeared to use as a business practice a 'deed of settlement' when dismissing or separating with an employee. This may have prevented employees from contesting a dismissal through the Fair Work Commission. As there was limited evidence in the City's documents regarding an understanding and assessment of the risks prior to the City entering into such a deed, it is difficult for the Inquiry to understand the City's motivations in termination matters.

Although most employment matters at the City fell within the jurisdiction of the Fair Work Commission, in some cases employees have been able to make claims to the Western Australian Industrial Relations Commission in respect of allegations that they had been:

- harshly, oppressively or unfairly dismissed from employment; and/or
- denied a benefit by their employer, not being a benefit under an award or order, to which the employee was entitled under their contract of service.

The City was also required to ensure that employment conditions provided by an employment contract or industrial agreement were not less than the minimum employment entitlements provided by the National Employment Standards.

#### **Policies and procedures**

At the relevant time, the City had human resource procedures, including for recruitment and selection; performance management and development; disciplinary action and grievances. The Inquiry notes that these may not have always been sufficient, or in line with the City's policies. Some were revoked, but not replaced during the period of the Inquiry's Terms of Reference.

The City also had two policy manuals, the Organisational Policy Manual (OP)<sup>23</sup> and the Council Policy Manual (CP).<sup>24</sup> These contained policies which affected human resources, including those below.

- Decision-making framework – OP[1].
- Equal Employment Opportunity – OP[4].
- Prevention and management of workplace bullying – OP[6].
- Code of conduct – CP10.1.
- Payments under section 5.50 of the LG Act (severance payments) – CP12.4.
- Senior Employees – CP12.6.



### Recruitment procedure

The City's recruitment procedure for the relevant period, "PR0007 – Recruitment and Selection", contained the following principles:

- *"The City has a best practice approach towards recruitment and selection, with an aim to recruit for talent and choose the best person for the position by allowing flexibility within the process.*
- *All recruitment decisions are made on the basis of equity, merit and procedural fairness.*
- *Recruitment and selection processes are open, competitive and free of bias, unlawful discrimination, nepotism or patronage.*
- *Decisions are transparent and capable of review.*
- *A proper assessment matches an applicant's skills, knowledge, abilities and talents, with the work-related requirements of the job and the outcomes sought by the City, which may include diversity.*
- *Those responsible for recruitment decisions are aware of and trained in the City's Recruitment and Selection process.*
- *The Chief Executive Officer, or an appropriate responsible officer, is responsible for employment decisions at the City of Perth and he/she will be:*
  - *Satisfied that the City's Recruitment and Selection Principles have been met;*
  - *Satisfied that the preferred applicant is suitable for the position;*
  - *Satisfied with the proposed arrangements relating to the person's employment".<sup>25</sup>*

To support the implementation of the recruitment procedure, during the period of the Inquiry's Terms of Reference, the City had a "Recruitment and Selection Manual" to guide selection panel members through the recruitment and selection process.

This manual specified the documentation a selection panel should prepare to support their assessment of each candidate against the work-related requirements and their recommendation of an applicant for appointment to the position. The documentation included an interview grid and a recruitment assessment form which were to be "used as evidence to demonstrate that the recruitment and selection process was conducted in accordance with the City's recruitment and selection processes and Equal Employment Opportunity legislation".<sup>26</sup>

### Disciplinary matters and procedural fairness

The City had “*Disciplinary Guidance Notes*”<sup>27</sup> to provide managers and employees with a model process for the management of unsatisfactory work performance, behaviour or conduct. The guidance notes distinguished between serious misconduct which must be reported to the Corruption and Crime Commission; minor misconduct which must be reported to the Public Sector Commission; and performance, behaviour or conduct issues which were not misconduct and could be dealt with internally.

These principles were reinforced in the City’s “*Organisational Policy Manual*”,<sup>28</sup> which required a decision maker to follow due process and to observe the principles of procedural fairness (also known as natural justice) “*to ensure that a person who might be adversely affected by a decision is given a ‘fair hearing’ both before a decision is made and after*”.

Three principles of procedural fairness were specified:

- “a. *The person who might be affected by a decision must be provided with sufficient information for the person to be able to participate meaningfully in the decision making process. This includes any statutory or other decision review or objection processes.*
- b. *The person who might be affected by a decision must be given a reasonable opportunity to respond to issues relevant to a decision and the decision maker must genuinely consider the person’s submission in making the decision.*
- c. *The decision maker must act impartially and in an unprejudiced manner when considering the matter. Bias is a lack of impartiality and may be in favour of or against the affected person. It may arise from an actual or perceived conflict of interest or the failure to apply due process”.*

### Record-keeping

Good record-keeping promotes and demonstrates accountable and transparent decision-making by a local government. Local governments are custodians of government records. The City’s records are a government record.<sup>b</sup>

Human resource records relate to an important function of a local government – the management of its largest resource, its people. These records relate to areas including the selection and recruitment of the CEO, senior employees and other employees, performance management, learning and development, grievances and complaints, occupational safety, health and workers’ compensation and separation.

<sup>b</sup> *State Records Act 2000*, s 3. That is “a record created or received by a government organisation or a government organisation employee in the course of the work for the organisation”.

The Inquiry has, at times during the investigation process, experienced difficulties in locating human resource related records from the City. The Inquiry observed the following in relation to human resource decisions:

- Records were not always stored or recorded within the City's official record-keeping system, including recruitment decisions which were maintained in a third party system.<sup>c</sup>
- Records were kept on local or network drives (for example, I:drive), rather than in the official record-keeping system, including records related to grievances, complaints and terminations.
- Records were kept in hard copy files in a person's office and were not connected to the official record-keeping system.
- Records were not held or retained by the City as a record as defined by the *State Records Act 2000*.
- Records on decisions, including supporting documentation, were not always complete.

Given the important nature of these matters, documents related to these matters should have been kept in the official record-keeping system and the records should have been complete.

The City's "*Record Keeping Plan*" (2017) (Plan), presented to the State Records Commission in accordance with Section 28 of the *State Records Act 2000*, set out the matters about which records were to be created by the City and how it was to keep its records. The Plan documented the record-keeping programme within the City, including information regarding the organisation's record-keeping system(s), disposal arrangements, policies, practices and processes. It is the primary means of providing evidence of compliance with the *State Records Act 2000* and the implementation of best practice record-keeping within the City.

The legal requirements for record-keeping under the *State Records Act 2000*, and the City's compliance with these, are described elsewhere in this Report. However, one of the areas where good records are important is in relation to human resources matters, particularly recruitment processes and decisions, terminations, and how complaints and grievances are addressed.

Part "OP[1] *Decision Making Framework*", of the City's "*Organisational Policy Manual*" at the relevant time, reinforced the importance of record-keeping. Section 2.3.2 stated:

*"Decision makers must create and maintain records detailing the information and issues that were taken into account in a decision making process and why, the weight given to the evidence, the information considered irrelevant and why, and the reasons for the decision made."*

*Effective record keeping evidences that the decision maker has fulfilled their decision making obligations and ensures that the decision making process can be reconstructed if the decision becomes the subject of a review or objection process".<sup>29</sup>*

<sup>c</sup> Third party is BigRedSky eRecruitment, Thomson Reuters HR Solutions.

Part “OP[10] Record Keeping” of the “*Organisational Policy Manual*” set out details of the record-keeping regulatory requirements and the roles and responsibilities of employees at various levels.

The State Records Office of Western Australia (SRO) is established under the *State Records Act 2000*. The SRO has issued a General Disposal Authority to guide local governments in disposal of their records.<sup>30</sup>

The SRO General Disposal Authority required that recruitment records (other than for a CEO) be retained for only one year after the action is completed. However, section 92.1 of the Authority required the City to keep personal data on a Personal File for each permanent, temporary and contract employee. Those records must be retained for 75 years after the date of birth of the employee, or seven years after the date of retirement or death. Only then can they be destroyed.

It appears to the Inquiry that human resource records were at times not maintained in accordance with either the General Disposal Authority issued by the SRO or the City’s policies. This was often caused by City employees not ensuring records were in the official record-keeping system. Retaining records within an official system ensures that records are transparent and capable of review. This results in decisions made being able to be justified, open and transparent. Record-keeping systems ensure that government records are able to be appropriately retained or disposed of according to the SRO General Disposal Authority under the Plan.

## Probation of directors

### Introduction

1. This Section is about the proposed termination of the employment of a senior employee, Mr Michael Carter, during his probationary period, by the then Acting Chief Executive Officer (CEO), Mr Martin Mileham.
2. The *Local Government Act 1995* (LG Act), empowers a local government authority to employ a person to be the CEO of the local government and such other persons as the council believes are necessary to enable the functions of the council to be performed. A council is also able to designate employees or a class of persons to be senior employees.<sup>31</sup> The CEO is responsible for the employment, management, supervision, direction and dismissal of other employees, with any proposal to employ or dismiss a senior employee to be referred to the council, which can accept or reject the proposal.<sup>32</sup>
3. In addition to the LG Act, the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations) contain regulations entitled “*Prohibition against involvement in administration*” and “*Relations with local government employees*”, which prohibit council members from undertaking administration tasks or attempting to direct or to influence a local government employee to do so.<sup>33</sup>

### Timeline

2015	During May	The positions of Director, Economic Development and Activation (DEDA), Director, Community and Commercial Services (DCCS) and Director, Construction and Maintenance (DCM), were advertised nationally. Applications closed on 12 June 2015.
	11 August	Council accepted recommendations to appoint Mr Carter as DEDA, Ms Rebecca Moore as DCCS and Mr Paul Crosetta as DCM.
	21 September	Mr Carter commenced as DEDA with a five-year term. The contract required a performance agreement to be developed within three months of his commencement but this did not occur.
2016	20 January	Mr Mileham was appointed as Acting CEO, following the termination of employment of Mr Gary Stevenson. Mr Mileham did not receive a handover and was not able to discuss the performance of the Directors with Mr Stevenson.
	10 February	Ms Lisa Scaffidi, Lord Mayor, sent Mr Carter eight emails between 7.42 am and 9.36 am expressing her displeasure at how Mr Carter had handled an issue relating to a Tourism Industry Exchange event. Ms Scaffidi also emailed Mr Mileham and copied him in on the emails with Mr Carter.
	23 February	Mr Mileham held a Council Briefing Session. Mr Reece Harley and Dr Jemma Green were not present for the full session. A Council Meeting was held later that day but Mr Carter’s employment was not raised.

2016	24 February	<p>Mr Mileham emailed Mr Harley and Dr Green and informed them he would not be extending Mr Carter's contract past the probationary period "<i>due to performance issues</i>".</p> <p>Mr Mileham and Ms Michelle Howells, Manager, Human Resources, conducted probationary review meetings for DEDA, DCCS and DCM.</p> <ul style="list-style-type: none"> <li>• Mr Carter was told that his employment was terminated "<i>due to performance concerns</i>", without completing the six-month probationary period, effective 26 February 2016. He had not undergone any performance management previously and was not given notice this would be raised at the probationary review meeting.</li> <li>• Ms Moore was advised that her six-month probationary period would be extended for a further six months due to concerns regarding her "<i>conduct and performance</i>".</li> <li>• Mr Crosetta was advised that he had satisfactorily completed the six-month probationary period.</li> </ul>
	26 February	<p>Deed of Settlement signed by Mr Carter. He submitted a resignation letter dated 1 February 2016 (with "<i>last working day</i>" 26 February 2016). The Deed included a provision to pay Mr Carter a Settlement Sum in excess of \$5,000.00.</p>

## Issues considered by the Inquiry

4. In investigating the termination of Mr Carter's employment during his probationary period, the Inquiry has considered:

- the events leading to Mr Carter's dismissal;
- whether Mr Mileham was required to put the proposed termination of Mr Carter to the City of Perth Council (Council);
- the termination payment authorised by Mr Mileham for payment to Mr Carter; and
- the treatment of Mr Carter.

## Terms of Reference

5. Part A.3 of the Inquiry's Terms of Reference requires the Inquiry Panel to inquire into and report on whether:

- there was improper or undue influence by any member, as defined by section 1.4 of the LG Act, of the Council in administrative tasks, such as recruitment, employee management and grants administration;<sup>34</sup>
- the relationships between the Council, members, the CEO and other employees of the City of Perth (City) and the effect of those relationships on the performance of the City's functions and obligations;<sup>35</sup>
- governance practices;<sup>36</sup> and
- the adequacy and competency of Council decision-making.<sup>37</sup>

## Investigation by the Inquiry

### Witnesses

6. The Inquiry held private hearings involving a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section.

- Council members Ms Lisa Scaffidi, Mr Jim Adamos, Ms Lily Chen, Ms Janet Davidson, Dr Jemma Green, Mr Reece Harley, Mr James Limnios, Ms Judy McEvoy and Mr Keith Yong.
- Mr Mileham, CEO.
- Mr Carter, Director, Economic Development and Activation (DEDA), from 21 September 2015 to 26 February 2016.
- Ms Michelle Howells, Manager, Human Resources, from 21 July 2014 to 3 February 2017.
- Ms Annaliese Battista, DEDA from 5 July 2017 to 22 June 2018. Ms Battista joined the City on 20 October 2015 as the Manager Communications and Engagement, then worked as the Manager, Marketing and Communications from 23 February 2016 and acted as the DEDA from 16 May 2016 until her permanent appointment.
- Ms Kelly Pember, Human Resource Business Partner from 9 February 2015 to 17 November 2017 and the then Acting Manager, Human Resources from 6 February 2017 to 17 November 2017.

7. Ms McEvoy and Mr Yong were not re-elected as councillors in October 2017. Dr Green was elected as a councillor in October 2015.



## Evidence obtained by the Inquiry

### Employment and termination of Mr Michael Carter

8. The Council Policy Manual, “CP12.6 – Staff – Local Government Employees – Senior Employees”, in force at this time, designated all directors as senior employees for the purposes of section 5.37(1) of the LG Act.<sup>38</sup> The designated senior employee position of DEDA was advertised nationally in May 2015. Applications closed on 12 June 2015. The DEDA position was one of three director positions advertised at this time. The other two were the Director, Community and Commercial Services (DCCS) and Director, Construction and Maintenance (DCM).<sup>39</sup>
9. Mr Carter was the preferred candidate unanimously recommended to fill the role of DEDA by the selection panel, consisting of Ms Scaffidi, CEO Mr Gary Stevenson, and an external member, Mr John Poulson.<sup>40</sup> Ms Scaffidi had been invited to participate as a selection panel member by Mr Stevenson.<sup>41</sup> At the Council Meeting on 11 August 2015 the Council voted to accept Mr Stevenson’s recommendation to appoint Mr Carter to the DEDA position. The Council also accepted Mr Stevenson’s recommendation to appoint Ms Rebecca Moore to the DCCS role and Mr Paul Crosetta to the DCM position.<sup>42</sup>
10. All three successful applicants were external candidates and each signed five-year contracts of employment with the City, subject to the satisfactory completion of a qualifying period of six months from the date of commencement.
11. On 20 January 2016, Mr Mileham was appointed as Acting CEO, following the termination of Mr Stevenson’s contract of employment by the Council.
12. On 24 February 2016, Mr Mileham and Ms Howells, Manager, Human Resources, conducted probationary review meetings with the three new directors. Mr Carter was informed that his employment would be terminated by the City and was given a letter to that effect.<sup>43</sup> He was presented with a deed of settlement (Deed) and asked to sign it.<sup>44</sup> Ms Moore was told that her qualifying period under her contract of employment would be extended for a further six months.<sup>45</sup> Mr Crosetta was confirmed as having successfully completed his qualifying period.<sup>46</sup>
13. On 26 February 2016, Mr Carter signed the Deed and provided the City with a letter of resignation dated 1 February 2016.<sup>47</sup>
14. In the course of inquiring into Mr Carter’s termination, the Inquiry compared Mr Mileham’s decision to terminate Mr Carter’s employment with his decision to extend Ms Moore’s probationary period. The Inquiry makes no findings as to Ms Moore’s conduct or capacity as an employee in this Section.

### Events leading to the termination of Mr Michael Carter's employment

15. Mr Carter signed a contract of employment with the City, appointing him to the position of DEDA for a term of five years, commencing on 21 September 2015 and concluding on 25 September 2020.<sup>48</sup>
16. Mr Carter's contract of employment required the development of a performance agreement within three months of him commencing employment. This did not occur.
17. On 20 January 2016, Council terminated Mr Stevenson's employment as CEO. Mr Mileham was formally offered the role of Acting CEO for a minimum period of six months from 20 January 2016. Mr Mileham did not have the opportunity to have any handover with Mr Stevenson or discuss the directors' performance with Mr Stevenson after Mr Stevenson's employment ended.<sup>49</sup>
18. On 10 February 2016, Ms Scaffidi sent Mr Carter eight emails between 7.42 am and 9.36 am in relation to a number of matters to do with a "*Tourism Industry Exchange*" event, including a complaint she had received from Mr Bradley Woods of the Australian Hotels Association that he had not been invited to speak at the event.<sup>50</sup> In her emails, Ms Scaffidi expressed displeasure about the way Mr Carter had dealt with Mr Woods. She also exchanged emails with Mr Mileham and copied him into those emails she sent to Mr Carter.<sup>51</sup> Mr Mileham understood from these emails that Ms Scaffidi was annoyed with Mr Carter.<sup>52</sup>
19. On 19 February 2016, Ms Howells sent Mr Mileham an email entitled "*Confidential: Points for Martin*" containing the message, "*For your meeting this afternoon*".<sup>53</sup> Attached to the email was a summary of meetings she had with Mr Mileham around Mr Carter and Ms Moore. The attachment contained a number of points under the heading "*Issues*" such as: "*Organisation riddled with cancer*" and "*Performance issues with DEDA and DCC*". Under the heading "*Mitigating actions*" it read, "*Termination of DEDA contract – ongoing risk to organisation of individual failing to deliver will impact performance and staff morale*". Under the heading "*Timing*" it read, "*23/02 inform Council of changes to directors in confidential briefing at agenda briefing*" as well as "*24/02 Inform DEDA Wednesday pm of decision not to continue contract ...*".<sup>54</sup>
20. A Council Briefing Session was held on 23 February 2016. The notes of that meeting record that Mr Mileham, Ms Scaffidi, Mr Adamos, Ms Chen, Ms Davidson, Mr Limnios, Ms McEvoy, Mr Yong and Dr Green attended, as well as a number of the City's officers. Mr Harley was not recorded as attending and Dr Green departed the meeting at 4.50 pm. The meeting concluded at 5.15 pm.<sup>55</sup> Mr Mileham advised the council members present of his intention to do various things, including acting on contract matters. Mr Mileham recalled that someone, he cannot remember who, said to him "*Councillor Green wasn't here, you'd better tell her*".<sup>56</sup>

21. Mr Mileham sent separate emails to Dr Green and Mr Harley on the following day, 24 February 2016, at 11.46 am and 11.48 am respectively, stating *“as you were unavailable last evening at the latter portion of the Council Briefing Session ...”* he was unable to inform them that he had made decisions, including that he would *“not be extending DEDA Michael Carter’s contract past the 6 month probationary period, due to performance issues”*.<sup>57</sup>
22. Mr Mileham had the opportunity to personally brief both Dr Green and Mr Harley at the Council Meeting held later on 23 February 2016. They are both recorded in the Minutes of that Council Meeting as being present. The meeting is recorded as commencing at 6.01 pm and concluding at 6.08 pm.<sup>58</sup> Mr Mileham also had the opportunity to submit to this Council Meeting his proposed actions for the employment contracts of the three directors as a late agenda item. However, the Minutes record no late agenda items.
23. On 24 February 2016, Mr Carter was called to a meeting with Mr Mileham and Ms Howells. At this meeting, he was advised that his employment would be terminated. Mr Mileham provided Mr Carter with a letter of that date which stated, among other things, *“due to performance concerns”* he had not successfully completed his qualifying period and *“the City will be terminating your employment in accordance with the termination provisions of your employment contract effective Friday 26 February 2016”*.<sup>59</sup> Mr Carter was presented with the Deed, which he was asked to sign. Mr Carter was asked about this meeting at his private hearing before the Inquiry:

*“Did Mr Mileham give you much feedback on your work in the role, once you became CEO?---Not at all, which is why I was completely gobsmacked or exasperated – flabbergasted I should say is probably the word, when I had my probationary review appointment.*

...

*I was not given an opportunity to express my concerns, I was not given an opportunity to explain what I had done over the last five and a bit months, because this was now coming up to the six month probationary period, and I was completely flabbergasted because I had no inkling that there was concern about my performance, whatsoever ”*.<sup>60</sup>
24. At 12.57 pm on 24 February 2016, Mr Mileham emailed Ms Scaffidi and all councillors to advise that he had implemented decisions, including that *“I have not extended DEDA Michael Carter’s contract past the 6 month probation period, due to performance issues”*. The email also stated, *“given a 6 month probationary period is a term of his contract, there is limited risk of an adverse outcome for the City, should he challenge my decision”*.<sup>61</sup>
25. On 26 February 2016, Mr Carter signed the Deed and provided the City with a letter of resignation dated 1 February 2016.<sup>62</sup>

### Whether Mr Martin Mileham was required to put the proposed termination of Mr Michael Carter to Council

26. Section 5.37(2) of the LG Act requires the CEO to inform the Council of each proposal to employ or dismiss a senior employee (except where a person is acting in the role for a term not exceeding one year and does not have a written contract for the position in which the person is acting). Council may accept or reject the recommendation. If it rejects the recommendation, the Council must inform the CEO of the reason for doing so.<sup>63</sup>
27. A council is empowered to make decisions only at meetings, by simple majority, or another kind of majority set out under the LG Act.<sup>64</sup> It follows that a decision to dismiss a senior employee is to be taken to a council meeting as a recommendation.
28. Mr Carter's contract of employment provided that, during an initial qualifying period of six months, either party could "*terminate employment*" by providing one month's written notice to the other party.<sup>65</sup>
29. The Inquiry considers that a decision by the City to terminate a senior employee's employment, amounts to a decision to "*dismiss*" within the meaning of section 5.37(2) of the LG Act.
30. Mr Mileham said that he advised the council members present at the Council Briefing Session on 23 February 2016 of his intended actions in relation to Mr Carter, although this is not recorded in the corresponding notes.<sup>66</sup> He later advised Dr Green and Mr Harley, who were not present when he informed the other council members, of his intentions by separate emails the following day at 11.46 am,<sup>67</sup> and 11.48 am,<sup>68</sup> respectively.
31. Mr Mileham did not take his proposal to terminate the employment of Mr Carter to a Council Meeting as a recommendation.<sup>69</sup>
32. In *Robert Whooley & Shire of Denmark* [2019] WASCA 28, the Western Australian Industrial Appeal Court held a CEO will have no power to dismiss a senior employee unless Council is informed of the decision and has accepted the CEO's recommendation:
 

*"The only power conferred on the CEO to dismiss an employee is the power conferred by s 5.41(g). That power is expressly subject to s 5.37(2) in relation to senior employees. The CEO has no power to dismiss a senior employee unless the CEO has informed the council of the proposal to dismiss the senior employee and the council has accepted the CEO's recommendation. The CEO did not inform the council of his proposal to dismiss Mr Whooley and the council did not accept a recommendation of the CEO to dismiss Mr Whooley. Therefore, the CEO had no power to dismiss Mr Whooley".*<sup>70</sup>
33. This judgement is relevant to the dismissal of Mr Carter, because there is no evidence to suggest that the decision to dismiss Mr Carter was taken to a Council Meeting and Mr Mileham gave evidence that he did not do so.<sup>71</sup> Furthermore, there is no evidence that the Council accepted a recommendation to terminate Mr Carter's employment. The Inquiry has not been able to locate any Council minutes which deal with the matter.

34. Accordingly, the Inquiry considers that, contrary to section 5.37(2) of the LG Act, Mr Mileham did not present his proposal to terminate Mr Carter's employment to a Council Meeting, and Council did not accept his recommendation, before he met with Mr Carter on 24 February 2016.
35. The failure to comply with section 5.37(2) of the LG Act is telling in two respects. Section 5.37(2) not only requires the CEO to act in a certain way, it also provides Council with an associated function. By requiring Council to accept or reject a CEO's recommendation, and provide reasons if it rejects a recommendation, section 5.37(2) clearly requires Council to consider the reasons for any recommendation before making that decision.
36. What is concerning is that both the CEO and the majority of council members lacked a proper understanding of the role of Council under section 5.37(2) of the LG Act.
37. Mr Mileham's view was that his decision to dismiss Mr Carter did not need to go to Council.<sup>72</sup>
38. Ms Scaffidi considered it was not for her to "*hire or fire*" a Director.<sup>73</sup> Mr Adamos,<sup>74</sup> Ms Chen<sup>75</sup> and Ms Davidson<sup>76</sup> did not believe it was a matter for Council. Dr Green said she did not think it would be raised at Council, given it related to a probation period.<sup>77</sup> Ms McEvoy was not sure whether it was a matter that would go to Council.<sup>78</sup> Mr Limnios was not asked about this issue.
39. Only Mr Yong<sup>79</sup> and Mr Harley<sup>80</sup> were aware of Council's functions in relation to the termination of senior employees.

#### Payment to Mr Michael Carter authorised by Mr Martin Mileham

##### Legislative and policy framework

40. Section 5.50(1) of the LG Act requires that a local government is to prepare a policy to deal with payments made to employees who are finishing their employment, setting out the circumstances in which the local government will pay an employee an amount in addition to their contractual or award entitlements. The policy should also deal with the manner of assessment of any such additional amount. The local government is to give public notice of the policy.<sup>81</sup>
41. Section 5.50(2) of the LG Act allows a local government to make a payment to an employee whose employment is finishing, which is in excess of any additional amount set out in the policy, required under sub-section (1) and adopted by the local government. However, if such a payment is made, "*local public notice*" of it must be given.<sup>82</sup> That requires a notice to be published in a newspaper circulating in the City and on public notice boards at the City's offices and its library.<sup>83</sup>
42. Section 5.50(3) of the LG Act requires that the value of a payment under the section is not to exceed such amount as is prescribed or provided for by the *Local Government (Administration) Regulations 1996* (Administration Regulations). Regulation 19A of the Administration Regulations prescribes the amounts which payments under section 5.50(1) or (2) of the LG Act must not exceed.

43. At the time of the termination of Mr Carter's employment, an additional payment was not to exceed \$5,000.00 unless certain conditions were met. The Administration Regulations allowed for an additional payment of not more than the person's annual remuneration to be paid if the person was accepting voluntary severance by resigning and was not a CEO or a senior employee.<sup>d</sup>
44. The policy prepared by the City is contained in CP12.4 of the Council Policy Manual and titled "*Payments Under Section 5.50 of the Local Government Act 1995*" (Policy). The Policy sets out the circumstances for severance payments, which are:
- Settlement of Legislative Action;
  - Recommendation by an Industrial Commissioner;
  - Illness or Impairment;
  - Order by a Court or Industrial Tribunal; or
  - Redundancy.<sup>84</sup>
45. The Policy also provides that nothing prevents the Council from deciding that an employee who is leaving may be paid an additional amount, provided the total value of additional payments to the employee does not exceed the value of the person's final annual remuneration. If the Council decides to make such a payment, "*local public notice*" of the payment must be given.<sup>85</sup>

#### Deed which was signed

46. Mr Carter and Mr Mileham signed the Deed on 26 February 2016. It included a provision to pay Mr Carter entitlements of five weeks pay in lieu of notice, annual leave (accrued and unused), time in lieu and an additional settlement sum equivalent to 10 weeks salary (Settlement Sum).<sup>86</sup> The value of the Settlement Sum was in excess of \$5,000.00.

#### Compliance with the Policy and legislative framework

47. When Mr Carter was paid the Settlement Sum, it was an amount additional to his entitlements (Additional Amount).
48. Mr Carter was not entitled to the Additional Amount under the Policy. The circumstances of his departure from the City were not contemplated by its terms.<sup>87</sup> As such, when Mr Carter was paid the Additional Amount, he was paid more than any additional amount allowed under the Policy. The Additional Amount could only have been paid under the Policy if Council had resolved to pay Mr Carter the higher additional amount, and public notice of the payment was given, but it was not.<sup>88</sup> Mr Mileham authorised the payment of the Additional Amount, on advice from the Human Resources Unit,<sup>89</sup> but without Council approval.

<sup>d</sup> Regulation 19A(1)(a) of the *Local Government (Administration) Regulations 1996* (Administration Regulations) has since been amended and reg 19A(1)(a)(ii) has been repealed. The Administration Regulations do not now stipulate that the person is not to be a CEO or a senior employee under a contract of employment.

49. Under section 5.50(2) of the LG Act, the Additional Amount could only have been paid if local public notice was given. Mr Mileham could not remember any public notice being given of the payment.<sup>90</sup> The City has no record of any such notice being placed.<sup>91</sup> Accordingly, the Inquiry finds the City paid Mr Carter the Additional Amount without giving public notice.
50. The Inquiry also finds the City paid Mr Carter an Additional Amount in excess of \$5,000.00. Mr Carter's employment was governed by a written contract for a period of five years and Mr Carter was designated as a senior employee.<sup>92</sup> Mr Carter did not accept voluntary severance.
51. Accordingly, even if a local public notice had been given, any payment in addition to Mr Carter's entitlements could not exceed \$5,000.00 under the LG Act, when read in conjunction with the Administration Regulations.<sup>93</sup> The payment made to Mr Carter under the Deed, in the form of the Additional Amount, was in excess of this limit.<sup>94</sup>
52. Mr Mileham agreed that the value of the payment should not exceed \$5,000.00.<sup>95</sup>
53. Mr Mileham accepted responsibility for signing the Deed on behalf of the City.<sup>96</sup>
54. The Inquiry finds that, through the conduct of Mr Mileham who signed the Deed, the City breached section 5.50(2) of the LG Act.
55. The Inquiry also finds that, through the conduct of Mr Mileham who signed the Deed, the City breached section 5.50(3) of the LG Act.

#### **Treatment of Mr Michael Carter in comparison to Ms Rebecca Moore**

56. Section 5.40 of the LG Act sets out a number of principles to be applied to the employees of local governments. Among them, is a requirement for employees to be treated fairly and consistently.<sup>97</sup>
57. Ms Moore's five year contract of employment as DCCS commenced on 7 September 2015 and was subject to the satisfactory completion of a qualifying period of six months from the date of commencement.<sup>98</sup> Mr Carter's contract as DEDA was in similar terms.<sup>99</sup>
58. Ms Moore's contract of employment, like Mr Carter's, required the development of a performance agreement within three months of commencing employment.<sup>100</sup> This did not happen for either employee.
59. In the lead up to their separate meetings with Mr Mileham on 24 February 2016, Ms Howells made general remarks about the performance of both Mr Carter and Ms Moore. She said both had exhibited performance issues, in the form of skill and capability gaps. Mr Carter had not yet produced any results. Ms Moore had produced results at the cost of people. The retention of both of them presented a risk to the business.<sup>101</sup> Mr Carter was the inaugural Director of his directorate.



60. Up to 24 February 2016, the City had no recorded complaints about either Ms Moore's or Mr Carter's conduct.
61. As the Director, Planning and Development, prior to being appointed Acting CEO, Mr Mileham was aware that Ms Moore had issues relating to teamwork, that her method of dealing with people was aggressive and that others described her as a bully.<sup>102</sup> He also formed his own view that Mr Carter was a bully.<sup>103</sup>
62. At her probationary review meeting on 24 February 2016 with Mr Mileham and Ms Howells, Ms Moore was told that her qualifying period under her contract of employment would be extended for a further six months due to concerns regarding her *"conduct and performance"*. Ms Moore was given a letter of the same date signed by Mr Mileham, confirming her unsuccessful completion of the qualifying period and the six month extension. The letter set out a number of behavioural matters as areas of concern but did not include specific examples of the alleged behaviour.<sup>104</sup> Ms Moore told the Inquiry, Mr Mileham did not speak to her about the specifics or provide examples.<sup>105</sup>
63. At his probationary review meeting with Mr Mileham and Ms Howells on 24 February 2016, Mr Carter was told there were concerns about his performance and the City was terminating his employment.<sup>106</sup> Mr Mileham went through some points from a script Ms Howells had prepared.<sup>107</sup> Mr Carter tried to explain that he had had to recruit an entire team and that it was unfair to have expected more of him in such a short period of time. Although Mr Mileham said Mr Carter was given an opportunity to respond to what he said in the meeting, Mr Carter and Ms Howells said Mr Carter was not.<sup>108</sup> Mr Mileham and Mr Carter recall it was a short meeting.<sup>109</sup> The Inquiry accepts Mr Carter and Ms Howells's evidence on this point. Ms Howells gave evidence that the decision to terminate Mr Carter's employment had been made prior to the meeting and the purpose of the meeting was to inform Mr Carter of this decision – *"it was not a meeting to have a discussion to see if there was evidence or information provided to change that"*.<sup>110</sup>
64. Mr Carter was handed the Deed and asked to sign it.<sup>111</sup> Up until his meeting with Mr Mileham on 24 February 2016, Mr Carter thought he was doing a solid job and was performing to task.<sup>112</sup> As Acting CEO, Mr Mileham had not raised any concerns with Mr Carter about his performance and Ms Howells had not engaged in any performance management processes with him.<sup>113</sup>
65. The Inquiry finds Mr Carter and Ms Moore were treated differently by the City, through the actions of Mr Mileham.
66. Mr Mileham agreed. He said Mr Carter and Ms Moore were treated differently, because what had come to his attention about Ms Moore at the time was more anecdotal than specific. Mr Mileham said he treated them differently because different matters had come to his attention.<sup>114</sup> With respect to Ms Moore, there were issues around teamwork and human relationships and her method of dealing with people. In Mr Carter's case, Mr Mileham believed he was aggressive, was not a good team member and he was not satisfied with the direction of Mr Carter's directorate.<sup>115</sup>
67. In contrast, Ms Howells said there were concerns with Mr Carter's ability to produce results whereas the concerns around Ms Moore's performance centred around her conduct.<sup>116</sup>

68. With respect to their assertive conduct, it appears that there was not a great deal separating Ms Moore and Mr Carter. They had each been described as a bully and aggressive.<sup>117</sup>
69. One of the key reasons Mr Mileham gave for terminating Mr Carter's employment was because he considered him a bully. This was something to which Mr Mileham said he gave a great deal of weight.<sup>118</sup> The City had a zero-tolerance policy on bullying in place.<sup>119</sup> However, it does not appear to have been given the same weight by Mr Mileham in relation to Ms Moore.
70. The letter Ms Moore was given during her meeting with Mr Mileham on 24 February 2016, set out a number of specific areas of concern regarding Ms Moore's conduct and performance. This included a lack of confidence in Ms Moore's *"ability to demonstrate conduct consistent with a senior officer position"*, and *"Diminished trust and confidence as a City of Perth Senior Executive"*. The letter also included feedback from council members relating to their concerns about *"a lack of maturity and professionalism that is expected at a Senior Executive level"*.<sup>120</sup>
71. Mr Carter's letter mentions nothing other than unspecified *"performance concerns"*. He was not given any written particulars about what the concerns were in his meeting with Mr Mileham on 24 February 2016.<sup>121</sup>
72. Ms Moore was given the opportunity to answer the matters raised with her,<sup>122</sup> and her contract was extended for an additional six months, during which she was invited to demonstrate behavioural improvements.<sup>123</sup>
73. Mr Carter's contract was not extended, and he was not given the opportunity to demonstrate improvement. Giving Mr Carter five and a half months of a probation period was not giving him time to improve. Mr Carter was never advised he needed to improve, as no one responsible for managing his performance told him his performance was lacking.<sup>124</sup>
74. The Inquiry finds Mr Carter was not given any notice that he was to be spoken to about his performance before the meeting with Mr Mileham on 24 February 2016. Mr Mileham could not recall whether Mr Carter was given such notice.<sup>125</sup> In circumstances where Mr Mileham has no real recollection, the Inquiry accepts Mr Carter's account.
75. As Mr Carter was not provided with written details of any concerns about his performance, was not afforded the opportunity to respond and to put his version of events, and was not given any time to improve his allegedly poor performance, the Inquiry finds Mr Carter was treated unfairly.
76. As Ms Moore's probationary period was extended, whereas Mr Carter's employment was terminated, Mr Carter was treated less favourably to Ms Moore in circumstances that did not warrant such differential treatment.
77. Section 5.40(c) of the LG Act required the City to treat employees fairly and consistently.<sup>126</sup>

## Findings

### Finding 2.3.2 – 1

The Inquiry makes the following findings:

- i. Contrary to section 5.37(2) of the LG Act, Mr Mileham did not present his proposal to terminate Mr Carter's employment to a Council Meeting, and Council did not accept his recommendation, before he met with Mr Carter on 24 February 2016 and told Mr Carter the City would be terminating his employment.
- ii. On 26 February 2016, the City breached section 5.50(2) of the LG Act by failing to give public notice of an additional payment.
- iii. On 26 February 2016, Mr Mileham failed to comply with Council Policy CP 12.4 sub-section (3) by authorising the payment of the Additional Amount without Council approval.
- iv. On 26 February 2016, the City breached section 5.50(3) of the LG Act by making an additional payment of more than \$5,000.00.
- v. By treating Mr Carter in the way he did, Mr Mileham failed to treat Mr Carter fairly and consistently. This was contrary to section 5.40(c) of the LG Act.

## Recruitment of a new Director, Economic Development and Activation

### Introduction

1. The purpose of this Section is to examine the two recruitment processes undertaken by the City of Perth (City) during 2016 and 2017 to select and appoint a person to the position of Director, Economic Development and Activation (DEDA), following the termination of Mr Michael Carter in February 2016.

### Timeline

2016	11 March	The Director, Economic Development and Activation (DEDA) position was advertised. Applications closed on 1 April 2016.
	16 May	Ms Annaliese Battista was appointed as Acting DEDA.
	19 May	By this time the short list for the DEDA position had been reduced to three people (Ms Jodi Cant, Ms Battista and Mr Charles Gunningham). This was the first recruitment process for the DEDA position.
	9 June	Ms Lisa Scaffidi, Lord Mayor, provided confidential information about the recruitment process for the DEDA position to Ms Battista.
	28 June	Ms Scaffidi requested copies of the confidential applications for the DEDA position, that is, those of Ms Cant, Mr Gunningham and Ms Battista.
	June	By late June 2016 Ms Cant had been endorsed as the preferred candidate by the recruitment panel, chaired by Mr Martin Mileham, Acting CEO.
	30 June	Ms Scaffidi and Ms Cant met in the Lord Mayor's office.
	11 July	Ms Scaffidi sent an email to Mr Mileham expressing a preference for Ms Battista to be appointed to the DEDA position.
	19 July	Ms Cant attended a Council Briefing Session with members of the Council.
	22 July	Ms Janet Davidson and Ms Judy McEvoy, council members, requested a copy of "other CV's" (Curriculum Vitae), including Ms Battista's CV, in order to make a considered decision.
	12 August	By this date Mr Mileham had formed the view that it was unlikely that the recommendation to appoint Ms Cant to the DEDA position would receive the support of Council. He advised Council that the City would not proceed with the appointment process.
	October	Mr Mileham and Ms Battista spoke about Ms Battista being appointed to the DEDA position, with Mr Mileham raising issues of loyalty and trust.

2017	7 February	Mr Mileham made an offer to appoint Ms Battista to the DEDA position.
	March	Advice sought about the legality of Ms Battista being appointed to the DEDA position (provided by Barristers and Solicitors, McLeods on 23 March 2017 and Jackson McDonald on 24 March 2017).
	15 April	The DEDA position was re-advertised, with applications closing on 5 May 2017. This was the second recruitment process for the DEDA position. The recruitment panel, chaired by Mr Mileham, recommended the appointment of Ms Battista.
	24 May	Ms Scaffidi spoke with an applicant for the DEDA position, advising the applicant that she would not be interviewed for the position.
	24 and 31 May	Ms Scaffidi requested a long list of candidates for the DEDA position from Mr Mileham on 24 May 2017, and a short list on 31 May 2017. Also on 31 May 2017, Ms Scaffidi suggested to Mr Mileham that Mr Todd Gogol should be interviewed for the DEDA position.
	4 July	Mr Mileham, pursuant to section 5.37(2) of the <i>Local Government Act 1995</i> (LG Act), made a recommendation to Council to appoint Ms Battista to the DEDA position (effective 5 July 2017). The recommendation was unanimously accepted by Council. By this time Ms Battista had been acting in the DEDA position for a period exceeding 12 months.

### Issues considered by the Inquiry

2. Consistent with A.3(ii), A.3(iii) and A.3(v) of its Terms of Reference, the Inquiry considered the following issues with respect to the selection of the DEDA and the appointment of Ms Annaliese Battista:

- Whether Ms Lisa Scaffidi breached confidentiality by telling Ms Battista a late application had been received from Mr Charles Gunningham in the first-round of recruitment for the DEDA position (first-round process).
- Whether council members became inappropriately involved in that first-round process.
- Whether there was a breach of s 5.39(1a)(a), namely, an employee acting as a senior employee without a contract.
- Whether Mr Martin Mileham should have removed himself from the second-round of recruitment for the DEDA position (second-round process) and whether the process was biased in favour of Ms Battista.
- Whether Ms Scaffidi breached confidentiality in speaking to a potential candidate on 24 May 2017.

## Investigation by the Inquiry

### Witnesses

3. The Inquiry held private hearings with a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section.

- Council members Ms Scaffidi, Mr Jim Adamos, Ms Lily Chen, Ms Janet Davidson, Dr Jemma Green, Mr Reece Harley, Mr James Limnios, Ms Judy McEvoy, and Mr Keith Yong.
- Mr Mileham, Chief Executive Officer (CEO).
- Ms Battista, the DEDA from 5 July 2017 to 22 June 2018. Ms Battista joined the City on 20 October 2015 as the Manager, Communications and Engagement. She became the Manager, Marketing and Communications on 23 February 2016. She acted as the DEDA from 16 May 2016 until her permanent appointment.
- Mr Mark Ridgwell, Manager, Governance.
- Ms Michelle Howells, Manager, Human Resources from 21 July 2014 to 3 February 2017.
- Ms Kelly Pember, Human Resource Business Partner from 9 February 2015 and Acting Manager Human Resources from 6 February 2017 to 17 November 2017.
- Ms Jodi Cant, the external applicant for the 2016 recruitment process for the DEDA position.
- Ms Wendy Earl, the external applicant for the 2017 recruitment process for the DEDA position and a former employee of the City.

### Legislative background

4. Part 5, Division 4 of the *Local Government Act* (LG Act) sets out various provisions dealing with local government employees. Section 5.36 provides that a local government has the function of employing a CEO and other employees. The CEO is responsible for the employment, management, supervision, direction and dismissal of other employees employed by the local government.<sup>127</sup>
5. Section 5.36(3) provides that a person is not to be employed by a local government in any other position unless the CEO believes that the person is suitably qualified for the position<sup>128</sup> and is satisfied with the proposed arrangements relating to the person's employment.<sup>129</sup>

6. However, section 5.37(2) of the LG Act provides conditions for the CEO's power to employ or dismiss designated "*senior employees*". During the period of the Inquiry's Terms of Reference, the holder of the position of DEDA was designated by the City as a senior employee.<sup>130</sup> Section 5.37(2) requires the CEO to inform the Council of each proposal to employ or dismiss a senior employee<sup>e</sup> and Council may accept or reject the CEO's recommendation. If it rejects the CEO's recommendation, Council must inform the CEO of the reasons for doing so. The CEO is to ensure information is available to the Council to enable Council to make an informed decision on the CEO's recommendation.<sup>131</sup>
7. Council is empowered to make decisions only at meetings, by simple majority, or another kind of majority set out under the LG Act.<sup>132</sup> It follows that a proposal by the CEO to employ a senior employee is to be taken to a Council Meeting as a recommendation for the Council to formally accept or reject.
8. The LG Act, read as a whole, therefore clearly differentiates between the roles of the Council and the CEO in relation to the employment of a senior employee. The CEO is responsible for employing a senior employee, being satisfied that any potential senior employee is suitably qualified for the role, putting a recommendation to Council at a Council Meeting and providing Council with information to enable it to make an informed decision. Council must consider and then accept or reject the CEO's recommendation.
9. That differentiation is consistent with the intention of the LG Act to clearly define the roles of the "*key players*" within a local government. In doing so, Parliament intended to promote efficient administration within local governments and avoid conflicts caused by uncertainty, including conflict between council members and employees caused by council members becoming involved in administrative matters that should be handled by staff.<sup>133</sup>
10. It is entirely a matter for the CEO whether a recommendation to Council is made and who the CEO proposes to employ as a senior employee. Council and council members (including the Lord Mayor) have no role to play in the employment of a senior employee unless and until the CEO makes a recommendation to Council in a meeting.
11. It is not appropriate for the Council or council members to direct or influence, or attempt to direct or influence, any such recommendation or a CEO's decision in relation to the employment of a senior employee until that meeting.<sup>134</sup>
12. While the Lord Mayor is to liaise with the CEO on the City's affairs and the performance of its functions,<sup>135</sup> that does not mean the Lord Mayor may become involved in day-to-day matters of the City's Administration.

<sup>e</sup> Except where a person is acting in the role for a term not exceeding one year and does not have a written contract for the position in which the person is acting.



13. The Lord Mayor, outside his or her role at Council Meetings, has no role to play in the employment, management, supervision, direction and dismissal of the City's employees. That is exclusively the function of the CEO.<sup>136</sup> As Ms Scaffidi said of the role of Lord Mayor, *"there needs to be that separation between the Administration and the strategic undertakings of the Council"*.<sup>137</sup>
14. Furthermore, Council can only accept or reject a CEO's recommendation related to a senior employee. It cannot, for example, amend the CEO's recommendation and propose that the local government employ another person as a senior employee. As a consequence, only information that might assist Council in deciding whether to accept or reject the CEO's recommendation is pertinent to its decision.
15. Section 5.39(1a)(a) of the LG Act allows for an employee to act in the role of a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting. In the case of an acting or temporary position, a contract under section 5.39(2)(a) cannot be for a term exceeding one year.

## Evidence obtained by the Inquiry

### First-round process of selecting a Director, Economic Development and Activation

16. After Mr Carter's termination in late February 2016, the City began the recruitment process to replace him. Mr Gary Dunne became the Acting DEDA in the interim.<sup>138</sup> The DEDA position was advertised nationally on 11 March 2016, with a salary package of \$256,230.00.<sup>139</sup> Applications closed on 1 April 2016.
17. On 12 April 2016, Mr Mileham, the Acting CEO, emailed Ms Pember stating, *"can you pls arrange for the LM to have access to Big Red Sky so she may look at the applications and CV's in confidence?"*<sup>140</sup>
18. On 14 April 2016, Ms Pember printed copies of the curriculum vitae (CV) and provided them to Ms Scaffidi.<sup>141</sup> There is no evidence Ms Scaffidi was provided with applications at the same time.
19. In late April 2016, Ms Scaffidi expressed a desire to have a role in recruitment for the DEDA position. This request was consistent with the practice which had developed under former CEOs, where council members had participated in the recruitment of senior employees.<sup>142</sup> However, Mr Mileham did not believe it was appropriate. He so informed Ms Scaffidi.<sup>143</sup>
20. Mr Mileham asked Mr Ridgwell to obtain legal advice from the City's legal advisor, Mr Neil Douglas of McLeods Barristers and Solicitors (McLeods), on the appropriateness of a council member participating on a recruitment panel. Mr Ridgwell emailed Mr Douglas on 26 April 2016 asking for advice.<sup>144</sup>

21. Three days later, Mr Douglas provided his advice. It was to the effect that although under the LG Act *“the CEO may authorise a Council member to participate in a recruitment selection process for a City employee”*, any decision to do so must be made by reference to the separation of powers under the LG Act and also by reference to the best practice principles applying to the City’s recruitment of employees. Mr Douglas’s letter also noted that it would be unusual, if not rare, for a council member’s participation in a recruitment process to be consistent with those principles.<sup>145</sup>
22. By letter dated 14 May 2016, Mr Gunningham wrote to Ms Howells expressing a desire to apply for the position and said *“it was good to see you again last week and discuss the advertised position”* of the DEDA.<sup>146</sup> He enclosed his CV. Mr Gunningham’s application was received some six weeks after the closing date of 1 April 2016.
23. After obtaining advice from a governance officer, Ms Howells approached Mr Mileham and advised that Mr Gunningham should be spoken to about the DEDA role.<sup>147</sup> Mr Mileham accepted the *“good advice and actions of the HR department under the jurisdiction and direction of Director of Corporate Services”* and agreed to the late acceptance of Mr Gunningham’s application. Mr Mileham made no written record of the decision. Mr Gunningham was added to the interview short list.<sup>148</sup>
24. On 16 May 2016, Ms Battista replaced Mr Dunne as Acting DEDA.<sup>149</sup>
25. On 30 May 2016, Ms Howells emailed Mr Mileham to confirm the short list of Ms Battista, Ms Cant and Mr Gunningham.<sup>150</sup>

#### **Ms Jodi Cant selected as the preferred candidate**

26. On 21 June 2016, Ms Battista was interviewed by the recruitment panel consisting of Mr Mileham, as the chair, Mr Robert Mianich, Director, Corporate Services, and Ms Suzette Breddel, a human resources consultant. Ms Cant and Mr Gunningham were interviewed on 23 June 2016.<sup>151</sup> In late June 2016, the recruitment panel endorsed Ms Cant as the preferred candidate.<sup>152</sup> Mr Mileham considered Ms Cant to be *“exceptional”*,<sup>153</sup> while Ms Battista was considered not to be director material at that time.<sup>154</sup>
27. On 28 June 2016, Ms Scaffidi emailed Mr Mileham. She wrote, *“I am keen for you to set up a coffee meeting”*. Ms Scaffidi also asked she be provided with Ms Cant’s *“application and Charlie G and Annaliese’s as well”*.<sup>155</sup> Mr Mileham responded advising he had already suggested to Ms Cant that she meet with Ms Scaffidi on a one-on-one basis. Mr Mileham was *“keen”* to introduce Ms Scaffidi to Ms Cant, because he foresaw *“a very close working relationship developing between the Lord Mayor and the Economic Development Directorate”*.<sup>156</sup> He suggested Ms Scaffidi wait until after her *“chat”* to receive the documents she had requested. Mr Mileham wrote *“The risks are that a quasi-interview, including Cr Davidson and visibility of the respective applications could provide ground to a protest, under the provisions of the Act. An informal one-on-one presents no such issues”*.<sup>157</sup>

28. On 30 June 2016, Ms Scaffidi and Ms Cant met. Mr Mileham escorted Ms Cant to and from the Lord Mayor's office.<sup>158</sup> Ms Cant told the Inquiry that she recalled the meeting being *"like a meet and greet"*, with the discussion being about her vision for the DEDA role and the Lord Mayor's vision for the City.<sup>159</sup> In effect, it was a quasi-interview.<sup>160</sup>
29. On 11 July 2016 at 1.47 pm, Mr Mileham emailed his assistant and asked for her to set up a meeting *"with the LM to discuss and agree way forward for appointment of DEDA"*.<sup>161</sup>
30. Later that afternoon, at 4.48 pm, Ms Scaffidi emailed Mr Mileham about a meeting and wrote, among other things *"I've been giving this some considered thought as you have too, no doubt, and I have to say I think Annaliese has created the stability which is really the priority right now"*. Ms Scaffidi went on to state that she was *"mulling on"* whether Ms Cant would be satisfied *"with much of the day-to-day & the overall manner with which we operate in a smaller arena than she is used to and of course the nature of how Council operates"*.<sup>162</sup> Ms Scaffidi also asked whether he proposed presenting Ms Cant to council members and whether he was going to tell Ms Cant she was the preferred candidate.<sup>163</sup> She noted the past process had been to present the *"reasons for the preferred candidate"* to council members before offering the role.<sup>164</sup>
31. Ms Scaffidi forwarded her email at 4.49 pm to members of her alliance: Ms Davidson, Ms McEvoy, Mr Adamos and Mr Yong, with the comment *"Fyi only"*.<sup>165</sup> When questioned by the Inquiry, Ms Scaffidi said she excluded Mr Limnios, Mr Harley and Dr Green, because *"it might have not been clear they strongly preferred Annaliese [Battista], but yes, they would close me down"*. She agreed it was inappropriate to withhold the information from them.<sup>166</sup>
32. Later, at 5.11 pm, Mr Mileham responded to Ms Scaffidi and requested a meeting the following day. Mr Mileham wrote, *"FYI the panel was unanimous in recommending Jodi as the best candidate. That said, as a designated employee a recommendation (to appoint DEDA) must come to Council for a 'yes or no' decision"*. Mr Mileham continued, *"I (and the panel) are convinced that Jodi is the best selection of those interviewed, however I will not put forward a recommendation that would be refused at Council. I am also unconvinced stability is the main requirement, in fact the opposite to some degree ..."*.<sup>167</sup>
33. Ms Scaffidi responded at 5.18 pm. She wrote *"Didn't state stability as main req! Like everything MM [Martin Mileham] its complex. You know I was not 'thrilled with the panel' also. Talk later"*.<sup>168</sup>

### Council Briefing Session on 19 July 2016

34. Mr Mileham invited Ms Cant to a City of Perth Council (Council) Briefing Session with council members, which she attended on 19 July 2016. Ms Cant was introduced as an applicant for the DEDA position. She then answered questions from the council members present.<sup>169</sup> Mr Mileham told the Inquiry the intention in holding this session was to test the *"temperature of the room"* and seek feedback from those council members.<sup>170</sup> There were no notes taken at this session.<sup>171</sup>

35. Council members and Administration staff present at the Council Briefing Session had varying recollections of what occurred, but most recall the council members present showing strong support for Ms Battista to be appointed to the DEDA position in preference to Ms Cant.
36. Ms Davidson attended the Council Briefing Session. She formed the view Ms Cant was not suitable for the role:

*“She was a fairly forthright person. She knew what she was doing and I think with some of the things that she had mentioned, not too sure whether she was the fit for that particular portfolio.”*<sup>172</sup>
37. Ms Davidson’s evidence to the Inquiry was that while Ms Cant’s application and CV satisfied the City’s requirements, she made the above mentioned assessment of Ms Cant during the Council Briefing Session – subjectively and in around 15 minutes. Ms Davidson remembered council members present wanted to know what other candidates were involved. Ms Davidson said she thought there was *“reasonable consensus that Elected Members, as I say, were comfortable with Annaliese Battista in the role”*. Ms Davidson recalled Mr Mileham telling the council members that if Ms Cant was not endorsed, he would recommend the City go back to the market, rather than appoint Ms Battista.<sup>173</sup>
38. Mr Harley acknowledged Ms Cant was an impressive candidate who fulfilled the selection criteria, had previous executive experience and the recruitment panel assessed her as the most suitable candidate. Mr Harley recalled some of the questions to Mr Mileham, including some from himself, about whether Ms Battista was a short-listed candidate and, why she was not the recommended candidate. In the Council Briefing Session, Mr Harley provided feedback to the effect that Ms Battista had performed well in the acting role.<sup>174</sup>
39. Mr Adamos believed the purpose of the Briefing Session was to get input from council members. In his view, due to the amount of turmoil the City was experiencing and the fact that Ms Battista apparently had a good rapport with the staff, it would be the *“path of least resistance”* to prefer Ms Battista even if Ms Cant was very strong. Mr Adamos went on to say he did not know if Ms Battista would be a better candidate, but because she worked well with the team *“that was a matter that could be continued, rather than start fresh”*. He said this was something he could not assess with Ms Cant.<sup>175</sup>
40. Dr Green told the Inquiry that the council members at the Briefing Session were very vocal about the fact they thought Ms Battista was doing an excellent job and that she should be the appointee. Dr Green considered the Briefing Session to be a forum in which Mr Mileham made a recommendation to appoint Ms Cant, which she considered Council had rejected. In her view, it was clear the majority of Council and *“probably everyone”*, with the exception of herself, preferred Ms Battista and they maintained that view up until the point when she was permanently appointed.<sup>176</sup>

41. Mr Yong's recollection was poor. He recalled the meeting included a number of directors as well as Ms Cant. He could not remember speaking about Ms Battista.<sup>177</sup> He believed an agreement was reached between the CEO, Human Resources and Ms Scaffidi to not appoint Ms Cant.<sup>178</sup>
42. Ms Chen had limited recollection of Ms Cant or the process, but said it would be inappropriate for Ms Battista to have been appointed simply because she was more likeable.<sup>179</sup>
43. According to Ms McEvoy, she said words to the effect of "*we need to look at her [Ms Battista] as well*".<sup>180</sup>
44. Mr Limnios was not present at the Briefing Session.<sup>181</sup>
45. Ms Scaffidi told the Inquiry she did not find Ms Cant to be unacceptable and thought she was professional and over-qualified. Ms Scaffidi said that she expressed this view during the Briefing Session, saying Ms Cant was "*over-qualified for the role*" and "*not likely to stay*".<sup>182</sup> Ms Scaffidi was concerned Ms Cant was not going to be a "*long term sure thing*" as the role was "*very repetitive and it's low level*" compared to Ms Cant's previous role.<sup>183</sup>
46. Contrary to Ms Scaffidi's email at paragraph 30 and her views at paragraph 45, Ms Cant told the Inquiry that she did not have concerns that she would not be stimulated by the role and did not have any misgivings about how the City operated. She did not have concerns that the DEDA position would have a smaller remit than her job at the time, because "*To me it looked like it had a broader remit*". Ms Cant gave evidence that she could not remember Ms Scaffidi, in their meeting on 30 June 2016, or any council members, in the Briefing Session on 19 July 2016, raising any of those concerns with her. Ms Cant believed that she would have remembered if those matters had been raised, because she was "*quite excited by the [DEDA] opportunity*".<sup>184</sup>
47. Mr Ridgwell also attended the Briefing Session on 19 July 2016. He was disappointed to observe the council members make unprofessional comments in relation to Ms Cant, whom he considered was a "*very high quality candidate*". Mr Ridgwell heard Ms Scaffidi say to him, and potentially to Ms Davidson and Ms McEvoy, that the council members did not like her appearance, and that Ms Cant was not "*a candidate that we would see fit to do this role*". Mr Ridgwell also heard Ms Scaffidi say words to the effect that "*Jodi Cant would not be fit for the role, she doesn't present well in the context of looks*". Mr Ridgwell heard other councillors agree in general terms with Ms Scaffidi. He did not hear anyone express an independent view.<sup>185</sup>

### Events after the Council Briefing Session

48. At 4.03 pm on 22 July 2016, Mr Mileham emailed Ms Scaffidi and council members to provide Ms Cant's work history and added he was unable to provide them with the names of all candidates and Ms Battista's CV. Mr Mileham then wrote *"if a recommendation is to go forward"* it would be at the Council Meeting in around *"two weeks' time"* and that he would *"follow up with each Elected Member next week to gain feedback in order to finalise this matter"*.<sup>186</sup>
49. Several minutes later, at 4.08 pm, Dr Green replied to Mr Mileham and stated, *"as indicated in the briefing session ... I have no objections to your pursuing of appointing Jodi"*. Dr Green also asked why he had indicated that in the event Ms Cant was not endorsed he would go back to market rather than appoint Ms Battista.<sup>187</sup>
50. At 4.11 pm, Ms Davidson replied to Mr Mileham copying in the other council members. Ms Davidson offered to sign a confidentiality agreement in the event she was permitted to view *"other CV's"*. Ms Davidson indicated she could not make a considered response *"without undertaking a comparison and necessary due diligence"*.<sup>188</sup>
51. Ms McEvoy responded to Ms Davidson's email at 4.19 pm and copied in Mr Mileham and the other council members. In her email, Ms McEvoy said, *"I agree with Cr Davidson – we also requested Analies's [sic] CV why has it not been received?"*<sup>189</sup>
52. Seeking information about Ms Battista may well have been a predictable response from council members, Mr Mileham having asked them to assess Ms Cant's suitability at the Council Briefing Session on 19 July 2016.
53. However, it was not for Ms Davidson or Ms McEvoy to compare Ms Cant to the other applicants. That was the role of the CEO and the recruitment panel. By requesting Ms Battista's CV, Ms Davidson and Ms McEvoy sought information that was not relevant to their role as council members in the appointment of a senior employee. In doing so, they overstepped their role.
54. At 4.39 pm, in his response to Ms Davidson's email, Mr Mileham reminded the council members of the process he was following. Mr Mileham stated the preferred candidate had been proposed on merit and the process was not to compare candidates and choose, but for Council to give a *"yes' or 'no' answer"* to a recommendation to appoint. Mr Mileham also reminded council members that they could not consider, recommend or appoint another candidate and to do that would be a potential breach of the LG Act. He wrote he was happy to provide any information that was permissible and relevant.<sup>190</sup>
55. Mr Mileham answered an email from Dr Green at 6.25 pm and explained that the Administration could not offer Council another choice once a no vote was received.<sup>191</sup>

### Concluding the first-round process

56. Almost a month after the Council Briefing Session attended by Ms Cant, Mr Mileham formed the view that it was unlikely a recommendation to appoint Ms Cant would receive unanimous Council support.
57. Several reasons led him to this view. The first reason arose from comments made to Mr Mileham by Mr Harley, who said *“you won’t get it”*, words to the effect that Ms Davidson was *“running interference”* and that *“The Lord Mayor doesn’t want her, she won’t get the votes”*. The second came from Mr Mileham’s observations of the demeanour of the council members during the Briefing Session and the questions that were being asked. The third was the hesitancy displayed by Ms Davidson, which *“sent alarm bells”*, because he had come to understand Ms Davidson as *“virtually a proxy for the Lord Mayor”*. He considered if Ms Davidson was asking the questions which she was in her emails, then it was likely Ms McEvoy and others may go along with her. He knew that the *“three [Ms Scaffidi, Ms Davidson and Ms McEvoy] would likely have issues”*.
58. Mr Mileham said he was concerned that if he were to put a recommendation to Council it would be voted down five/four or higher and this would be a very poor start for a designated employee in such a pivotal role.<sup>192</sup> Mr Mileham expressed his concerns to Mr Ridgwell, who advised Mr Mileham he should take the recommendation to Council for them to decide, because a unanimous vote was not necessary.<sup>193</sup>
59. Mr Mileham instead advised the council members by email that the recruitment process would not be proceeding and the DEDA position would be filled by an acting arrangement until the appointment of the CEO was finalised by the Council.<sup>194</sup>

### Mr Martin Mileham’s appointment as Chief Executive Officer and discussions with Ms Annaliese Battista

60. At a Special Council Meeting on 1 September 2016, Mr Mileham was confirmed in the CEO role. His five-year contract commenced on 3 October 2016, with his appointment subject to successful completion of a six-month probationary period.
61. On 12 October 2016, Ms Battista emailed Mr Mileham and asked him to consider appointing her directly to the DEDA role when he returned from a trip to Darwin.<sup>195</sup> Mr Mileham replied to the effect that he *“eagerly”* looked forward to discussing it on his return.<sup>196</sup>
62. On 18 October 2016, Ms Battista emailed Mr Mileham. She referred to their *“frank discussion”* that day and said *“I had not understood trust was an issue for you. I believe I am worthy of your trust and I will work to rebuild it”*. She provided a *“pitch”* to be appointed to the role of director but offered him *“100% support”* whether or not she was appointed.<sup>197</sup>



63. On 7 December 2016, Ms Battista met with Ms Earl. Ms Battista advised Ms Earl that she (Ms Battista) was going to be appointed as DEDA in February 2017. Ms Battista asked Ms Earl if she was willing to come back as an “*executive manager*”.<sup>198</sup>
64. Mr Mileham emailed Ms Battista on 7 February 2017, referring to “*predominately verbal*” discussions with her about her appointment as DEDA. Mr Mileham went on to state he had suspended the DEDA recruitment process, because of “*unfavourable political and organisational conditions*” that had the potential to be extremely difficult for the new incumbent to manage. He then made Ms Battista an offer in the following way:

*“Following the suspension of the DEDA recruitment process and in subsequent discussion with you I agreed that, subject to your performance in the period to the completion of my own probationary period (i.e. up to the end of March 2017) and subject to my own formal and ‘unconditional’ appointment, I would recommend to Council your appointment to the role of DEDA, for an unspecified contract term. As you know and as we discussed, the role is a for a so-called designated employee and must be approved by Council.*

*Core to my offer to you was that you were ‘100% loyal’ (my words) to the ELG and to the office of the CEO and in effect that you at all times exhibited the values and behaviours we had agreed to in the ELG, i.e. our own code of conduct.*

*I would however appreciate the opportunity to further discuss the above with you with a view to formalising an agreed position between us, in writing, given the need for mutual clarity, particularly in the context of recent changes in the management of the Human Resources unit”.<sup>199</sup>*

65. Ms Battista understood this to be an implied threat, so that if she did not support Mr Mileham it would prejudice her ability to be appointed as Director.<sup>200</sup>
66. Mr Mileham acknowledged to the Inquiry that at the time he made the offer, he made it conditional upon her performance up until he had finished his probationary period, his own formal and unconditional appointment and contingent upon Ms Battista being 100 per cent loyal to him. Mr Mileham agreed that offering Ms Battista the DEDA role, with conditions, before it had been advertised was an inappropriate management decision and an error of judgement.<sup>201</sup> He also said that he had agreed with Ms Scaffidi that it was a possibility that Ms Battista would be appointed and this discussion had occurred before the DEDA role was advertised for a second time.<sup>202</sup>

#### Efforts to move ahead with re-advertising the position

67. Ms Pember, now acting as Manager, Human Resources, emailed Mr Mianich on 10 February 2017, and asked him to follow up on the DEDA recruitment with Mr Mileham. She also advised Ms Battista’s higher duties entitlement was going to expire on 30 March 2017.<sup>203</sup>

68. On 13 February 2017, Ms Battista emailed Ms Pember regarding the appointment of another staff member to her substantive role of Manager, Marketing Communications and Engagement *“should I be appointed permanently to the DEDA role”*. Ms Battista wrote that Mr Mileham had clarified that his intention to *“appoint me to the DEDA role is now dependent on his ‘unconditional’ appointment to the CEO role at the end of March”*. In asking for advice Ms Battista remarked *“I appreciate this is rather ‘untidy’ ”*.<sup>204</sup>
69. On 17 March 2017, Mr Ridgwell met with Mr Douglas of McLeods and asked for advice on the recruitment process for the DEDA.<sup>205</sup>
70. On 23 March 2017, McLeods provided advice to the effect that if the City were to appoint Ms Battista directly to the role then any legal challenge would have a reasonable prospect of succeeding. McLeods further advised that Ms Battista should cease as Acting DEDA (on higher duties) no later than 12 months after she commenced.<sup>206</sup>
71. Mr Mileham met with Ms Battista and Ms Pember on 23 March 2017. Mr Mileham informed Ms Battista that she had met the set targets and that he would like to make a recommendation to Council to conclude the prior recruitment process and appoint her as DEDA.<sup>207</sup> Ms Pember told the Inquiry:

*“To have a conversation of that nature, a conversational discussion around someone’s appointment with the individual sitting in the room and to ask me to seek – what I had thought was asking me to seek legal advice around whether that was possible, I didn’t feel that was appropriate to have that discussion with Annaliese in the room”*.<sup>208</sup>
72. Ms Pember sought legal advice from Jackson McDonald, another legal firm used by the City, who responded on 24 March 2017 and concurred with McLeods’s advice.<sup>209</sup>
73. Ms Pember emailed Mr Mileham on 27 March 2017, copying in Mr Ridgwell and Mr Mianich. She attached a confidential memorandum and the legal advices received from Jackson McDonald and McLeod’s. The memorandum compared the option of commencing a new recruitment process and re-advertising the DEDA position and the alternative option of appointing Ms Battista to the position. Ms Pember recommended concluding the prior recruitment process and re-advertising the position.<sup>210</sup>
74. Mr Mileham responded to Ms Pember on 27 March 2017 at 3.37 pm, noting his preferred approach was to conclude the recruitment process and instead make a recommendation to Council to appoint Ms Battista, subject to it being *“legal”*. Mr Mileham noted the lawyers’ advice, and Ms Pember’s advice, had been that his preferred approach was *“less prudent”* than terminating the recruitment process and re-advertising.<sup>211</sup>

75. Mr Mileham told the Inquiry that despite the advice of Ms Pember, Mr Ridgwell and two legal firms, he desired to appoint Ms Battista directly to the role of DEDA. He believed this to be the easiest and least problematic approach for the City.<sup>212</sup> At the end of March 2017, Ms Battista was also performing her duties satisfactorily, which was one of the conditions required by Mr Mileham.<sup>213</sup>
76. Ms Pember replied to Mr Mileham's email on 30 March 2017, noting the consensus was that the position should be re-advertised. She referred to a meeting scheduled for 5 April 2017 with Mr Mileham, Mr Mianich and Ms Battista to discuss the matter. She confirmed Ms Battista would have been acting in the DEDA role for 12 months as at 16 May 2017 (six weeks away). Ms Pember also wrote that she believed dispensation would be available to have Ms Battista act in the role for a period in excess of a year if the City could demonstrate the recruitment process was taking place.<sup>214</sup>
77. In April 2017, the position description for the DEDA role was produced.<sup>215</sup> On 2 April 2017, Dr Green emailed Mr Mileham and asked for an update on the DEDA position.<sup>216</sup> In reply, Mr Mileham told Dr Green he would likely inform Council in mid-May.<sup>217</sup>
78. Ms Pember emailed Mr Mileham on 11 April 2017. She said that further to a discussion with Mr Mianich she would prepare a file note confirming the close of the prior DEDA recruitment and that the City would be readvertising the position. Ms Pember asked Mr Mileham to inform Ms Cant, as a courtesy, and asked him whether he would consider putting Ms Cant straight on to a short list if she applied again as *"I anticipate we will do this for Annaliese Battista"*.<sup>218</sup>
79. Ms Pember sent a further email to Mr Mileham later that day and asked him to sign-off on the DEDA advertisement.<sup>219</sup>
80. On 13 April 2017, Ms Pember informed Ms Cant by letter that the City had closed the 2016 DEDA recruitment process and commenced a new recruitment process with the position to be advertised on 15 April 2017.<sup>220</sup>

#### Second-round process for Director, Economic Development and Activation selection

81. Applications for the re-advertised DEDA role closed on 5 May 2017.<sup>221</sup>
82. The second recruitment panel consisted of Mr Mileham as the chairperson, Ms Noelene Jennings, an external member, and Ms Pember.<sup>222</sup>
83. At 5.30 am on 24 May 2017, Ms Scaffidi emailed Mr Mileham asking for the long list of applicants and the name of the third-party interviewer.<sup>223</sup>
84. Ms Pember emailed Mr Mileham at 8.29 am on 24 May 2017, attaching a short list of applicants for the DEDA role for him to share with Ms Scaffidi. She also advised that Ms Jennings was a potential external recruitment panel member.<sup>224</sup> At 1.36 pm, Mr Mileham emailed Ms Scaffidi a list of applicants and a list of potential third-party interviewers with the comment, *"FYI. I favour Noelene Jennings as a panellist"*. Ms Scaffidi replied at 1.39 pm, *"Great suggestion!"* Ms Scaffidi then forwarded Mr Mileham's email to Ms Davidson at 2.00 pm.<sup>225</sup>

85. Ms Earl was an applicant for the second DEDA process. She told the Inquiry Ms Scaffidi called her on 24 May 2017 and advised she would not be interviewed, as Mr Mileham did not want someone who had previously worked at the City and that he wanted Ms Battista for the role. Ms Earl said Ms Scaffidi asked her not to say anything.<sup>226</sup>
86. On 31 May 2017, Ms Scaffidi and Mr Mileham exchanged emails in relation to the short list for the DEDA role and the composition of the recruitment panel.<sup>227</sup> In response to a request from Ms Scaffidi,<sup>228</sup> Mr Mileham asked Ms Pember to confidentially provide the short list to Ms Scaffidi.<sup>229</sup> Ms Scaffidi later suggested the City interview Mr Todd Gogol.<sup>230</sup>
87. The recruitment panel were unanimous in deciding Ms Battista was the best candidate for the position.<sup>231</sup>
88. On 29 June 2017, Mr Mileham provided the council members with confidential information in a report recommending the appointment of Ms Battista.<sup>232</sup> The report set out the details of the recruitment panel, identifying the third-party panel member, the process which had been followed and Ms Battista's details. The report noted that only Ms Battista had taken part in the second-round interview and that she had performed "*strongly*".<sup>233</sup>

#### **Council's decision to accept Mr Martin Mileham's recommendation to appoint Ms Annaliese Battista**

89. On 4 July 2017, in accordance with section 5.37(2) of the LG Act, Mr Mileham recommended Ms Battista's appointment to Council.<sup>234</sup>
90. Earlier in the day, Dr Green and Mr Mileham exchanged emails concerning the short list of applicants for the DEDA position. Dr Green asked for written information "*as per what we received last time? Why are we not getting a briefing as per last time? E.g. the scoring matrix of the candidates*".<sup>235</sup> To this Mr Mileham responded that the previous process was "*compromised*", and he had "*elected to conduct [the second] process in a more confidential manner*".<sup>236</sup>
91. On the evening on 4 July 2017, Council unanimously voted to accept the CEO's recommendation to appoint Ms Battista to the DEDA position.<sup>237</sup>
92. Mr Yong voted for Ms Battista for two reasons. The first was his subjective assessment of her performance as the Acting DEDA. Secondly, Mr Yong felt his group, including Ms Scaffidi, had persuaded him to vote to appoint Ms Battista. Mr Yong agreed it was not a good decision to endorse Ms Battista in those circumstances.<sup>238</sup>
93. Ms Chen voted in support of Ms Battista after reading the report for the Council Meeting and did not request further information on the recommendation or other candidates.<sup>239</sup>
94. Dr Green voted in favour of Ms Battista, because she was the only option they were presented with and she felt that she was doing an excellent job. She also felt the other council members thought Ms Battista was doing a good job.<sup>240</sup>

95. Mr Harley endorsed Ms Battista on Mr Mileham's recommendation, as it was clear to him that she had been performing well in the role as Acting DEDA.<sup>241</sup>
96. Ms McEvoy voted for Ms Battista, because she knew her, and she had done a good job as the Acting DEDA.<sup>242</sup>
97. Ms Davidson voted for Ms Battista due to the work she had completed in the directorate. This was so, notwithstanding her view that Ms Cant was a better candidate.<sup>243</sup>
98. Mr Adamos voted in favour of Ms Battista, after considering the recommendation from Mr Mileham.<sup>244</sup>
99. Mr Limnios voted for Ms Battista, having advocated for her appointment.<sup>245</sup>
100. When asked about her vote, Ms Scaffidi had no memory of casting it.<sup>246</sup>

## Analysis

### Whether during the first recruitment process Ms Lisa Scaffidi breached confidence in telling Ms Annaliese Battista the City had accepted the late application of Mr Charles Gunningham

101. When applications closed for the first-round of the DEDA recruitment process on 1 April 2016,<sup>247</sup> Mr Gunningham had not applied.
102. Ms Howells told the Inquiry Mr Gunningham was put forward by Mr Limnios and that the Lord Mayor was also aware of him. Some six weeks after the closing date, Mr Gunningham submitted his application to Ms Howells who, after consulting with a Governance officer, suggested to Mr Mileham that Mr Gunningham's application be accepted as he seemed like a strong candidate. Mr Mileham agreed, and Mr Gunningham was added to the interview short list.<sup>248</sup>
103. In a note dated 9 June 2016, written to herself at a private email address, Ms Battista wrote:
 

*"Advice received from the Lord Mayor at 1.00pm re: DEDA position – MH advocated for and received late application from Charlie Gunningham, who is now shortlisted".*<sup>249</sup>
104. Ms Scaffidi could not recall speaking to Ms Battista about the matter. When questioned by Counsel Assisting, Ms Scaffidi said:
 

*"I don't recall a conversation with Ms Battista, I recall – I think it was Councillor Limnios, alerting us to an application from Mr Gunningham and whether that was on email or via discussions, that is how I recall it.*

*Is that where you received your information about Mr Gunningham? – I believe it was through Councillor Limnios, yes".*<sup>250</sup>

105. Ms Scaffidi was then asked whether, after she spoke to Mr Limnios, she spoke to Ms Battista about Mr Gunningham:

*“After you spoke to Councillor Limnios about that, did you speak to Ms Battista? ---Councillor Limnios, I believe sent an email about it ... I think that was in the prereading I was given for the last private hearings.*

*About Charles Gunningham?---Yes, and I don’t believe I had any need to discuss it with Annaliese Battista”.*<sup>251</sup>
106. Ms Scaffidi was asked if she told Ms Battista that *“Michelle Howells advocated for and received a late application from Charles Gunningham”* and said she did not *“recall that at all”*.<sup>252</sup>
107. In June 2016, Ms Battista spoke to Mr Ridgwell about Mr Gunningham’s late application and asserted Mr Limnios may have had something to do with it.<sup>253</sup>
108. Mr Ridgwell investigated the matter and recorded his observations and the details of his investigation in a note dated 17 June 2016. Mr Ridgwell considered the allegation that Mr Gunningham had been invited to apply after the close of applications and that Mr Limnios may have played some part in this occurring.<sup>254</sup> He did not make any enquiries about how Ms Battista found out.<sup>255</sup> After speaking to Mr Mianich, Ms Pember, Ms Howells and Mr Mileham, Mr Ridgwell concluded there had been no influence or contact from Mr Limnios. He recommended greater procedural documentation be recorded for applications received after the closing date.<sup>256</sup>
109. Although the details of the conversation were unclear to her when questioned by Counsel Assisting, Ms Battista said *“I do recall being annoyed at the thought that that process was open to influence because obviously I was part of the process by that stage”*.<sup>257</sup> This adds some plausibility to the content of her note. Ms Battista had applied for the position, she heard a late application was received, the Lord Mayor told her about it, and she recorded what she was told, because she was annoyed. The note stands as a contemporaneous record of remarks the Lord Mayor made to Ms Battista at 1.00 pm, 9 June 2016 and the Inquiry accepts its content. In the absence of either Ms Battista or Ms Scaffidi recalling a conversation between them on 9 June 2016, the best evidence available to the Inquiry is Ms Battista’s 3.45 pm note, apparently made two and three-quarter hours after the conversation took place.
110. Putting the note to one side, the balance of evidence supports the facts which Ms Battista asserts Ms Scaffidi relayed to her:
  - Ms Howells was the one who took advice from governance as to whether the application could be received, and had Mr Gunningham added as an applicant – in this sense advocating for and receiving his application;<sup>258</sup>
  - Mr Gunningham’s application was late;<sup>259</sup> and
  - Mr Gunningham was short listed.<sup>260</sup>

111. These three events had all occurred before 9 June 2016.<sup>261</sup> This adds to the weight to be given to the note.
112. Accepting the content of Ms Battista's note in the circumstances set out above, the Inquiry finds Ms Scaffidi spoke to Ms Battista at 1.00 pm on 9 June 2016 and told her Ms Howells had advocated for and received a late application from Mr Gunningham who was short-listed. The information that Mr Gunningham had applied, that his application was late, and that he had been added to the short list, was information concerning the details of an ongoing recruitment process to recruit a DEDA. As such, the information was confidential information. In providing the information she did to Ms Battista, the Lord Mayor passed on confidential information, breaching confidence. Ms Battista was an applicant who had also been short listed,<sup>262</sup> and she should not have been given the information Ms Scaffidi gave to her.

### **Whether council members became inappropriately involved in the first-round recruitment process**

#### **Events before the 19 July 2016 Council Briefing Session**

113. Ms Scaffidi involved herself in the first-round recruitment process by asking for details of the recruitment process, requesting and meeting Ms Cant prior to the 19 July 2016 Briefing Session,<sup>263</sup> providing comments to Mr Mileham about both Ms Battista and Ms Cant,<sup>264</sup> and requesting the applications of Ms Cant, Mr Gunningham and Ms Battista.<sup>265</sup>

#### **Meeting Ms Jodi Cant**

114. The Inquiry finds that, in meeting with Ms Cant on 30 June 2016, Ms Scaffidi became involved in the day-to-day administration of the City, overstepping her role as Lord Mayor. The Inquiry further finds that, in arranging the meeting for Ms Scaffidi,<sup>266</sup> knowing she had no role in the process,<sup>267</sup> Mr Mileham allowed Ms Scaffidi to overstep her role as Lord Mayor. The important distinction between Lord Mayor and the Administration was not maintained.
115. Ms Scaffidi was keen for Mr Mileham to set up the meeting,<sup>268</sup> and recognised that asking to see a potential appointee was interfering.<sup>269</sup> Mr Mileham said he organised the meeting, because of the nature of the working relationship which he foresaw between the DEDA and the Lord Mayor.<sup>270</sup>
116. The Inquiry considers Mr Mileham authorised Ms Scaffidi to meet with Ms Cant one-on-one. However, the Inquiry is not satisfied that Mr Mileham authorised Ms Scaffidi to interview Ms Cant. The meeting was not intended to be an interview.<sup>271</sup> Ms Scaffidi knew that.<sup>272</sup> According to Mr Mileham, he had made it clear to Ms Scaffidi that the one-on-one was not to be an interview of Ms Cant and that it should not happen.<sup>273</sup> Ms Scaffidi was not a member of the recruitment panel and she had no other role in the recruitment process at this point.



117. According to Mr Mileham:

*“... It was a process that I wanted to step through to introduce [Ms Cant] to the Lord Mayor because I believed it was a very important role and that it was important that that introduction was made. The Lord Mayor wanted [to] meet the person that I was likely to recommend”.*<sup>274</sup>

118. The meeting, however, went beyond a mere introduction. Ms Scaffidi conducted a quasi-interview that she had no place conducting and, in doing so, became involved in the day-to-day administration of the City. Even though she was invited to participate in the one-on-one, she should have declined. Ms Scaffidi accepted this.<sup>275</sup>
119. In arranging for Ms Scaffidi to meet with Ms Cant and himself,<sup>276</sup> Mr Mileham facilitated what then became a quasi-interview.<sup>277</sup> Mr Mileham had already turned his mind to the risk that this would occur if more than one councillor met with Ms Cant,<sup>278</sup> and should have known the same risk would arise if he and the Lord Mayor met with her. The “meet and greet”<sup>279</sup> or “informal one-on-one”<sup>280</sup> allowed Ms Scaffidi to form a view as to Ms Cant’s suitability for the role.<sup>281</sup>
120. Having met with Ms Cant and formed a view as to her suitability for the role, Ms Scaffidi was in a position to influence, or be perceived to influence, Mr Mileham’s decision about who he would recommend to Council. As Mr Mileham said, *“it was a very positive meeting, and I felt the Lord Mayor would be supportive of a recommendation. I felt that, she didn’t say that”.*<sup>282</sup>
121. In meeting with Ms Cant at the stage she did, Ms Scaffidi was also in a position to influence the decision of Council about whether to accept or reject a recommendation from the CEO to appoint Ms Cant to the position. Although the Inquiry does not find that Ms Scaffidi did influence Council in this way, the point is that she should not have been allowed to be in that position.

#### **Request for the applications of Ms Jodi Cant, Mr Charles Gunningham and Ms Annaliese Battista**

122. The Inquiry finds Ms Scaffidi overstepped her role and involved herself in the day-to-day operations of the Administration when she requested the applications of Ms Cant, Mr Gunningham and Ms Battista in her email of 2.17 pm on 28 June 2016.<sup>283</sup> By requesting these materials, she was inserting herself into a process which she, as Lord Mayor, had no proper role in. The material was confidential. Ms Scaffidi had no entitlement to it and should not have asked for it. In doing so, Ms Scaffidi interfered in the day-to-day operations of the Administration, and the Inquiry accepts her concession that she did.<sup>284</sup>

123. Mr Mileham had allowed Ms Scaffidi to overstep her role by agreeing to arrange for her to meet Ms Cant. Ms Scaffidi then asked for further information in the form of applications.<sup>285</sup> This was a foreseeable outcome of agreeing to arrange the meeting between himself, Ms Cant and Ms Scaffidi. It follows that, for the same reasons as Mr Mileham allowed Ms Scaffidi to overstep her role by arranging the meeting with Ms Cant, he was similarly involved in her overstepping her role when she made a request for the applications of Ms Cant, Mr Gunningham and Ms Battista. The Inquiry notes Mr Mileham did not deny her request. He instead asked her to wait for the documentation until after her “chat”.<sup>286</sup> He did so knowing she had no role in the process.<sup>287</sup>

#### Expressing views to Mr Martin Mileham about Ms Jodi Cant and Ms Annaliese Battista

124. The Inquiry finds Ms Scaffidi interfered in the day-to-day operations of the Administration when she provided Mr Mileham with her views on Ms Cant and Ms Battista in her 4.48 pm email on 11 July 2016.
125. By interfering in this way, Ms Scaffidi overstepped her role as Lord Mayor. This is something Mr Mileham allowed.
126. By allowing Ms Scaffidi to meet Ms Cant,<sup>288</sup> Mr Mileham allowed her to form an impression about whether Ms Cant was a suitable candidate.<sup>289</sup> This put her in a position where she could (or might be perceived to be able to) influence Mr Mileham’s decision-making about whether he would or would not recommend Ms Cant to Council.
127. By email at 4.48 pm on 11 July 2016, Ms Scaffidi wrote:
- “... I’ve been giving this some considered thought as you have too, no doubt, and I have to say I think Annaliese has created the stability which is really the priority right now.*
- The other issue which I’m really mulling on is how Jodi will be satisfied with much of the day-to-day & the overall manner with which we operate in a smaller area (remit) than she is used to and of course the nature of how Council operates (meeting processes – agendas etc.) ...”.*<sup>290</sup>
128. Providing Mr Mileham with her views in this way had the potential to influence Mr Mileham’s thinking about candidates he had a duty to assess objectively – as part of his role in making a recommendation to Council.
129. Ms Scaffidi gave evidence to the effect that her comments about “*stability versus the over-qualification*” drew a comparison and, as such, contributed to the pressure applied to Mr Mileham.<sup>291</sup> Ms Scaffidi accepted that, in providing Mr Mileham with her opinion in relation to the two candidates, and in contributing to the pressure on Mr Mileham, she interfered in the day-to-day administration of the City.<sup>292</sup>

130. Knowing Ms Scaffidi had no role in the recruitment process,<sup>293</sup> Mr Mileham permitted Ms Scaffidi to become involved. It was the CEO's role to determine who to recommend to Council. The Inquiry considers that, once the recruitment panel had made its selection, there was no room for an individual council member to become involved until the whole of Council was asked to consider the CEO's recommendation. Although drawing a comparison between Ms Cant and Ms Battista could be seen as a foreseeable outcome of her meeting with Ms Cant, the Inquiry does not consider that it was part of any task which Ms Scaffidi had been authorised to undertake. It went beyond her liaising with Mr Mileham about the City's affairs and performance of its functions. Ms Scaffidi became directly involved in the day-to-day operations of the Administration, blurring the important distinction between the role of the Lord Mayor and that of the CEO.

### 19 July 2016 Council Briefing Session

131. In a very real and practical sense, the Council Briefing Session on 19 July 2016 provided council members with the opportunity to prematurely and inappropriately involve themselves in decision-making on the appointment of the DEDA. Council members shared their views on Ms Cant, and were able to propose and discuss alternatives together, despite their role being properly limited to accepting or rejecting a recommended candidate.<sup>294</sup>
132. Ms Cant's attendance at the 19 July 2016 Council Briefing Session was approached as if it were an interview, notwithstanding that a recruitment panel had already chosen Ms Cant as the preferred and most suitable candidate for the position.
133. The amount of time afforded to Ms Cant in the Council Briefing Session was relatively short. Ms Davidson's estimate of the assessment was that it took 15 minutes.<sup>295</sup>
134. Although several council members believed Ms Cant was an impressive candidate,<sup>296</sup> most preferred Ms Battista.<sup>297</sup> This was despite Mr Mileham not asking them to consider her for the position at all.
135. During the Briefing Session, Ms Scaffidi is said to have made a number of statements directed towards Ms Cant's appearance.
136. Mr Ridgwell was sure that he heard Ms Scaffidi speak about Ms Cant's appearance in a derogatory way. Mr Ridgwell presented as a witness of truth and, although he did not have a complete recollection, he had a clear recall of certain remarks, their context, and the effect of those remarks by Ms Scaffidi about Ms Cant.
137. Ms Scaffidi did not agree that she made a derogatory comment about Ms Cant or said that she *"does not present well in the context of looks"*. She said if she did make those remarks it would be wrong, because it was not relevant to Ms Cant's qualification for the role.<sup>298</sup> She also agreed it would be inappropriate.

138. Overall, Mr Ridgwell impressed as an earnest and credible witness, who answered the questions asked of him directly. In contrast, Ms Scaffidi often avoided questions put to her and was repeatedly unresponsive to questioning. For this reason, and those set out at paragraph 136, the Inquiry prefers the evidence of Mr Ridgwell about what he heard Ms Scaffidi say during the Council Briefing Session about Ms Cant on 19 July 2016.
139. On balance, the Inquiry finds the Council Briefing Session on 19 July 2016 was a forum in which council members were prematurely participating in the decision-making process concerning the potential appointment of Ms Cant (and others) as the DEDA. The Inquiry finds that, in the Briefing Session, Ms Scaffidi said *“she [Ms Cant] would not be fit for the role ... she doesn’t present well in the context of looks”*, and made another derogatory remark about her appearance.<sup>299</sup> Ms Scaffidi also used words to the effect that *“I don’t think much of her dress sense”*.<sup>300</sup> The Inquiry finds these statements by Ms Scaffidi reveal she had regard to Ms Cant’s appearance in a context where she was assessing Ms Cant’s suitability for the role of DEDA. In having regard to Ms Cant’s appearance in assessing her suitability for the DEDA, Ms Scaffidi took into account an irrelevant consideration, which was inappropriate. Making a derogatory remark about Ms Cant in a decision-making forum involving other councillors was also inappropriate.

## Events after the Council Briefing Session

### Requesting information about applicants

140. The Inquiry does not consider that Mr Mileham ever authorised Ms Scaffidi to undertake a task that could contribute to the second-round process.<sup>301</sup> He and Ms Scaffidi simply exchanged information. What they did though, went beyond liaising with each other on the affairs of the City and its functions,<sup>302</sup> and blurred the distinction between the role of the Lord Mayor and that of the Administration.
141. By an email sent at 5.31 am on 24 May 2017, Ms Scaffidi requested the long list of candidates for the second-round process.<sup>303</sup> In doing so, Ms Scaffidi involved herself in the second recruitment process and interfered with the day-to-day operations of the Administration. Ms Scaffidi agreed.<sup>304</sup> The Inquiry finds this went beyond liaising with Mr Mileham about the City’s affairs and its functions and Ms Scaffidi overstepped her role as Lord Mayor. Mr Mileham, for his part, discussed it with her<sup>305</sup> and provided the long list to her, knowing it could raise issues, including confidentiality issues.<sup>306</sup> In the context of their discussions, Mr Mileham involved Ms Scaffidi in the second-round process without her having any formal or proper role in it. In doing so, the distinction between the role of the Lord Mayor and that of the Administration became blurred and allowed Ms Scaffidi to overstep her role.<sup>f</sup>

g The Inquiry does not consider that by providing Ms Scaffidi with the long list for the second-round process Mr Mileham authorised Ms Scaffidi to undertake a task that could contribute to the administration of the local government. Ms Scaffidi had no formal or proper role in the recruitment process.

142. By an email sent at 9.15 am on 31 May 2017, Ms Scaffidi requested the short list for the second-round process. Ms Scaffidi agreed that in making a request such as this that she had interfered in the day-to-day operations of the Administration<sup>307</sup> and the Inquiry so finds. On 24 May 2017, Mr Mileham provided Ms Scaffidi with a short list of candidates and so allowed her to be involved in the second-round process. He did so, aware that there may be issues with granting the request,<sup>308</sup> and his actions enabled Ms Scaffidi to overstep her role as Lord Mayor.

#### Suggesting Mr Todd Gogol for interview

143. On 31 May 2017, after the second-round process was already underway, Ms Scaffidi and Mr Mileham exchanged emails in relation to the short list for the DEDA role and the composition of the recruitment panel.<sup>309</sup> At 12.35 pm, Mr Mileham forwarded an email he had received from Ms Scaffidi on to Mr Ridgwell and Ms Pember and asked Ms Pember to confidentially provide the short list to Ms Scaffidi.<sup>310</sup> Ms Pember complied at 2.33 pm.<sup>311</sup> At 2.45 pm, Ms Scaffidi forwarded Ms Pember's email and the short list to Ms Davidson. At 2.47 pm, Ms Scaffidi emailed Mr Mileham and wrote *"thought we agreed Todd Gogol was worth an interview?"*<sup>312</sup> Mr Mileham responded to Ms Scaffidi *"may be worth a revisit"*.<sup>313</sup>
144. Mr Mileham's evidence about these emails was that by providing Ms Scaffidi with a long list, it could raise concerns about a breach of confidentiality, and it might also lead to council members lobbying for particular candidates.<sup>314</sup> The same could be said for a short list. That a council member who received a list of candidates may lobby for a particular candidate, is apparent from a reading of Ms Scaffidi's email in reply.<sup>315</sup>
145. With respect to the email sent by her at 2.47 pm on 31 May 2017, Ms Scaffidi accepted that, by suggesting Mr Gogol for an interview, she was interfering in the day-to-day administration of the City and it was inappropriate for her to do so.<sup>316</sup> The Inquiry so finds and also finds that, in doing so, Ms Scaffidi overstepped her role as the Lord Mayor.
146. When Mr Mileham provided Ms Scaffidi with the long list<sup>317</sup> and arranged for her to receive the short list<sup>318</sup> for the second-round process, he passed on information which was properly intended for members of a recruitment panel or officers of the Administration with a role in that process.
147. Even though both Mr Mileham and Ms Scaffidi expected Ms Scaffidi would have a reasonably close working relationship with the DEDA,<sup>319</sup> the Inquiry considers her involvement in the second-round recruitment process, in the way in which it occurred, was inappropriate.
148. What happened, went beyond the ordinary liaison legally required and expected between a CEO and a Lord Mayor, and blurred the distinction which should have been maintained between the role of one and the other.

149. By providing Ms Scaffidi with both the long list and the short list, Mr Mileham impliedly invited Ms Scaffidi to comment on the suitability of candidates for interview.<sup>320</sup> This was done in circumstances where Mr Mileham appreciated that it could give rise to lobbying for candidates.<sup>321</sup> Irrespective of whether Mr Mileham paid any attention to Ms Scaffidi's views about candidates, the fact that he provided the lists meant that he enabled her to overstep her role as Lord Mayor. .

**Whether there was a breach of the *Local Government Act 1995* in allowing Ms Annaliese Battista to act as Director, Economic Development and Activation for more than 12 months**

150. Ms Battista's substantive role was Manager, Communication and Engagement, and she was employed under a standard five-year contract of employment.<sup>322</sup> Ms Battista's term of acting in the DEDA role commenced on 19 May 2016.<sup>323</sup> Ms Battista was appointed to the DEDA position on 4 July 2017 on a five-year fixed term contract.<sup>324</sup>
151. Throughout this period, Mr Mileham signed higher duties forms authorising Ms Battista to be paid for performing higher duties, from 13 May 2016 to 13 August 2016,<sup>325</sup> 1 August 2016 to 30 September 2016,<sup>326</sup> 1 October 2016 to 31 March 2017,<sup>327</sup> 1 April 2017 to 31 May 2017<sup>328</sup> and 1 June 2017 to 31 July 2017.<sup>329</sup> This covered a cumulative period of greater than 12 months.
152. At all material times, Ms Battista's employment was covered by her contract of employment as a Manager Communication and Engagement, which was made on 23 September 2015. On 11 May 2016, Mr Mileham offered Ms Battista the temporary position of Acting DEDA, commencing on 16 May 2016. The letter containing the offer noted that *"in accepting this offer, you will receive higher duties whilst acting in this position. The full terms and conditions of your employment remain the same as outlined in your current contract"*.<sup>330</sup>
153. The letter of offer also stated that *"The duration of this acting appointment will be in line with the recruitment of the Director Economic Development and Activation"*.
154. Ms Battista signed the letter of offer on 19 May 2016.<sup>331</sup>
155. The Inquiry considers the letter of offer for the temporary position of Acting DEDA and Ms Battista's Manager's contract should be read together and set out the terms of Ms Battista's contract for the temporary position of Acting DEDA.
156. However, the Inquiry does not consider that this contract had an expiry date, something required by section 5.39(3)(a) of the LG Act. The contract term being *"in line with the recruitment"*, is not a period that has the required certainty about it. Its end date is far from clear.<sup>332</sup> It does not specify whether the contract ends when the recruitment panel determines who is the preferred candidate, or when Council accepts a recommendation to appoint someone, or when someone commences in the position. In this sense, the event triggering the expiry of the contract is unascertainable and what is specified in the contract is not an expiry date.<sup>333</sup>

157. Without an expiry date, the contract for the temporary position of Acting DEDA was of no effect,<sup>334</sup> and Ms Battista's employment fell to be covered by her Manager's contract. In those circumstances, Ms Battista was still entitled to be paid a higher duties allowance while performing the duties of the DEDA.<sup>335</sup> However, without a contract for the position in which she was acting, she was not permitted to act in the position of DEDA for more than one year.
158. Ms Pember suggested to Mr Mileham that a dispensation to allow for Ms Battista to act beyond 12 months would be reasonable and fair. However, in her evidence before the Inquiry, Ms Pember said she could not recall where the idea had come from, and she did not know if the LG Act permitted any such thing.<sup>336</sup> Mr Mileham relied on her advice, as he was entitled to do. However, as CEO, Mr Mileham remained responsible for authorising the payment.<sup>337</sup>
159. The Inquiry finds that, in the absence of an effective contract for the position of Acting DEDA, by authorising Ms Battista to continue to act in the DEDA position beyond 12 months, Mr Mileham caused the City to breach section 5.39(1a)(a) of the LG Act. Ms Battista should not have been allowed to act in the DEDA position, or have been paid higher duties, for more than 12 months.<sup>338</sup>
160. Mr Mileham agreed he should not have authorised the payment on 15 May 2017 in the absence of a written contract with respect to Ms Battista acting in the role,<sup>339</sup> and the Inquiry so finds. The Inquiry also finds Mr Mileham should not have authorised the payment he did on 23 March 2017, as it extended Ms Battista's higher duties to 31 May 2017,<sup>340</sup> beyond the allowable 12-month period.

#### Whether the second-round process was tainted by apprehended bias

161. Mr Mileham agreed that he expressed strong views to the effect that he wanted to appoint Ms Battista directly to the DEDA role.<sup>341</sup> In his view, it was the easiest and least problematic thing to do, and he wanted to conduct a process that was least disruptive to the City.<sup>342</sup> He offered to recommend Ms Battista be appointed on certain conditions, including a condition that she be "100% loyal" to the Executive Leadership Group and the office of the CEO. He repeatedly conveyed to City officers his preference for Ms Battista to be appointed directly to the role and to Ms Battista herself on 7 February 2017,<sup>343</sup> in a meeting between Ms Pember, Ms Battista and himself on 23 March 2017<sup>344</sup> and by email to Ms Pember, Mr Ridgwell and Mr Mianich on 27 March 2017.<sup>345</sup> He did so in the face of external legal<sup>346</sup> and internal<sup>347</sup> advice to the effect that the position should be re-advertised.
162. Notwithstanding his opinion of Ms Battista, Mr Mileham denied that he was biased in her favour. He also denied that he was on the recruitment panel so he could secure her appointment to the position. He disagreed with the proposition that it looked like he sat on the recruitment panel so he could appoint Ms Battista. Mr Mileham also disagreed with the proposition that, because of his strong views about Ms Battista, he brought a perception of bias to the recruitment panel. When it was put to him that he could have appointed someone else to the panel, Mr Mileham agreed that he could have, and that he chose not to do so.<sup>348</sup>



163. It is difficult to accept Mr Mileham's evidence on this topic. Although he had no recollection of the details of many of the events surrounding Ms Battista's appointment, he was quick to disagree with propositions that may have cast him in a negative light. By way of example, when he was initially asked whether he ever said to Ms Battista, orally or in writing, that subject to her performance in the period to the completion of his own probationary period, he would offer to recommend her appointment to Council, Mr Mileham said:
- "I didn't have – no, I don't believe because we hadn't yet run a recruitment process so any discussion like that, if it had occurred, discussion on the appointment to the position would have been subject to the provision that the recruitment process ran its course. That I'm certain of".*<sup>349</sup>
164. Mr Mileham was asked whether he ever made an offer to Ms Battista to recommend her to Council if she was 100 per cent loyal to the office of the CEO, and he said "No". He agreed it would be inappropriate to do either of those things.<sup>350</sup> When shown his "offer"<sup>351</sup> to Ms Battista, he had no memory of writing it or sending it, but stated that he would not do it again.
165. When asked why he would not do it again, Mr Mileham said:
- "Because of the line of questioning now, that it would appear that it looks like a preconceived plot to have her appointed and it was certainly not in my mind at that time ...".*<sup>352</sup>
166. On balance, the Inquiry finds Mr Mileham's evidence about whether or not he was biased towards Ms Battista unconvincing. The Inquiry instead finds Mr Mileham consistently expressed a preference to directly appoint Ms Battista to the position of DEDA, in the period leading up to the second-round recruitment process and at least from 7 February 2017.<sup>353</sup> Furthermore, he chose to be the chair of the recruitment panel in circumstances where he could have chosen someone else to take his place.<sup>354</sup>
167. The Inquiry considers that a fair-minded observer, having knowledge of all of the relevant facts, might reasonably come to the view that Mr Mileham might not bring an impartial mind to the second-round recruitment process. On that basis, it could properly be said that Mr Mileham had an apprehended bias and should not have participated in that process.<sup>355</sup>
168. The recruitment panel's decision to recommend Ms Battista for the role was unanimous and the Inquiry is not critical of the recruitment panel's decision-making. However, Mr Mileham risked the decision-making being tainted by his apprehended bias. This risk should and could have been avoided by Mr Mileham stepping away from the recruitment process. In failing to do so, he acted in a way which called into question the City's Recruitment and Selection procedure, which stated that *"Recruitment and selection processes are open, competitive and free of bias, unlawful discrimination, nepotism or patronage"*.<sup>356</sup>

### Whether Ms Lisa Scaffidi breached confidence by speaking to Ms Wendy Earl in May 2017

169. Ms Earl told the Inquiry that, on 24 May 2017, Ms Scaffidi called her, telling her the call was confidential. Ms Earl said Ms Scaffidi told her she would not be invited for an interview for the position of DEDA, because the CEO did not want someone who had previously worked at the City and that he wanted Ms Battista for the role. Ms Scaffidi asked Ms Earl not to tell anyone anything.<sup>357</sup>
170. Although Ms Scaffidi could not recall specifically speaking to Ms Earl on 24 May 2017, she said Ms Earl may have contacted her or they could have met face-to-face.<sup>358</sup> Ms Scaffidi said she told Ms Earl that it was made clear that Mr Mileham wanted “*new blood*” or words to that effect and she may have said the CEO did not want anyone who had previously worked at the City.<sup>359</sup> Ms Earl had previously worked for the City. In circumstances where Ms Scaffidi acknowledged speaking to Ms Earl, but could not recall all of the details, and Ms Earl recalls similar and additional detail, the Inquiry accepts and prefers the evidence of Ms Earl, particularly in its additional detail.
171. Accordingly, the Inquiry accepts that a conversation between Ms Earl and Ms Scaffidi occurred on 24 May 2017 and that Ms Scaffidi told Ms Earl she would not be invited for interview for the role of DEDA, because the CEO did not want someone who had worked at the City before and wanted to appoint Ms Battista.
172. The Inquiry finds the information Ms Scaffidi conveyed to Ms Earl was confidential information, because it related to the ongoing selection of a DEDA. By providing this information to Ms Earl, Ms Scaffidi passed on confidential information and, in so doing, breached the City’s confidence.

## Findings

### Finding 2.3.2 – 2

The Inquiry makes the following findings:

- i. On 9 June 2016, Ms Scaffidi provided confidential information about the recruitment process for the DEDA position to Ms Battista, who had applied for the role.
- ii. Ms Scaffidi overstepped her role as Lord Mayor and interfered in the day-to-day administration of the City in the two recruitment processes for the position of DEDA by:
  - requesting copies of the confidential applications of Ms Cant, Mr Gunningham and Ms Battista on 28 June 2016;
  - conducting a quasi-interview with Ms Cant, the recruitment panel's preferred candidate for the position, on 30 June 2016;
  - providing Mr Mileham with her views on the suitability of Ms Cant and Ms Battista for the position on 11 July 2016;
  - requesting a long list of candidates from Mr Mileham on 24 May 2017;
  - requesting a short list of candidates from Mr Mileham on 31 May 2017; and
  - suggesting to Mr Mileham that the City interview Mr Gogol for the position on 31 May 2017.
- iii. Mr Mileham enabled Ms Scaffidi to overstep her role as Lord Mayor in the two recruitment processes for the position of DEDA by:
  - allowing Ms Scaffidi to meet Ms Cant on 30 June 2016;
  - discussing the recruitment process with Ms Scaffidi and providing her with a long list of candidates on 24 May 2017; and
  - directing Ms Pember to provide Ms Scaffidi with a short list of candidates on 31 May 2017.
- iv. On 19 July 2016, during the Council Briefing Session, Ms Scaffidi acted inappropriately by making a derogatory remark about Ms Cant and assessing Ms Cant's suitability for the role of DEDA with reference to her personal appearance.
- v. On 22 July 2016, Ms Davidson went beyond her role as a council member and interfered in the day-to-day administration of the City when she requested the CVs of candidates for the DEDA position.
- vi. On 22 July 2016, Ms McEvoy went beyond her role as a council member and interfered in the day-to-day administration of the City when she supported Ms Davidson's request as above and requested Ms Battista's CV.

### Finding 2.3.2 – 2 (contd)

- vii. From 18 May 2017 until 5 July 2017, the City, through the conduct of Mr Mileham, breached section 5.39(1a)(a) of the LG Act, by allowing Ms Battista to act in the position of Acting DEDA for a period exceeding 12 months.
- viii. Between 11 August 2016 and 5 July 2016, Mr Mileham had apprehended bias in favour of Ms Battista in the recruitment process to recruit a DEDA.
- ix. On 24 May 2017, Ms Scaffidi provided confidential information about the City's recruitment process for the DEDA position to a third party.

## Performance management and termination of employment of an employee

### Introduction

1. On 4 November 2013, Mr Diranjan (Dillon) Fernando was employed by the City of Perth (City) as Catering Supervisor. Among other things, he was responsible for managing the operational side of the catering and the dining room of the City for civic events and for City of Perth Council (Council) functions, which involved civic or ambassadorial type functions as well as Council dinners and lunches. Mr Fernando was employed in the Economic Development and Activation Directorate.<sup>360</sup>
2. In 2016 and 2017, concerns were raised about Mr Fernando's performance and behaviour and Ms Lisa Scaffidi became involved in the City's management of Mr Fernando's employment, which was exclusively the role of the City's Administration.
3. On 23 November 2017, Mr Fernando was dismissed from his employment with immediate effect for serious misconduct. Following an application to the Fair Work Commission, the parties agreed to rescind the dismissal and allow Mr Fernando to resign as of 23 November 2017.

### Timeline

2013	4 November	Mr Dillon Fernando was employed by the City as Catering Supervisor.
2016	2016 and 2017	Concerns were raised about the performance and behaviour of Mr Fernando.
	1 February	Mr Michael Carter was terminated as Director, Economic Development and Activation (DEDA) effective 26 February 2016.
	24 February	Ms Annaliese Battista, as Manager, Marketing and Communications, assumed responsibility for the Marketing and Events Unit. Mr Fernando was a member of that unit.
	19 April	Ms Battista met with Mr Fernando to discuss accumulation of excessive flexi-time and working overtime without prior approval.
	21 April	Ms Scaffidi, Lord Mayor, by email to Ms Battista, attested to the "valued" performance of Mr Fernando as Catering Supervisor.
	16 May	Ms Battista was appointed as Acting DEDA.
	1 September	Mr Martin Mileham was appointed as Chief Executive Officer (CEO).

2017	Mid-2017	The City addressed concerns relating to irregularities with some contracts managed by Mr Fernando.
	5 July	Ms Battista was appointed as the DEDA.
	7 September	Ms Scaffidi undertook not to perform the powers or duties of Lord Mayor pending a Court of Appeal decision.
	22 September	Ms Battista put eight allegations of serious misconduct in relation to catering processes to Mr Fernando in a letter dated 22 September 2017. Mr Fernando prepared a response to that letter, with the assistance of Ms Scaffidi.
	5 October	Mr Fernando's response to the letter of 22 September 2017 was sent to Ms Battista.
	14 November	Ms Battista advised Mr Fernando by letter that she would be recommending his dismissal for serious misconduct.
	23 November	Mr Mileham, CEO, terminated Mr Fernando's employment for serious misconduct on 23 November 2017. However, after a review by the Fair Work Commission the dismissal of Mr Fernando was rescinded, allowing Mr Fernando to resign from his position as Catering Supervisor, as of 23 November 2017.

### Issues considered by the Inquiry

4. Consistent with A.3(i), A.3(iii) and A.3(v) of its Terms of Reference, the Inquiry has considered the following issues in relation to Mr Fernando's resignation:
  - whether Ms Scaffidi attempted to exert any influence over those charged with managing Mr Fernando's performance; and
  - whether Ms Scaffidi placed her personal interests or those of Mr Fernando above those of the City when she assisted Mr Fernando to respond to allegations of misconduct.
5. Although this matter concerns the performance management and eventual resignation of Mr Fernando, it is not necessary for the Inquiry to make any findings about Mr Fernando's performance or conduct as an employee and it makes no findings on these matters.

## Investigation by the Inquiry

### Witnesses

6. The Inquiry held private hearings with a number of people in the course of investigating this matter. The positions given below are the positions held at the time of the events described in this Section.

- Council members Ms Scaffidi, Mr Jim Adamos, Ms Lily Chen, Ms Janet Davidson, Dr Jemma Green, Mr Reece Harley, Mr James Limnios, Ms Judy McEvoy and Mr Keith Yong.
- Mr Martin Mileham, Chief Executive Officer (CEO).
- Mr Michael Carter, Director, Economic Development and Activation (DEDA), from 21 September 2015 to 26 February 2016.
- Ms Michelle Howells, Manager, Human Resources, from 21 July 2014 to 3 February 2017.
- Ms Annaliese Battista, DEDA from 5 July 2017 to 22 June 2018. Ms Battista joined the City on 20 October 2015 as the Manager, Communications and Engagement. She was the Manager, Marketing and Communications from 23 February 2016 and acted as the DEDA from 16 May 2016 until her permanent appointment.
- Ms Kelly Pember, Human Resource Business Partner from 9 February 2015 to 17 November 2017 and the then Acting Manager, Human Resources from 6 February 2017 to 17 November 2017.

7. Mr Fernando did not give evidence to the Inquiry. This is because the Inquiry was concerned with and examined the City's processes in relation to Mr Fernando's employment. The Inquiry did not investigate, and deliberately makes no findings in relation to, Mr Fernando's conduct or performance as an employee.
8. Ms McEvoy and Mr Yong were not re-elected as councillors in the Local Government Ordinary Elections in October 2017. Dr Green was elected as a councillor in October 2015.



## Evidence obtained by the Inquiry

### Performance management

9. Mr Carter commenced as the inaugural DEDA on 21 September 2015. At that time, Mr Fernando reported to Ms Louise Scott, then Manager, Marketing, Communications and Events, who in turn, reported to Mr Carter.<sup>361</sup>
10. On 21 December 2015, Mr Carter, Ms Scott and Mr Fernando met. Mr Fernando's alleged inappropriate behaviour was discussed. This was considered to be a repeat of earlier similar behaviour and contrary to Council Policy "CP10.1 – Code of Conduct". Mr Fernando denied the allegations both during the meeting and in a subsequent email exchange with Ms Scott and Mr Carter.<sup>362</sup>
11. In subsequent weeks, Mr Carter followed up with Mr Fernando several times to ensure Mr Fernando understood the severity of the situation.
12. Mr Carter gave evidence that in early 2016 he informed Mr Stevenson, CEO, of his concerns with Mr Fernando's performance and also mentioned to Ms Scaffidi that he may "need to let Dillon go if he doesn't shape up". Mr Carter told the Inquiry:
 

*"It was just, I was there in the room, we had a meeting concluding and I said 'Look I might just need to let you know'. She seemed concerned about that, like, 'Well, Dillon's very good, he knows exactly what I like to order. It would be a shame, you better look into that. You better think about that seriously' and I said 'Well, at the end [of the] day this guy is not acting in accordance – in the manner that he should so, we would need to let him go'. I had no further discussion with the Lord Mayor on that".*<sup>363</sup>
13. Ms Scaffidi did not recall this conversation but denied she would have said those words because that is not how she speaks. Ms Scaffidi accepted, if she had said those words, it would have been unreasonable and interfered with the day-to-day operations of the City's Administration.<sup>364</sup>
14. Mr Carter presented as a candid witness attempting to assist the Inquiry. By contrast, Ms Scaffidi was often combative, frequently gave unresponsive answers to Counsel Assisting's questions and required questions to be repeated. When giving evidence on her alleged conversation with Mr Carter, Ms Scaffidi could only speculate on what she would not have said.
15. Given Mr Carter had a good recollection of the conversation and Ms Scaffidi had no recollection, the Inquiry prefers Mr Carter's evidence on this issue and finds that in early 2016, Ms Scaffidi said to Mr Carter words to the effect "Dillon's very good, he knows exactly what I like to order. It would be a shame, you better look into that. You better think about that seriously" when Mr Carter had said to her that he may need to terminate Mr Fernando's employment "if he (Mr Fernando) doesn't shape up".

16. On 14 January 2016, Mr Carter briefly met with Mr Fernando and advised him he would need to move his desk from the Lord Mayor's office on level 11 down to level 2, where the civic events team was located.<sup>365</sup> Mr Carter later confirmed his direction in an email to Mr Fernando.<sup>366</sup> Mr Fernando responded to the email, writing that he would like to remain on level 11 and that *"Even the LM and council members are in favour of me been located in [sic] Level 11"*.<sup>367</sup> Mr Fernando apparently raised the issue with Ms Scaffidi, who expressed her concern to Mr Carter.<sup>368</sup>
17. Mr Fernando complied with Mr Carter's direction for a short while, before moving himself back up to level 11.<sup>369</sup>
18. Mr Carter found the level of involvement by Ms Scaffidi in his dealings with an employee under his supervision *"extremely unusual"* given that Mr Fernando was in a *"fairly junior"* role in the City.<sup>370</sup>
19. Mr Carter left the City on 26 February 2016 and Mr Gary Dunne became the Acting DEDA until he left the City on 12 May 2016. Mr Carter's employment with the City ended abruptly and there is no evidence that Mr Fernando's performance was the subject of any kind of handover.
20. Ms Battista commenced employment with the City on 20 October 2015 in the role of Manager, Communications and Engagement. On 24 February 2016, Ms Battista's position was changed to Manager, Marketing and Communications and, among other responsibilities, she assumed responsibility for the Marketing and Events Unit. This unit, included catering and civic services, in which Mr Fernando was a team member.<sup>371</sup>
21. In her new role, Ms Battista *"very quickly established"* that Mr Fernando had had *"some performance and conduct issues of concern"*. Ms Battista found Mr Fernando was quite difficult to manage and he did not accept direction very well. Ms Battista also noticed that Mr Fernando had significant contact with council members, from whom he would take direction, with these directions often differing to those given by herself or his supervisor in civic services, Ms Lauren Fancote. Mr Fernando would often accommodate special requests from council members to cook things a certain way or to provide a certain style of meal, or an additional dessert.<sup>372</sup> One such request was made by Ms Scaffidi on 13 May 2016 for Mr Fernando to arrange a birthday cake for Ms McEvoy.<sup>373</sup>
22. During April 2016, an issue arose where Mr Fernando was availing himself of what Ms Battista believed to be excessive flexi-time and working overtime without seeking prior approval.<sup>374</sup> On the morning of 19 April 2016, Ms Battista met with Mr Fernando to discuss these matters and later that same day confirmed their discussion by email at 3.41 pm.<sup>375</sup> Mr Fernando forwarded this email to Ms Scaffidi at 4.53 pm that same afternoon with the message *"hello Lord mayor. Please see attached"*.<sup>376</sup>

23. The following day, on 20 April 2016, Ms Battista and Ms Pember, Human Resource Business Partner, had a meeting with Mr Fernando regarding his overtime claim. This meeting was held on the same day as a Council dinner.<sup>377</sup> Later that same day, at 7.30 pm, following the Council dinner, Ms Scaffidi emailed Mr Fernando, copying in Ms Battista, Mr Mileham the Acting CEO, and council members Ms Davidson and Ms McEvoy, saying that four separate people commented about “*all aspects of the food, beverage and service*” and thanked Mr Fernando for his commitment in this regard.<sup>378</sup>
24. At 9.26 pm that evening, Ms Battista responded to Ms Scaffidi stating that she appreciated the feedback and that the catering team consistently delivered at a high standard. Ms Battista advised Ms Scaffidi that the Administration was “*working through some serious HR issues with regards to Dillon’s behaviour and conduct including three recent written complaints from external service providers*” and that she would aim to resolve the matters in the City’s favour for all concerned.<sup>379</sup>
25. Ms Scaffidi responded to Ms Battista’s email on 21 April 2016 at 6.39 am and copied in Mr Mileham. Ms Scaffidi wrote:

*“Goodmorning*

*I appreciate you sharing this information with me. I hope you will allow me to provide some context on Dillon as I have got to know him very well & regard him highly.*

*Dillon works so hard (many could take a leaf out of his book) and is so committed to providing the best he can in his area for the Crs [councillors] and for the City.*

*Without knowing the exact details my guess would be the external service providers are food providers and possibly even our caterer?*

*No doubt Dillon has pushed them to provide the best possible service and they have baulked.*

*Reality is [the caterer is] very inconsistent.*

*Recently I was invited to the Stirling dining room and they have a in house Chef as well as a person in Dillon’s role. When you think about the amount of money we pay an outside caterer we ourselves could probably employ a chef who would provide fresher and better food.*

*Being Sri Lankan Dillon is very polite and very tuned into a high level of service.*

*His expectations may occasionally put pressure on others to deliver. That is all I will say on the matter for now as I would appreciate a full overview when we meet.*

*His role is a very difficult role to fill given the odd and long hours. There are so many events like citizenship last night and yet early starts with other events on level 11, as early as 930 some mornings.*

*I know I speak for all the Crs when we say how much we value him.*

*Talk more in [sic] this later.”<sup>380</sup>*

26. Ms Scaffidi accepted that by sending this email, she was becoming involved in the day-to-day management of the City's Administration and that it was wrong. However, Ms Scaffidi gave evidence that it was appropriate for her to send the email, because she felt that Mr Fernando was being victimised by Ms Nicola Brandon and Ms Battista. Ms Scaffidi said she believed what Mr Fernando told her about the *"three written complaints from external service providers"* and that Ms Battista was soliciting external complaints to try to terminate his employment. Ms Scaffidi did not know that Ms Battista and Human Resources were attempting to discipline Mr Fernando because of his behaviour and conduct. According to Ms Scaffidi, Ms Battista did not tell Ms Scaffidi that Mr Fernando was being performance managed and Ms Scaffidi was not privy to the procedures followed in the performance management of an employee.<sup>381</sup>
27. Ms Battista gave evidence that Ms Scaffidi's *"guess"* that the written complaints came from businesses providing food to the City and the City's caterer was incorrect, although Ms Battista said she believed one of the contractors had contacted her by email.<sup>382</sup> Ms Battista also said that Ms Scaffidi's assumption that *"Dillon has pushed them to provide the best possible service and they have baulked"* was incorrect.<sup>383</sup>
28. Ms Battista forwarded Ms Scaffidi's email to Ms Pember at 8.50 am on 21 April 2016. Ms Pember replied that she would ensure *"all information is captured"* on Mr Fernando's employee relations file. In the subsequent email exchange, at 10.13 am Ms Battista acknowledged Ms Pember's email and said *"you can likely infer where this is headed and I want to make sure I manage it effectively, so will keep you advised"* and that she would send her all correspondence. At 10.16 am, Ms Pember replied stating *"it is a very difficult matter to navigate through given the level of involvement and must feel like a minefield for you"*.<sup>384</sup>
29. Ms Battista sent another email to Ms Pember, on 26 April 2016, advising, among other things:

*"On a separate issue, but so it is noted, following the meeting between Dillon, yourself and myself on 20 April, Dillon made separate verbal complaints about me to the Lord Mayor, Deputy Lord Mayor, Councillor Davidson and Councillor McEvoy about the meeting (all of whom subsequently contacted me to follow-up and to whom I explained the circumstances). In our meeting on Wednesday, 27 April 2016, I advised Dillon this was highly inappropriate"*.<sup>385</sup>
30. Mr Mileham recalled that on more than one occasion, Ms Scaffidi told him that she believed Mr Fernando was doing a good job in the catering role. Mr Mileham recalled that during April 2016, Ms Scaffidi spoke to him about her concerns that Mr Fernando was being unfairly treated and he assured her that was not so.<sup>386</sup> Mr Mileham did not think this contact was appropriate and agreed Ms Scaffidi made it difficult for him to assert himself with respect to Mr Fernando, because she would argue with him. Mr Mileham characterised this argument as debate.<sup>387</sup>

31. Ms Battista was appointed to the role of Acting DEDA on 16 May 2016, following the departure of Mr Dunne. Ms Brandon acted in her role as Manager, Marketing and Communications, with management oversight of Mr Fernando.<sup>388</sup> As Acting DEDA, Ms Battista worked closely with Ms Brandon to manage Mr Fernando, because it was “quite time and labour intensive” and it appeared that it was stressful for Ms Brandon.<sup>389</sup>
32. Ms Brandon engaged with Mr Fernando through weekly meetings about his performance, which included using his desk on level 2, as Mr Fernando had a propensity to be absent from his desk and to spend most of his time on level 11 where the Lord Mayor’s office was located, as well as levels 9 and 10. Level 10 was where the Councillors and the Deputy Lord Mayor had their offices and the dining room was located on level 9. All three levels had restricted access.<sup>390</sup>
33. When Ms Battista became aware of issues, including Mr Fernando’s frequent absences from his desk on level 2, his tendency to be late or miss meetings with Ms Brandon and his failure to answer his telephone when Ms Brandon tried to call him, Ms Battista insisted Mr Fernando used his desk on level 2 and sit there when he was not engaged in catering duties. However, according to Ms Battista, Mr Fernando “*did absolutely everything he could to evade his desk on level 2*”.<sup>391</sup>
34. On 3 October 2016, Mr Mileham commenced as the permanent CEO.<sup>392</sup>
35. In late November 2016, the performance and conduct of Mr Fernando was still unsatisfactory.<sup>393</sup> On 17 November 2016, Mr Fernando emailed Ms Scaffidi writing, “*can I please have 5 minutes of your valuable time to inform you a certain matter which is bothering me immensely at present. I thought it is gone but it has come back again. Extremely sorry for any inconvenience. thanks*”.<sup>394</sup> Ms Scaffidi responded, “*call me but I can’t talk for long*”.<sup>395</sup>
36. On 23 November 2016, Ms Battista sent an email to Ms Brandon with a copy to Ms Pember, advising that she had attended the Audit and Risk Committee and Council Meetings the previous night. Ms Battista wrote:

*“Two Elected Members approached me separately and confidentially to broach the subject of Dillon (one with a third Councillor present).*

*He has been conveying details of his recent interactions with you and I to Elected Members and from what I can gather, appealing to them for support. The Elected Members enjoy excellent service from Dillon and they in turn are very supportive of him.*

*This is concerning on a number of levels. Firstly, Dillon should not be sharing HR issues with Elected Members. We have been clear with him about this. Secondly, Elected Members are potentially in breach of the Act by interfering in operational matters such as staff management (I will deal with this separately as is appropriate). Can you please counsel Dillon about this as part of your meeting?”*<sup>396</sup>

37. On 6 December 2016, Ms Brandon and Ms Pember met with Mr Fernando to discuss ongoing concerns with his behaviour and failure to follow reasonable instructions. The following day, Ms Brandon summarised the matters discussed in writing and Mr Fernando was invited to respond to the matters raised by 13 December 2016. Among the matters raised, was the approach to Ms Battista by the council members on 23 November 2016. Ms Brandon reminded Mr Fernando he had been previously instructed not to discuss his human resources matters with the council members and she reiterated that such discussions *“will not be tolerated and must stop immediately”*.<sup>397</sup> Mr Fernando formally responded to allegations in an undated letter denying all allegations.<sup>398</sup>
38. A follow-up meeting with Mr Fernando was delayed until 19 January 2017. Ms Brandon summarised the discussion in a letter to him dated 24 January 2017, confirming the City was instigating an eight-week performance improvement plan with set and specific expectations consistent with his role requirements and the City’s policies and procedures. Mr Fernando was advised that if his performance was deemed to be unsatisfactory during this period his ongoing employment with the City could be impacted.<sup>399</sup>

#### **Disciplinary matters – contract issue and termination of Mr Dillon Fernando**

39. Matters with Mr Fernando escalated around mid-2017, when the City decided to act in relation to certain irregularities with some of the contracts managed by Mr Fernando.
40. On 4 September 2017, the State Administrative Tribunal (SAT) made an order that Ms Scaffidi be disqualified from holding office as a member of Council for 18 months, commencing at midnight on Thursday, 7 September 2017. That order was stayed by the Western Australian Court of Appeal on 7 September 2017. The order of the SAT was ultimately set aside and the matter was remitted to the SAT for consideration of new orders.<sup>400</sup>
41. At that time, Ms Scaffidi did not return to work and provided the Court of Appeal with an undertaking that she would not:  
*“... perform any of the powers or duties conferred upon her as Lord Mayor by the Local Government Act 1995 (WA) and the City of Perth Act 2016 (WA) until the determination of this appeal and the appeal in CACV 57 of 2017”*.<sup>401</sup>
42. After a preliminary investigation, Ms Battista, who had recently been appointed permanently as the DEDA, put eight allegations of serious misconduct in relation to catering processes to Mr Fernando in a letter dated 22 September 2017.<sup>402</sup> Mr Fernando was advised that, in view of the serious nature of the allegations, he would be stood down on full pay while the City investigated the matters further and he was invited to respond to the allegations. He was further advised that the City had reported the matter to the Corruption and Crime Commission.

Ms Battista also wrote that the matter was strictly confidential and:

*“Additionally you are not to approach or contact any of the City’s employees or elected members, either directly or indirectly about the matters under investigation”.*<sup>403</sup>

43. After being advised of the allegations, Mr Fernando contacted Ms Scaffidi by telephone. Ms Scaffidi told the Inquiry that Mr Fernando, during this call, was hard to understand, because he was emotional and *“tripped over his words”*. Ms Scaffidi said she asked him to explain, and Mr Fernando told her that he had been given some questions to answer and he was upset. Ms Scaffidi discussed the allegations with him and then asked him to send the questions to her email. She then went through them with him and was *“writing down what he’s telling me verbatim”*.<sup>404</sup>
44. Ms Scaffidi then sent this document to Mr Fernando, which she told the Inquiry was verbatim. Ms Scaffidi said she then told him, *“you’ve just got to be very sure that you put them in good grammatical English”*. Ms Scaffidi then sent the answers to Mr Fernando, which she said were verbatim and she did not *“embellish, add or change in any way what he had said to me”*.<sup>405</sup> Ms Scaffidi later conceded, after being shown the document, that perhaps it was not wholly verbatim and perhaps she corrected the English, although she maintained that it was *“pretty solid to the discussion that was had”*.<sup>9</sup>
45. Ms Scaffidi did not agree that she had a conflict of interest when she assisted Mr Fernando in drafting his response. She said she was not aware she had a conflict of interest at the time. Ms Scaffidi did not agree that she should not have helped Mr Fernando but agreed, in hindsight, that the best way for her to have helped Mr Fernando would have been to refer him to someone else.<sup>406</sup>
46. On 5 October 2017, the document Ms Scaffidi produced for Mr Fernando was sent to Ms Battista as his response to the allegations against him.<sup>407</sup>
47. After investigating Mr Fernando’s response and finding seven of eight allegations substantiated, Ms Battista formally advised Mr Fernando, by letter on 14 November 2017, that she would be recommending his dismissal from his employment for serious misconduct. Mr Mileham, CEO, terminated Mr Fernando’s employment by the City for serious misconduct with immediate effect on 23 November 2017.<sup>408</sup>

### Aftermath

48. In a letter to Mr Mileham dated 23 December 2017, Ms Battista wrote about Ms Scaffidi’s defence of Mr Fernando and what she saw as the *“prevention”* of her ability to *“appropriately discipline, performance manage and ultimately terminate his employment”*, despite strong evidence that he was engaging in alleged minor and serious misconduct over more than three years.

<sup>9</sup> Transcript, L Scaffidi, private hearing, 31 July 2019, p 20-23. Ms Scaffidi conceded that instead of *“as per Q3 above”* she may have interpreted Mr Fernando’s answer: Transcript, L Scaffidi, private hearing, 31 July 2019, p 23.



49. Ms Battista stated that in *“the absence of this interference”* she was able to fully investigate Mr Fernando’s conduct and terminate his employment on 23 November 2017.<sup>409</sup>
50. Mr Fernando made an unfair dismissal claim to the Fair Work Commission and after a review, the parties agreed to rescind the dismissal and allow Mr Fernando to resign as of 23 November 2017.<sup>410</sup>

## Analysis

### Ms Lisa Scaffidi’s interference in Mr Dillon Fernando’s employment

51. The Inquiry finds, that in her discussion with Mr Carter in early 2016 and by sending her email on 21 April 2016 to Ms Battista, Ms Scaffidi attempted to direct the Administration and those responsible for managing Mr Fernando’s employment and overstepped her role as Lord Mayor. In doing so, Ms Scaffidi contravened regulation 10(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations), which prohibited a council member from attempting to direct a City employee to do or not do anything in their capacity as an employee.
52. Irrespective of how Ms Scaffidi felt about Mr Fernando’s performance as an employee or the way the Administration was dealing with him<sup>411</sup>, it was not the role of a Lord Mayor to become involved in, or attempt to direct, the management of an employee.<sup>412</sup>
53. The Inquiry notes that when Ms Scaffidi intervened through her email of 21 April 2016, she relied on what Mr Fernando had told her, made erroneous assumptions about the allegations of misconduct against Mr Fernando and was not aware of the disciplinary processes being carried out by the City. This is consistent with Ms Battista’s evidence before the Inquiry, where she gave her opinion that council members *“didn’t have either the knowledge or the ability to make informed decisions or judgments about any employee other than the CEO because they simply didn’t have the exposure”*.<sup>413</sup>
54. Ms Battista and Ms Pember gave evidence that Mr Fernando’s communications with Ms Scaffidi and other council members made managing Mr Fernando’s employment more difficult.
55. Ms Battista observed *“there was usually a correlation between some form of counselling or disciplinary measure and contact from Elected Members”*. Ms Battista’s experience was that a day or two after Mr Fernando was counselled or disciplined in respect of his performance as an employee, Ms Battista was contacted by council members and told that Mr Fernando *“was an outstanding employee, an exemplary employee”*. Ms Battista gave evidence that this contact from council members made it more difficult for her to do her job.<sup>414</sup>

56. Ms Pember gave evidence in relation to Ms Scaffidi's email of 21 April 2016 and said:

*"... receiving emails of that nature from the Lord Mayor implies and makes Dylan believe or which he did believe that he is doing absolutely nothing wrong, that this process is a witch hunt, that he is performing exceptionally well, he has had the greatest review and appraisal that he could ever seek from the Lord Mayor and that our conduct as his manager, as the director, as a HR representative is targeted, is unfair, is bullying. It gives him that sense that we are targeting him unfairly which makes managing a process of that nature very difficult.*

*MS OLDFIELD: More difficult?---More difficult, that's right, because he has an inflated view of his work and he is almost protected in a way from this kind of process.*

*So he is protected or he perceives that he's protected?---He perceives or believes that he is protected. When you have the Lord Mayor and Councillors in very favourable of your performance and we receive emails of that nature and obviously you can see how the Lord Mayor has written to Annaliese around her feelings around Dylan it makes that management of a process very difficult for all parties including Dylan".<sup>415</sup>*

#### Preparation of a response to allegations of serious misconduct

57. Part 3 of the Council Policy "CP10.1 – Code of Conduct" deals with conflict and disclosure of interests. At the relevant time, clause 3.1 specifically dealt with conflicts of interest and provided that members and employees must ensure there was no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their public duties and functions.<sup>416</sup>
58. Ms Scaffidi and Mr Fernando were work friends.<sup>417</sup> The Inquiry has numerous emails between Ms Scaffidi and Mr Fernando, which demonstrate there was a personal friendship between them.<sup>418</sup> Ms Scaffidi and Mr Fernando were in direct contact<sup>419</sup> and Ms Scaffidi would often make herself available to Mr Fernando if he said he needed her attention.<sup>420</sup>
59. Whether Ms Scaffidi contributed to the substance of Mr Fernando's response to the City or not, by agreeing to assist Mr Fernando in the way she did, she had, at the very least, a potential, if not actual, conflict of interest between her personal interest in her friendship with Mr Fernando and her responsibility as Lord Mayor to act in the best interests of the City.

## Findings

### Finding 2.3.2 – 3

The Inquiry makes the following findings:

- i. In her discussion with Mr Carter in early 2016 and by sending her email to Ms Battista at 6:39 am on 21 April 2016, Ms Scaffidi attempted to direct the Administration and those responsible for managing Mr Fernando's performance. In so doing, Ms Scaffidi overstepped her role as Lord Mayor and may have breached regulation 10(1)(a) of the Conduct Regulations.
- ii. Between 21 September 2017 and 6 October 2017, Ms Scaffidi had a potential, if not actual, conflict of interest when she assisted Mr Fernando to prepare a response to allegations of misconduct.

## Endnotes

- 1 *Local Government Act 1995*, s 5.36(3), s 5.40, Division 6; *Local Government (Rules of Conduct) Regulations 2007*.
- 2 Chapter 2.3.3 – Financial management and planning; Chapter 2.4.1 – Events leading to the suspension of the Council.
- 3 Terms of Reference, A.3(i).
- 4 Report, Crowe, Review of Governance and Financial Matters, August 2019, p 63-65.
- 5 Report, Crowe, Review of Governance and Financial Matters, August 2019, p 140-142.
- 6 Report, City of Perth, Annual Report 2017/2018, p 67. Average cost per employee is calculated by dividing the “Employee Costs (including costs capitalised)” by the “Number of Employees (including full-time, part-time and casuals)”; Employee costs per 1,000 City residents is calculated by the “Employee Costs (including costs capitalised)” being divided by “Estimated Residential Population” and then dividing by 1,000. There was a 16 per cent increase in residents in 2016/2017 following the boundary changes resulting from the City of Perth Act 2016. Reports, PwC and Local Government Professionals Australia, Australian Local Government Performance Excellence Program – City of Perth – FY 2016, 28 February 2017, p 12; FY 2017, 15 December 2017, p 11; FY 2018, 13 December 2018, p 11; Reports, PwC and Local Government Professionals Australia, Australian Local Government Performance Excellence Program – City of Perth – FY 2016, 28 February 2017, p 12; FY 2017, 15 December 2017, p 11; FY 2018, 13 December 2018, p 11: ‘Changes in the workforce’ arrivals and departures. Reports, PwC and Local Government Professionals Australia, Australian Local Government Performance Excellence Program – City of Perth – FY 2018, 13 December 2018, p 11: ‘Diversity’; Document, City of Perth, Equal employment opportunity survey 2018, May 2018: ‘Diversity’. Document, City of Perth, Workers’ compensation claims register for 2015/2016, 2016/2017 and 2017/2018, 18 July 2019: ‘Health and Safety’. Report, Tower Human Capital Group, Performance Analysis, Assessment and Review of the HR function, December 2018, p 96.
- 7 Document, City of Perth, Issue Register – Grievances for the period of 1 October 2015 – 1 March 2018, updated 15 April 2019.
- 8 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017, p 38.
- 9 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017, p 38.
- 10 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017, p 33-34.
- 11 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017, p 36-38.
- 12 Report, State Services Authority Victoria, Organisational Culture, 2013, p 5, 9; Chapter 2.1.2 – Culture and governance.
- 13 Report, State Services Authority Victoria, Organisational Culture, 2013, p 17-26.
- 14 Report, CULTYR, Employee Scorecard 2017, 4 September 2017, p 17.
- 15 Report, CULTYR, Employee Scorecard 2017, 4 September 2017, p 17.
- 16 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017, p 37.
- 17 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 18 Guidelines, Department, Integrated Planning and Reporting Framework and Guidelines, October 2010.
- 19 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017, p 37.
- 20 Report, Tower Human Capital Group, Performance Analysis, Assessment and Review of the HR function, December 2018, p 7.
- 21 *Local Government Act 1995*, s 5.40.
- 22 Policy, City of Perth Council Policy Manual, CP12.4 Payments under s 5.50 of the *Local Government Act 1995*, 2 August 2017.
- 23 Policy, City of Perth Organisational Policy Manual, 13 June 2017.
- 24 Policy, City of Perth Council Policy Manual, 2 August 2017.
- 25 Procedure, City of Perth, PR0007, Recruitment and Selection, 17 May 2013, p 1-2.
- 26 Document, Recruitment and Selection Manual, p 13.
- 27 Procedure, City of Perth, PR0439, Disciplinary Guidance Notes, 23 February 2003.
- 28 Policy, City of Perth Organisational Policy Manual, OP[1], Decision making framework, s 2.3, 13 June 2017, p 13.
- 29 Policy, City of Perth Organisational Policy Manual, 19 December 2016, p 14.
- 30 Document, State Records Office, General Disposal Authority for Local Government Records: DA 2015-001, June 2016, p 157.
- 31 *Local Government Act 1995*, s 5.37(1).
- 32 *Local Government Act 1995*, s 5.37(2).
- 33 *Local Government (Rules of Conduct) Regulations 2007*, reg 9 and 10.
- 34 Terms of Reference, A.3(i).
- 35 Terms of Reference, A.3(iii).
- 36 Terms of Reference, A.3(v).
- 37 Terms of Reference, A.3(vi).
- 38 *Local Government Act 1995*, s 5.37(1); Policy, City of Perth Council Policy Manual, CP12.6, Staff – Local Government Employees – Senior Employees.
- 39 Minutes, Ordinary Council Meeting, confidential items, 11 August 2015.
- 40 Transcript, M Howells, private hearing, 20 June 2019, p 9-10.
- 41 Email, G Stevenson to Lord Mayor and councillors, 8.58 am 20 July 2015.
- 42 Minutes, Ordinary Council Meeting, 11 August 2015.
- 43 Letter, M Mileham to M Carter, 24 February 2016; Transcript, M Mileham, private hearing, 23 July 2019, p 15.

- 44 Transcript, M Carter, private hearing, 19 June 2019, p 44; Transcript, M Howells, private hearing, 20 June 2019, p 51, 57; Settlement Deed, The City of Perth and M Carter, executed 26 February 2016.
- 45 Letter, M Mileham to R Moore, 24 February 2016.
- 46 Email, M Mileham to Lord Mayor and councillors, 12.57 pm 24 February 2016.
- 47 Transcript, M Howells, private hearing, 20 June 2019, p 61; Letter, M Carter to M Mileham, 1 February 2016; Email, M Carter to M Howells, 7.14 am 26 February 2016.
- 48 Contract of Employment, The City of Perth and M Carter, 11 August 2015.
- 49 Transcript, M Mileham, private hearing, 22 July 2019, p 68-69.
- 50 Emails, L Scaffidi to M Carter, 10 February 2016.
- 51 Emails, L Scaffidi to M Mileham, 10 February 2016.
- 52 Transcript, M Mileham, private hearing, 22 July 2019, p 64.
- 53 Email, M Howells to M Mileham, 12.07 pm 19 February 2016.
- 54 Document, email attachment, Points for Martin, 19 February 2016.
- 55 Briefing Notes, Special Council Briefing Session, 23 February 2016.
- 56 Transcript, M Mileham, private hearing, 23 July 2019, p 38-39.
- 57 Email, M Mileham to J Green, 11.46 am 24 February 2016; Email, M Mileham to R Harley, 24 February 2016.
- 58 Minutes, Ordinary Council Meeting, 23 February 2016.
- 59 Transcript, M Carter, private hearing, 19 June 2019, p 44-45; Letter, M Mileham to M Carter, 24 February 2016.
- 60 Transcript, M Carter, private hearing, 19 June 2019, p 44; Transcript, M Howells, private hearing, 20 June 2019, p 51, 57.
- 61 Email, M Mileham to Lord Mayor and Councillors, 12.57 pm 24 February 2016.
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- 381 Transcript, L Scaffidi, private hearing, 31 July 2019, p 5, 7-10.
- 382 Transcript, A Battista, private hearing, 24 June 2019, p 9.
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- 384 Email thread, A Battista and K Pember, 8.50 am to 10.16 am 21 April 2016.
- 385 Email, A Battista to K Pember, 8.52 am 26 April 2016.
- 386 Transcript, M Mileham, private hearing, 22 July 2019, p 35.
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- 388 Transcript, A Battista, private hearing, 24 June 2019, p 10; Transcript, N Brandon, private hearing, 27 March 2019, p 4.
- 389 Transcript, A Battista, private hearing, 24 June 2019, p 13.
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- 392 Document, Contract of Employment, The City of Perth and M Mileham, 21 September 2016.
- 393 Transcript, K Pember, private hearing, 17 June 2019, p 32.
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- 395 Email, L Scaffidi to D Fernando, 10.51 am 17 November 2016.
- 396 Email, A Battista to N Brandon, 9.00 am 23 November 2016.
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- 399 Letter, N Brandon to D Fernando, 24 January 2017.
- 400 *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222 [213].
- 401 Associate's Record, Western Australian Court of Appeal, 7 September 2017.
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- 403 Letter, A Battista to D Fernando, 22 September 2017.
- 404 Transcript, L Scaffidi, private hearing, 10 July 2019, p 20-21.
- 405 Transcript, L Scaffidi, private hearing, 10 July 2019, p 21-22; Transcript, L Scaffidi, private hearing, 31 July 2019, p 17.
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- 407 Letter, D Fernando to A Battista, 5 October 2017.
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- 413 Transcript, A Battista, private hearing, 24 June 2019, p 65.
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- 420 Emails, between D Fernando and L Scaffidi, 11.54 am, 10.51 am 17 November 2016.

## 2.3.3 Financial management and planning

A local government plans and manages significant programmes and finances on behalf of its community. This carries with it a serious responsibility to properly manage them. They must sustainably and holistically plan for its future. Finances which are used to provide services and facilities to the community must be responsibly managed.

The governance of the City of Perth (City) during the period of the Inquiry's Terms of Reference, 1 October 2015 to 1 March 2018, consisted of the systems and processes by which it operated. Important among these were the financial management and planning processes.

This Section of the Report examines the nature of the City's integrated planning and reporting framework, the City's financial position, and its financial management practices. In addition, a partnership arrangement involving significant funding between the City and a not-for-profit organisation, the Perth Public Art Foundation, is examined. Weaknesses in systems, capability and processes are identified as well as how these are being, and can be, addressed.

### Financial management and integrated planning and reporting

#### Introduction

1. Local governments manage substantial finances to enable them to provide a wide range of public services and maintain considerable public infrastructure.
2. In order to finance their activities, councils are granted certain powers to raise funds. These are raised mainly by levying municipal rates or through other activities, including commercial enterprises. Councils also receive grant funding from the Federal and State Governments. They are also able to levy fees and charges for services.
3. Councils are required to undertake certain planning and reporting functions. This ensures they responsibly manage resources and are accountable to the public. They are often required to consult with the public while exercising these functions.
4. To deliver services efficiently and effectively, local governments must be prudent users of public funds. Local governments must be transparent and accountable, while striking a balance between community expectations and the practical limitations of revenue and expenditure.
5. Local governments require effective processes and procedures to facilitate efficient financial management. This is critical to the overall operations of a local government and for the protection of assets used for the delivery of sustainable services.

6. In achieving this goal, local governments should embrace sound principles of good governance by ensuring the sustainability of their long-term financial performance and position. The responsibility for good governance, including proper control and operation of the local government's affairs, the allocation of resources and determination of policies, rests with Council.

### Financial processes of the City of Perth

7. During the period 1 October 2015 to 1 March 2018, the *Local Government Act 1995* (LG Act) and associated regulations provided a framework for strategic and corporate planning, reporting and the management of the finances of the City of Perth (City). The framework has largely remained unchanged.
8. The City of Perth Council (Council) was ultimately responsible for governing the City's affairs, including by overseeing the allocation of its finances and resources.<sup>1</sup>
9. The Chief Executive Officer (CEO) is responsible, among other things, for:
  - ensuring advice and information relating to the City's functions is available to the Council to enable it to make informed decisions;<sup>2</sup>
  - ensuring proper accounts and records of the transactions and affairs of the City are kept;<sup>3</sup> and
  - undertaking regular (at least once every four financial years) reviews of the appropriateness and effectiveness of the financial management systems and procedures of the City and reporting on those reviews to the Council.<sup>(a)</sup>
10. Several sub-committees of the Council, each made up of three council members, provided recommendations to the Council on financial matters. Local governments are required by law to have an audit committee. The *Local Government (Audit) Regulations 1996* prescribe their minimum functions.<sup>4</sup>
11. Throughout the year, reports were prepared by administrative staff of the City to enable the Council to make financial decisions. These included reviewing the City's finances to ensure it was adhering to its annual budget.
12. Expenditure was monitored against the budget on a monthly basis by the Council's Finance and Administration Committee and the Council. The budget, as a whole, was reviewed in the first quarter of each calendar year.<sup>5</sup>
13. During the period of the Inquiry's Terms of Reference, the City had a Finance unit of approximately 30 people headed by a manager and overseen by the Director, Corporate Services. In addition, each of the City's four other directorates had a directorate accountant. Some individual business units, particularly City of Perth Parking (CPP), had its own accounting staff. There were approximately 10 senior financial staff members outside the Finance section.<sup>6</sup>

a *Local Government (Financial Management) Regulations 1996*, reg 5(2)(c). On 26 June 2018, the regulation was amended to provide for a review to occur not less than once in every three years.



### Financial planning by the City

14. For each financial year within the period of the Inquiry's Terms of Reference, the City prepared a 10-year Long Term Financial Plan to set priorities in accordance with financial resources and to measure and ensure the financial sustainability of the City.
15. It was intended that each Long Term Financial Plan would be aligned to the Corporate Business Plan and other plans, including the Asset Management Plan and the Workforce Plan, as part of the City's integrated planning and reporting processes.
16. The Department of Local Government, Sport and Cultural Industries (Department) issued guidelines for integrated planning and reporting for use by local governments.<sup>7</sup>
17. A Corporate Business Plan was produced each year and was intended to be an implementation plan for services, projects and investments for the following four years.
18. The Corporate Business Plan was to set out the local government's priorities, govern its internal business planning, and develop and integrate matters relating to resources, including asset management, workforce planning and long-term financial planning. It was to be reviewed every 12 months.<sup>8</sup>
19. The LG Act requires each local government to prepare and adopt an Annual Budget. The City's Annual Budgets were based on the projected costing of the first year of the Corporate Business Plan, with an opportunity to review during a mid-year budget review process. Part 6 of the LG Act provides for the financial management of local governments. It requires that a local government prepare an Annual Budget for the following financial year,<sup>9</sup> reviews that budget and prepares an annual financial report for the preceding financial year.<sup>10</sup>
20. Following the setting of the Annual Budget, in accordance with regulation 33A of the *Local Government (Financial Management) Regulations 1996* (Financial Management Regulations), a review of it is undertaken between 1 January and 31 March. During this review, a local government is to review the first six-months performance of the financial year, consider the financial position at the date of review and review the outcomes for the end of that financial year that are forecast in the budget.<sup>11</sup>
21. A Financial Report is to be prepared in accordance with section 6.4 of the LG Act for the end of the financial year. The Financial Report is to contain the local government's actual financial year performance and is audited by the Auditor General.
22. The Annual Budget and Financial Report are also to include a local government's intentions in relation to rates.
23. Rates are collected by local governments from ratepayers to enable revenue to be raised to fund the services and facilities provided to residents and visitors.<sup>12</sup> There are three legislative provisions relevant to the statutory requirements around financial management and rate setting by Councils.



Section 6.2(2) of the LG Act provides for the budget to be set annually by the Council. Regulation 22(1)(d) of the Financial Management Regulations requires the budget to include a “rate setting statement” showing details of:

- “(i) the revenue and expenditure that have been taken into account to determine the budget deficiency; and*
- (ii) the total amount of the general rates to be imposed; and*
- (iii) any deficit or surplus remaining after the imposition of the general rates”.<sup>13</sup>*

24. The Annual Budget is to contain the amount required to make up the deficiency, if any, shown by comparing the estimated expenditure with the estimated revenue and income.<sup>14</sup> Rate revenue is generated to cover the deficiency in funds within the budget.<sup>15</sup>
25. A rate setting statement of a local government details this deficiency and provides information on compliance with the provisions contained in section 6.34 of the LG Act. For the 2015/2016 financial year, it provides that:

- “Unless the Minister otherwise approves, the amount shown in the annual budget as being the amount it is estimated will be yielded by the general rate is not to –*
- (a) be more than 110% of the amount of the budget deficiency; or*
  - (b) be less than 90% of the amount of the budget deficiency”.<sup>16</sup>*

26. The contents of a rate setting statement are set out in regulation 22(d) of the Financial Management Regulations.

### Issues considered by the Inquiry

27. Consistent with A.1(i), A.1(ii) and A.3(v) of its Terms of Reference, the Inquiry considered aspects of the City’s strategic planning, governance and financial management, including whether:

- the financial plans, governance, structures and processes used by the City were appropriate for its financial management;
- the City complied with the relevant legislative provisions;
- the City’s Integrated Planning and Report Framework operated effectively;
- the City’s sources of revenue and expenditure were appropriately monitored and recorded; and
- the CPP, the City’s parking business was managed appropriately.

## Investigation by the Inquiry

### Witnesses

28. The Inquiry interviewed, and held private and public hearings, involving a number of people in the course of investigating this Section. The positions given below for council members and employees are the positions they held at the time of the events described in this Section:

- Mr Martin Mileham, CEO from 20 January 2016 to 29 October 2018;
- Mr Murray Jorgensen, CEO since 27 November 2018;
- Mr Robert Mianich, Director, Corporate Services from 7 November 2005 to 30 June 2019;
- Mr Andrew Hammond, Commissioner, City of Perth since 2 March 2018 and Chair Commissioner, City of Perth since 9 August 2019;
- Mr John Nicolaou, Executive Director, ACIL Allen Consulting; and
- Mr Dan Richards, Manager, Finance from 3 March 2015 to 13 February 2019.

29. Mr Jorgensen and Mr Hammond did not occupy roles at the City during the period of the Inquiry's Terms of Reference. However, the City's financial management and governance processes, practices and systems at the commencement of their respective tenures were the same as those which existed during the Inquiry's Terms of Reference. Their evidence on financial matters was, to a large degree, consistent with other evidence before the Inquiry.
30. The Inquiry commissioned two independent expert reports from ACIL Allen Consulting (ACIL Allen) and Crowe (formerly Crowe Horwath) on financial matters affecting the City. These were:
- ACIL Allen, *"City of Perth Financial Review"* (ACIL Allen Report).
  - Crowe, *"Review of Governance and Financial Matters"* (Crowe Report).
31. ACIL Allen examined the:
- adequacy of the City's strategic planning, financial planning and management business models;
  - City's financial position and the underlying drivers of its financial position over time;
  - City's parking business, CPP; and
  - City's rates model for residential and commercial properties, and the degree to which there was any cross-subsidisation and any subsidisation arising from the parking business.<sup>17</sup>
32. The study period for this report was from FY 2012 to FY 2018. Mr Nicolaou, Executive Director, ACIL Allen, gave evidence to the Inquiry on the report and its findings in a public hearing on 7 October 2019.

33. Crowe in their report on governance and financial management practices examined:
  - the appropriateness of the City's governance practices for budgeting and financial reporting, and the oversight by Council and the Administration;
  - the maturity, appropriateness and effectiveness of the City's internal audit programme; and
  - the City's financial budgeting and expenditure practices to identify areas of risk.<sup>18</sup>
34. Crowe also examined and reviewed specific issues and projects relating to a number of areas, including procurement and contracting, grants, sponsorships and donations, termination payments and workers' compensation expenditure. Some of the matters examined by Crowe were investigated further by the Inquiry and are considered elsewhere in this report.
35. This Section will also note trends within the City's financial management in earlier years, back to the financial year 2011/2012 (FY 2012),<sup>b</sup> for the purpose of providing context and identifying long-term trends.

### Evidence obtained by the Inquiry

36. The City is one of the wealthiest local governments in the State. Its revenue generation is second only to the City of Stirling, while its annual expenditure was the third largest behind the City of Stirling and City of Rockingham.<sup>19</sup>
37. The City's revenue was annually in excess of \$200 million during the three financial years under the Inquiry's Terms of Reference (FY 2016 to FY 2018). The City is unique compared to other local governments in Western Australia and Australia, because it operates a significant off-street parking business which provides the City with significant, untied revenue. The City also spent significant funds on resources to deliver its services and programmes, with staffing costs being the most significant.
38. At an administrative level, the Inquiry heard and obtained evidence that the City's systems were insufficient to effectively manage its information and data. Obtaining available, accurate and timely information was a challenge, and the siloed nature of the culture contributed and may have even prevented information sharing and good business decisions.<sup>c</sup>
39. In examining financial aspects of the City, it is important to understand its composition. In FY 2018, the estimated population of the City was 27,432 residents. The City's resident population is forecast to grow to 50,000 by 2050, representing an additional 25,800 residents in 16,000 dwellings over the next 34 years. Each workday, the City attracts around 205,750 workers and visitors to the central-business district and over 25,000 to the University of Western Australia and Queen Elizabeth II Medical Centre. In FY 2018, the City had an estimated workforce population of 147,474 people.<sup>20</sup>

<sup>b</sup> Note, financial years may be referred to by the second year of the period. For example, financial year 2016/2017 is referred to as financial year 2017 or FY 2017.

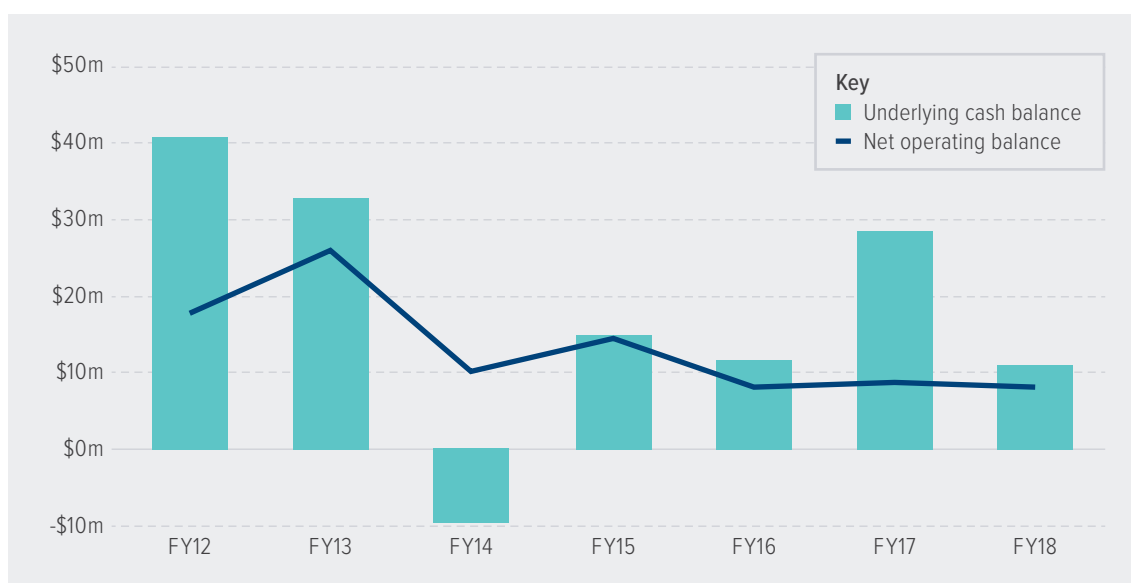
<sup>c</sup> Paragraph 154, 217-233 and 256 of this Section.

40. The City also exists in a wider economic environment, and is affected by Western Australian, national and global trends. Given factors such as the global financial crisis and the end of Western Australia's resources boom, it is no surprise that some sources of income for the City reduced. The following factors are relevant over the period FY 2015 to FY 2018, when compared to previous years. These are sourced from Council budget briefings for FY 2017<sup>21</sup> and FY 2018<sup>22</sup> and were as follows:

- unemployment was rising;
- the Consumer Price Index (CPI) remained low;
- the office vacancy rate in the City had increased;
- property values would continue to fall; and
- the State Government was transferring costs to the City and the City was paying more taxes and levies to the State.

### Financial position

41. The City's operating position reflects its ability to fund its day-to-day operations, including the services it provides. The City's overall financial position deteriorated over the study period (FY 2012 to FY 2018), both in terms of the nett operating balance<sup>d</sup> and the underlying cash balance<sup>e</sup> (Figure 2.21).<sup>23</sup>



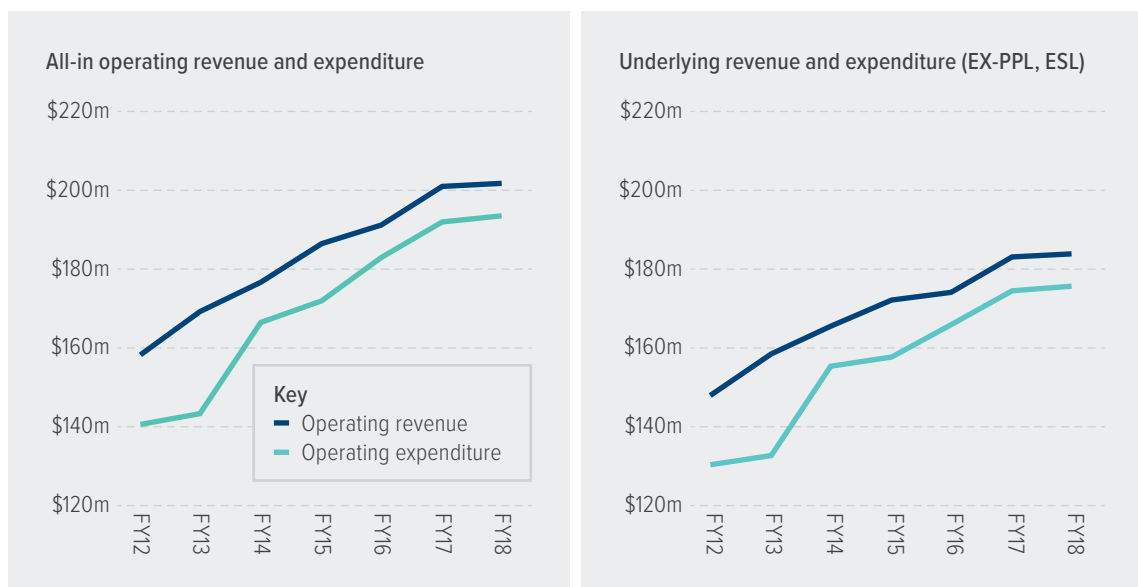
**Figure 2.21:** City of Perth nett operating balance versus underlying cash balance (\$ million).

42. Between FY 2012 and FY 2018, the nett operating balance fell from a high of \$26.1 million in FY 2013 to a low of \$8.2 million by FY 2018. The deterioration in the City's operating position came despite growth in total operating revenue from \$169.2 million to \$201.9 million over the period (+\$32.8 million), with operating expenditure growing from \$143.2 million to \$193.8 million (+\$50.7 million). The City's gross operating margin on own-source revenue shrunk from 12 per cent in FY 2012 to 4.4 per cent in FY 2018.

<sup>d</sup> Net operating balance is calculated as revenue from transactions less expenses from transactions.

<sup>e</sup> Underlying cash balance reflects cash outlays versus cash receipts.

43. On an underlying cash balance basis, the City's surpluses narrowed, particularly compared to the first two years of the study period. According to ACIL Allen's calculations (Figure 2.21),<sup>24</sup> the City's underlying cash balance for FY 2018 was \$11.1 million, its lowest cash surplus over the study period.<sup>f</sup>
44. The City's operating position also included the collection and pass through of two State Government taxes: the Perth Parking Levy and the Emergency Services Levy. The Perth Parking Levy is used by the State Government to fund transportation services, including the CAT bus service and other things. This levy was increased during the period FY 2012 to FY 2018, from \$9.9 million to \$17.7 million per year.<sup>25</sup>
45. Mr Nicolaou gave evidence that removing the Perth Parking Levy and Emergency Services Levy from the City's revenue and expenditure yields the same operating position, but provides a more accurate picture of the City's underlying revenue and expenditure performance as the City has no control over the levies.<sup>26</sup>
46. By removing the impact of the levies, over the past seven years the City's operating revenue has increased by 17 per cent (\$25.2 million), while its operating expenditure has increased by 33 per cent (\$43.1 million) (Figure 2.22).<sup>27</sup>



**Figure 2.22:** City of Perth revenue and expenditure, all-in versus underlying (\$ million).

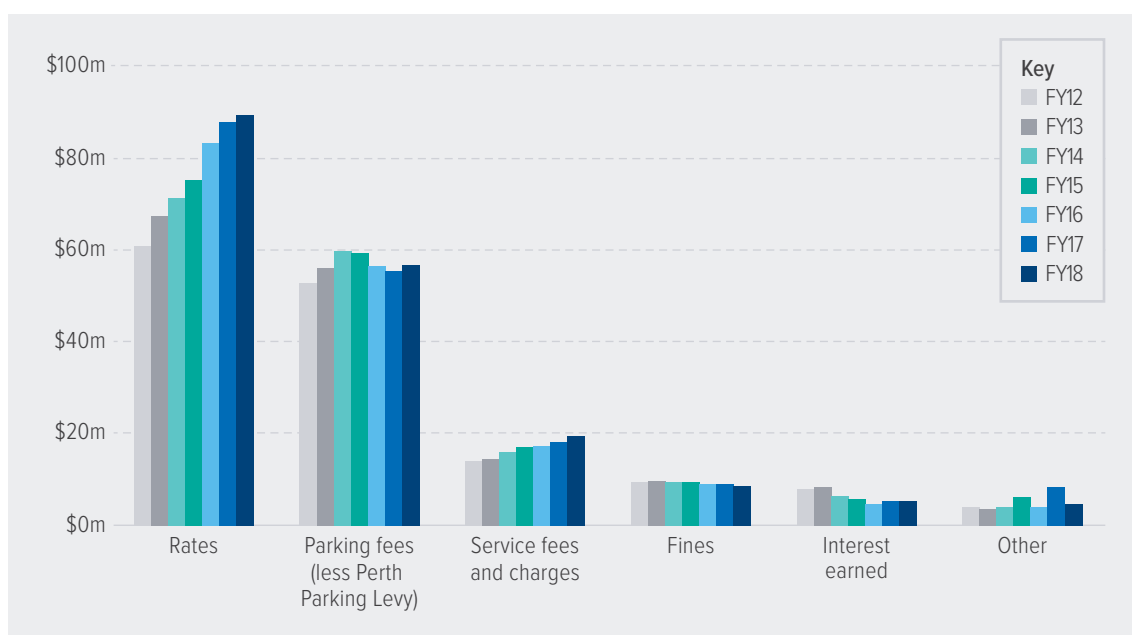
47. During the period FY 2012 to FY 2018, including the State Government levies, the City's operating revenue increased from \$158.4 million to \$201.9 million. An increase of \$43.5 million. Absent the levies, revenue increased from \$148.1 million to \$183.9 million.

<sup>f</sup> This excludes the deficit in FY 2014, when the City made a cash contribution to the State Government for the Perth City Link project.

48. The City's underlying revenue growth of 3.7 per cent per annum is 2.2 percentage points greater than the Perth CPI over the same period. It also came as property asset prices had generally fallen back to pre-resources boom levels after peaking between 2012 and 2014. According to ACIL Allen, that suggests *"there has been an increase in 'revenue effort' by the City, meaning it has sought to increase its revenue base by taking actions to increase its capture of activity in its local area"*.<sup>28</sup>
49. During this period the City's operating expenditure increased from \$140.6 million to \$193.8 million. An increase of \$53.2 million. This means that expenditure grew more than revenue during this six-year period. This can be partly explained by a \$7.8 million increase in the Perth Parking Levy paid to the State Government. However, there have also been considerable increases in direct staff expenditure and in contract labour expenditure by the City during this period.

### Revenue

50. The City collects revenue from a number of different sources. In FY 2012 to FY 2018, the largest sources of revenue for the City were property rates, parking fees, and service fees and charges collected or imposed by the City<sup>g</sup> (Figure 2.23).<sup>h</sup>



**Figure 2.23: City of Perth overall revenue trends by revenue line, (\$ million).**

51. During the study period, the City's revenue increase was largely driven by the growth in rates revenue (Figure 2.23), which was the largest revenue source and had increased at a faster rate than any other revenue source. The underlying revenue growth from parking fees was largely unchanged once the impact of the Perth Parking Levy was removed.

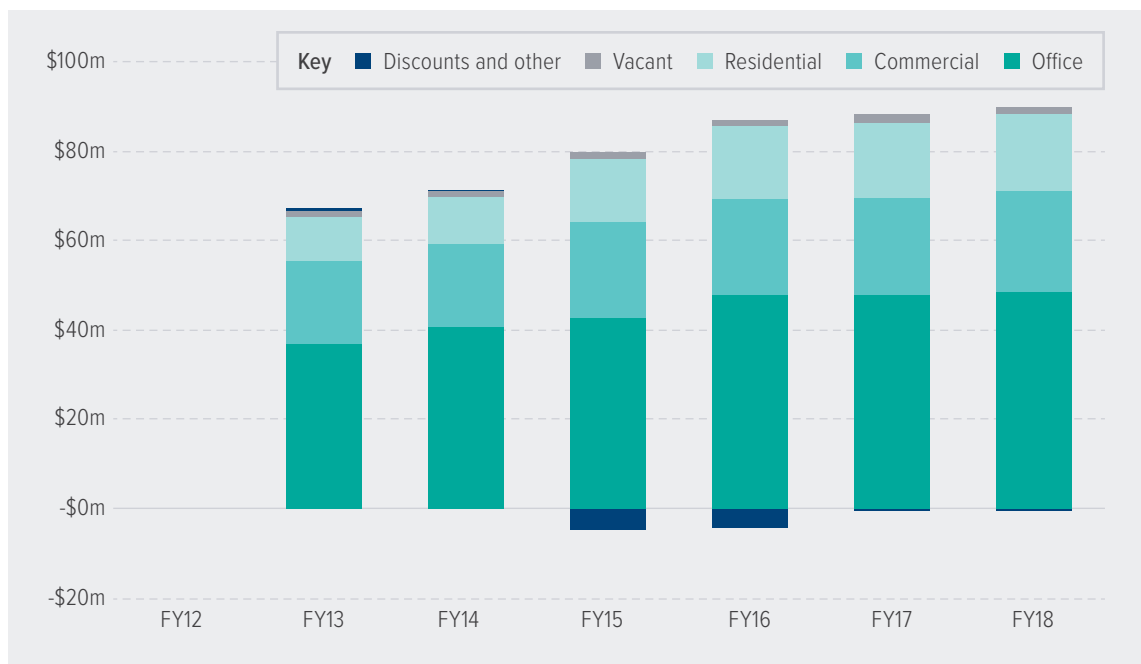
<sup>g</sup> Including fees charged by the City for municipal services (including waste collection, on-street parking, a library and information search services) and for licencing regulated activities (including fees for building permits and outdoor dining).

<sup>h</sup> The City also earned revenue from other sources, including: fines for failures to comply with regulations; interest earned on financial reserves; renting out City-owned premises; providing non-municipal services (including a childcare centre, a rest centre and a podiatry business); and providing parking services to the Town of Victoria Park.

52. Of the remaining categories of revenue (Figure 2.23), service fees and charges provided almost \$20 million per year. It rose steadily between FY 2012 and FY 2018. Fines were the source of approximately \$10 million of revenue per year to the City.<sup>29</sup>
53. The City's revenue from rates and parking fees were examined further by the Inquiry.

### Rates

54. Property rates were and are the main source of revenue for the City.
55. Revenue from rates has risen markedly during the period FY 2012 to FY 2018 despite the increase in the office vacancy rate and a fall in property prices. Rates revenue rose from \$60.8 million in 2012 to \$89.5 million in FY 2018,<sup>30</sup> an average increase of 6.7 per cent per annum (Figure 2.24).<sup>31</sup>

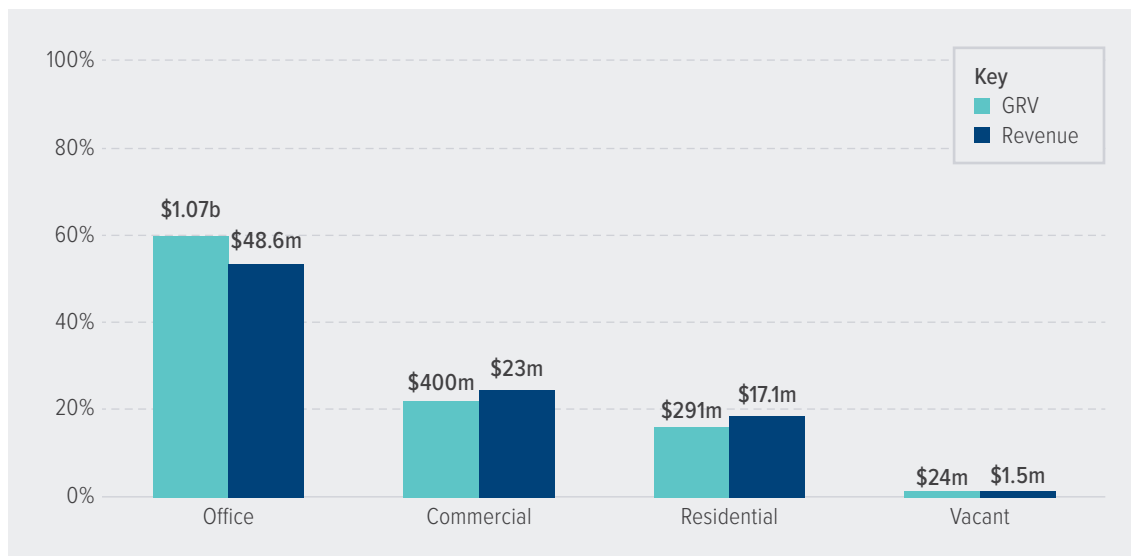


**Figure 2.24:** City of Perth rates revenue trends, by land use category (\$ million).

56. Revenue from rates increased at a greater rate than any other source of income.
57. Rates are divided by the City into four categories of land use: residential; commercial; office and vacant land. This is known as differential rate setting.<sup>32</sup>



58. Office properties made up the largest proportion of total rates revenue, being \$48 million in FY 2018. Commercial properties generated \$23 million, while residential properties were \$18 million and vacant land was \$2 million (Figure 2.25).<sup>33</sup>



**Figure 2.25:** City of Perth rates revenue vs Gross Rateable Value, by land use category, FY 2018.

59. There was a strong shift in the composition of the City's rates base towards residential properties over the study period, with residential property rates increasing from \$9.7 million to \$17.1 million (+76.8 per cent). Between FY 2014 and FY 2018, the City's rates on residential properties increased by 38.0 per cent, against revenue growth of 63.1 per cent.<sup>34</sup>
60. Rates are based on Gross Rateable Value (GRV). Each category of property has a different GRV applied and therefore ratepayers owning different categories of properties pay different levels of rates. Using the GRV and revenue collections for each category of property, an indication of the "revenue effort" can be calculated.
61. Residential had the highest revenue effort for the City, with revenue representing 6.2 per cent of GRV, compared to 5.8 per cent for commercial use and 4.5 per cent for office (Figure 2.25).<sup>35</sup>
62. The City's differential rating has resulted in a cross-subsidisation of the City's rate base. That is, rates from residential and commercial properties effectively subsidised rates from office properties.
63. Mr Nicolaou gave evidence that:
- "... the composition of the rates base has noticeably shifted towards residential properties with a greater proportion of total revenue from rates now derived from residential properties versus the other categories".<sup>36</sup>*
64. ACIL Allen estimated that a "general rate" required to generate the same revenue the City raised from its differential rates in FY 2018 would be 4.94446 cents in the dollar. At this rate, office ratepayers would have paid an additional \$4.6 million in rates in FY 2018, while residential and commercial ratepayers would have paid \$2.3 million less each.<sup>37</sup>

65. The City provided information to the Inquiry on the rates revenue generated through the City's rate setting statement and associated spend. This data was used to calculate the City's percentage of budget deficiency and the percentage of rates revenue raised above the budget deficiency with no specified purpose.
66. While the City's rate setting in the budget process was within the parameters set by the LG Act,<sup>38</sup> for FY 2016 to FY 2018 there had been additional effort made through this process to generate funds above the budget deficiency, for which no specified purpose was identified (Table 2.14). During this time, the City potentially generated funds from ratepayers which were between 5.6 and 9.2 per cent more than was needed.

**Table 2.14: Comparison of City rates raised (Rate Setting Statement) with no specified purpose in FY 2014 to FY 2018.**

Financial Year	Adopted Annual Budget: Rates revenue (Rate Setting Statement) <sup>39</sup>	Budget deficiency before general rates <sup>i</sup>	Adopted Annual Budget: Closing position <sup>40</sup>	Percentage of budget deficiency <sup>j</sup>	Percentage of rates revenue raised above the budget deficiency with no specified purpose <sup>k</sup>
FY 2018	\$89,256,330.00	\$84,512,867.00	\$4,743,463.00	105.6%	5.6%
FY 2017	\$85,143,608.00	\$78,112,566.00	\$7,031,042.00	109.0%	9.0%
FY 2016	\$82,692,368.00	\$75,750,030.00	\$6,942,338.00	109.2%	9.2%
FY 2015	\$76,236,923.00	\$75,690,505.00	\$546,418.00	100.7%	0.7%
FY 2014	\$72,452,121.00	\$70,987,300.00	\$1,464,821.00	102.1%	2.1%

67. A balanced picture of the City's revenue generation can be seen when the end of financial year performance is also examined.
68. Table 2.15 shows the closing financial position of the City for the same financial years. The City, in every year, underspent its budget commitments generated through rates revenue by between 22.6 per cent to 45.6 per cent.

**Table 2.15: Percentage of rates revenue not required in financial years FY 2014 to FY 2018.**

Financial Year	Budget deficiency before general rates <sup>l</sup>	Financial report: Closing position <sup>41</sup>	Percentage of rates revenue raised in excess of budget deficiency <sup>m</sup>
FY 2018	\$84,512,867.00	\$28,442,491.00	33.7%
FY 2017	\$78,112,566.00	\$35,585,696.00	45.6%
FY 2016	\$75,750,030.00	\$21,140,731.00	27.9%
FY 2015	\$75,690,505.00	\$18,198,783.00	24.0%
FY 2014	\$70,987,300.00	\$16,073,145.00	22.6%

i This is calculated by taking the figure in the column titled 'Adopted Annual Budget: Rates revenue (Rate setting statement)' and subtracting the figure in the column titled 'Adopted Annual Budget: Closing position'.

j This is calculated by taking the figure in the column titled 'Adopted Annual Budget: Rates revenue (Rate setting statement)' divided by the figure in the column titled 'Budget deficiency before general rates'.

k This is calculated by taking the figure in the column titled 'Adopted Annual Budget: Closing position' divided by the figure in the column titled 'Budget deficiency before general rates'.

l Sourced from Table 2.14 of this Section.

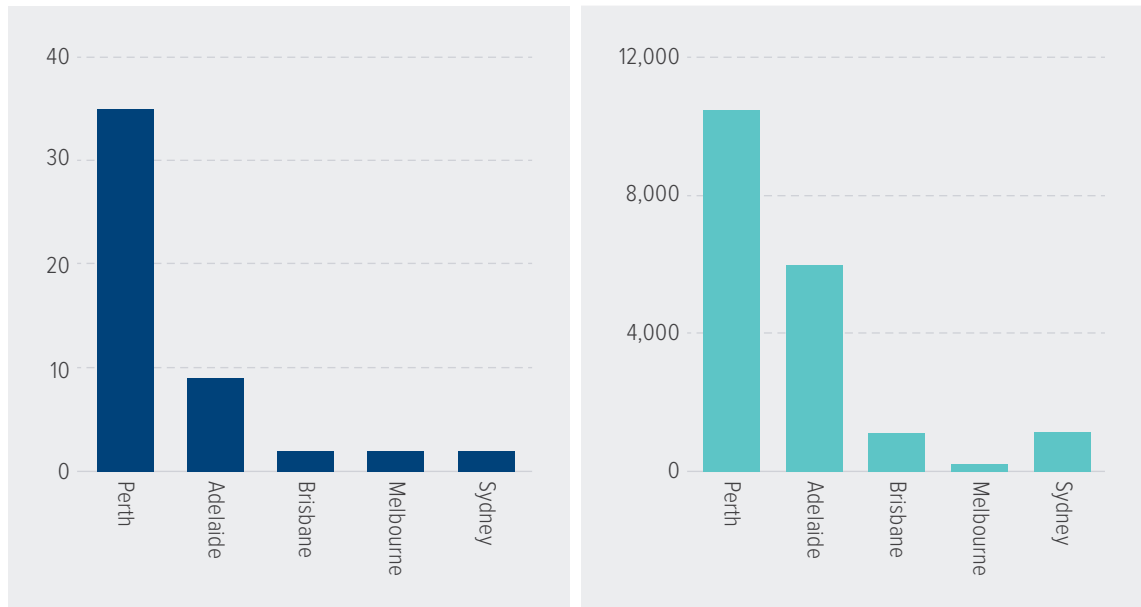
m This is calculated by taking the figure in the column titled 'Financial Report: Closing position' divided by the figure in the column titled 'Budget deficiency before general rates'.

69. The City advised the Inquiry that this underspend was caused in all years by “a large number of CAPEX [Capital Expenditure] projects with significant budget underspending at the end of the financial year”.<sup>42</sup> The Inquiry has considered the difficulties in the City’s capital expenditure in another Section of this Report.<sup>43</sup>
70. Mr Richards, Manager, Finance, gave evidence that the City “tolerated” instances where amounts budgeted to be spent on capital works were not spent:
- “... in my time at the City, there were a couple of times when we spent only roughly 50 per cent of our capital budget, so it was certainly tolerated. Personally, I don’t think that’s good enough.*
- What do you mean by that?---When you set the rates for the year, you’re effectively raising money to execute capital projects. So if you’re only executing 50 per cent of your capital projects, then the question becomes, are you over-rating?”.*
71. He further explained:
- “What happens to that under-spend is it goes into reserve so those reserves are used to fund future years but there’s a level of reserves that’s – if you consistently under-spend, you’re just going to build the reserves up to a level which you never really spend.*
- ...
- I think in very simplistic terms, if you’re raising revenue based on executing a capital program and you’re consistently not delivering that capital program, then you have to start thinking about how you’re setting your rates or how you’re setting your capital program, whether you are being over-optimistic in what you can achieve”.*<sup>44</sup>
72. Based on the information in Table 2.14 and Table 2.15, it is likely that the same outcomes and services could have been delivered by the City in each of the financial years, without the additional revenue effort through rates. The significant percentage of the underspend in each year, which was related to capital work projects, was the main contributing cause to the underspend.<sup>45</sup>

### City of Perth Parking

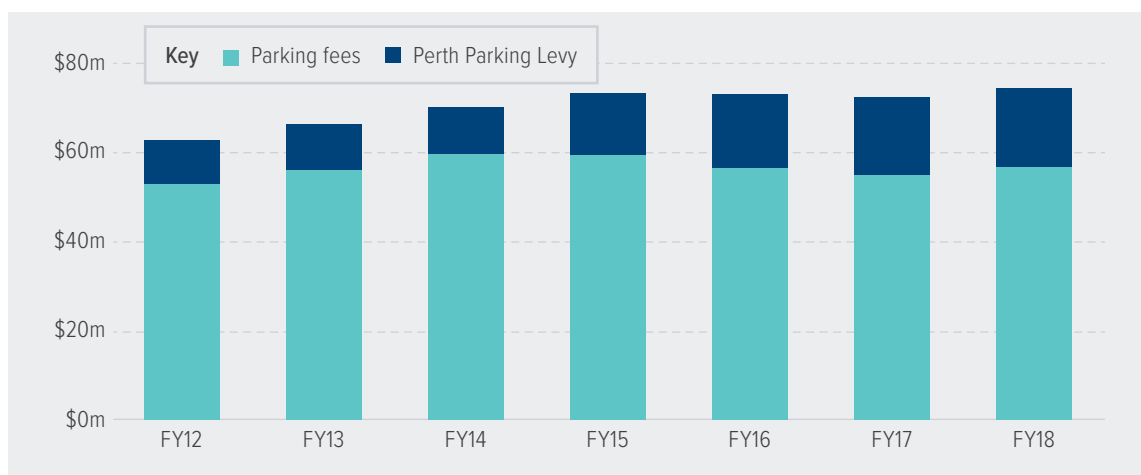
73. Parking fees were the second most significant source of revenue for the City. This revenue was primarily sourced through the City’s parking business, CPP. In 2018, this generated \$73.8 million in revenue, but \$17.7 million of this was paid as the Perth Parking Levy to the State Government.
74. CPP began operating commercially in the 1990s and during the period of the Inquiry’s Terms of Reference operated as a unit in the City’s Community and Commercial Services Directorate. CPP’s main responsibilities are on-street parking technology, revenue management, off-street parking facilities, financial control, operations and customer service.

75. The City operates 35 parking sites, with 10,500 parking bays under its management.<sup>46</sup> This is far more than any other capital city in Australia, none of which have more than nine carparks (Figure 2.26). Mr Nicolaou commented that the City “*has the most significant non-rates related business*” out of all capital city local governments in Australia.<sup>47</sup>



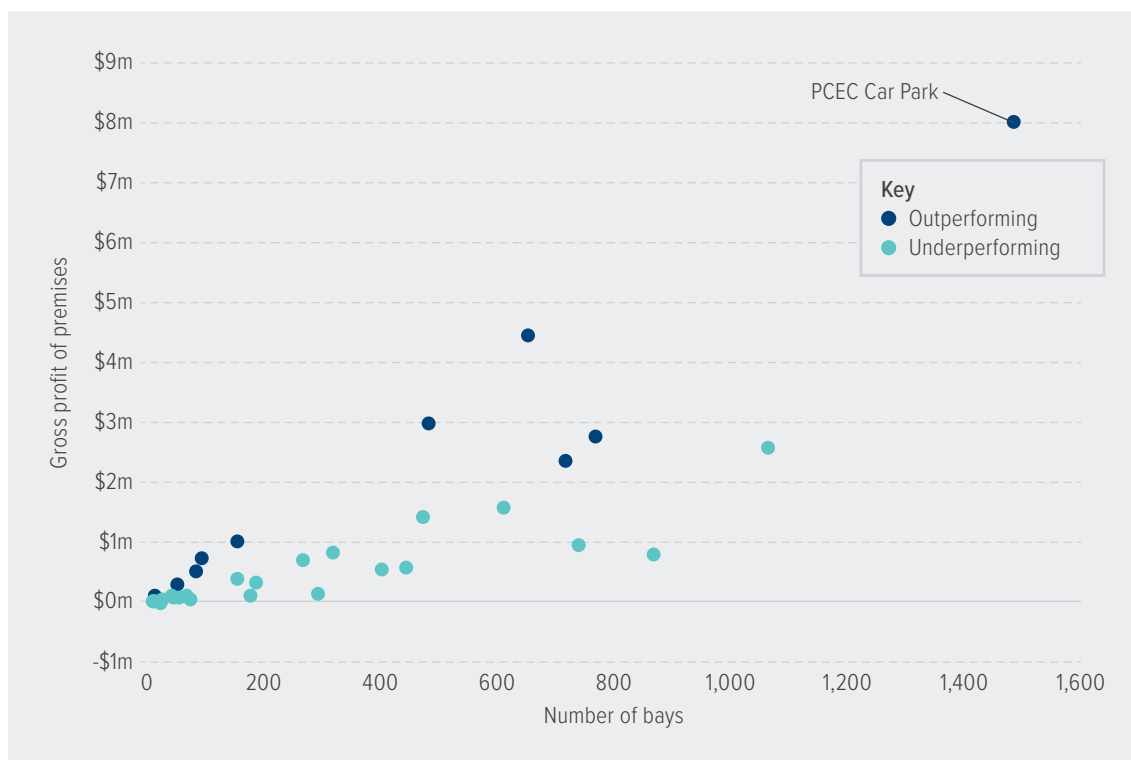
**Figure 2.26:** Capital City Local Government parking undertakings, number of premises (1st chart) and bays (2nd chart).

76. Although total parking revenue increased slightly over the period FY 2012 to FY 2018, because of the increase in the Perth Parking Levy, ACIL Allen found that the parking revenue received by the City had remained relatively steady since FY 2012 and decreased by 3.5 per cent since FY 2015 (Figure 2.27), before a slight increase in FY 2018.<sup>48</sup>



**Figure 2.27:** City of Perth parking revenue, parking fees vs Perth Parking Levy (\$ million).

77. ACIL Allen analysed the gross profit performance of various City-owned car parks (Figure 2.28). There was considerable variation between car parks, with the most successful, the Perth Convention and Exhibition Centre (PCEC) car park, earning \$11.5 million in FY 2018. Two parking premises made a loss.<sup>49</sup>



**Figure 2.28:** Performance of City of Perth Parking portfolio in FY 2018, gross profit vs number of bays (\$ million) (performance benchmark is average gross profit per bay).

78. In FY 2018, the average level of gross profit per parking bay was \$3,128.00<sup>n</sup>. Of the City's 33 active premises, just 10 achieved this average level of performance, and accounted for a total of 68 per cent of the gross profit from the entire CPP off-street premises.<sup>50</sup>
79. ACIL Allen concluded:
- "... the CPP undertaking generated \$202.6 million of free cash for the City over the five year period where data was available. This accounted for approximately 21 per cent of the City's total free cash generated from operating activities between 2013–14 and 2017–18".<sup>51</sup>*
80. Mr Nicolaou was asked about the term "free cash flow" at his hearing and said:
- "So what we tried to calculate here was the gross profit of the City of Perth Parking business prior to all the internal recharges and the like. So it's really the amount of money that business makes available to the City of Perth for whatever strategic priorities there are at the time. So it's a significant cash flow generator for the City, generating what we estimate to be \$202.6 million of free cash flow".<sup>52</sup>*

<sup>n</sup> This figure is before internal City charges, but includes the Perth Parking Levy and Emergency Services Levy where applicable.

81. ACIL Allen considered it likely the availability of “free cash flow” generated by CPP played a role in the City’s high level of costs over the study period.<sup>53</sup>
82. Mr Mianich gave evidence that CPP “has acted largely as a cash cow for the Council to expend significant moneys on capital for the benefit of ratepayers that has largely been funded by the surplus cash flows out of the Parking business”.<sup>54</sup>
83. Mr Mileham told the Inquiry:
- “The parking business I believe when I took over [as CEO], was predominantly a P&L [profit and loss] business ... the parking business was run year to year to generate good margins, for want of a better term”.<sup>55</sup>*
84. However, Mr Mileham said, “I wouldn’t call [the CPP] a cash cow, I would call it a legitimate generator of revenue” and noted the role of the Perth Parking Levy in funding public transport services.
85. Mr Hammond indicated to the Inquiry that there was a “reliance upon parking revenue to fund the overall operations of sustainability of the City”. Mr Hammond described this reliance as:
- “a long-term cultural issue. It’s been prevailing for many, many, many years and that was, if you like, the sacred cow of revenue was the parking business, so don’t touch it because that’s keeping us afloat”.<sup>56</sup>*

#### Commercial enterprises – major trading undertaking

86. The LG Act provides that local governments may undertake commercial enterprises if certain conditions are met.
87. Section 3.59(1) of the LG Act defines such a commercial business or enterprise as a “trading undertaking” and this includes “an activity carried on by a local government with a view to producing profit”.
88. A “major trading undertaking” for a metropolitan local government is defined as being \$5 million or more by regulation 9 of the *Local Government (Functions and General) Regulations 1996* (Functions and General Regulations).
89. Where a local government commences or continues<sup>57</sup> to operate a “major trading undertaking” it must prepare a business plan. A local government that carries on a “major trading undertaking”, must prepare a business plan.<sup>58</sup> The LG Act provides for the Council decision to operate the undertaking, the content of the business plan and its availability to the public. The business plan must include, among other things, an overall assessment and details of the undertaking and the undertaking’s expected financial effect on the local government.<sup>59</sup>

90. A local government can only continue carrying on a major trading undertaking if it has complied with the requirements to prepare a plan.
91. Given the evidence of Mr Mianich, Mr Mileham and Mr Hammond,<sup>o</sup> along with the financial data analysed by ACIL Allen, it is apparent that the City has continued to operate CPP *“with a view to producing profit”*. The Inquiry is satisfied the CPP was a *“major trading undertaking”* within the meaning of the LG Act.
92. As the CPP was a *“major trading undertaking”*, it was required to have a business plan. Mr Mileham gave evidence that *“a due diligence process which looked top to bottom at the CPP”* asking *“what is that business and what are its costs, what are its revenue ... had never, in my view, been done or certainly hadn’t been done in the last 15-odd years”*.<sup>60</sup>
93. Mr Mileham was of the view that whether or not a business plan was a statutory requirement, the CPP needed a business plan and a strategy going forward.<sup>61</sup>
94. It appears that a business plan was not prepared, because the City considered the requirement to prepare a business plan would not apply to the CPP, as it was operating before the enactment of the LG Act.<sup>62</sup> This was not the case as transitional provisions of the LG Act applied.<sup>63</sup>
95. The City’s *“Organisational Capability and Compliance Assessment Report”* prepared by Deloitte in June 2017 (Deloitte Report), identified that the City had been in breach of the requirement to prepare a business plan for the CPP since 1997. The Deloitte Report stated that *“The City’s staff are intending to address this compliance issue via the development of a CPP business plan”*.<sup>64</sup>
96. During the Inquiry’s Terms of Reference period, the City did not have a business plan in accordance with the LG Act and regulations.
97. Each calendar year a local government is required to carry out an audit of its compliance with statutory requirements under the LG Act and regulations. The statutory Compliance Audit Return (Return) is considered annually by the Audit Committee and adopted by Council, before the CEO and the Lord Mayor certify it and submit it to the Department.<sup>p</sup>
98. There were four Returns submitted by the City to the Department that relate to the Inquiry’s Terms of Reference period. The disclosures for the section *“Commercial Enterprises for Local Government”* were examined by the Inquiry. The Return required the City to respond to the question *“Has the local government prepared a business plan for each major trading undertaking ...”*.<sup>65, (q)</sup>
99. In 2015 and 2016, the City submitted a response of *“N/A”* and that they had *“No major trading undertakings in 2015”*. The Return was signed by the CEO, Mr Mileham and the Lord Mayor, Ms Lisa Scaffidi, on 26 March 2016.

<sup>o</sup> Paragraphs 87-90 of this Section.

<sup>p</sup> *Local Government (Audit) Regulations 1996*, reg 14, 15(2), 16. The audit covers the period 1 January to 31 December with the Compliance Audit Return to be submitted to the Department by 31 March each year.

<sup>q</sup> The question in the Compliance Audit Return refers to ‘s 3.59(2)(a)(b)(c)’ and ‘F&G Reg 7, 9’.



100. In 2017, the City submitted their response also as “N/A”. However, it stated:
- “A draft report was prepared in 2017 in relation to a business plan for City of Perth Parking, however, this report was not endorsed by Council in 2017. This business plan is in response to a finding from the Organisational Capability and Compliance Assessment completed by Deloitte and reported to Council in June 2017”.<sup>66</sup>*
101. The return was signed by the CEO, Mr Mileham, and the Chair Commissioner, City of Perth, Mr Eric Lumsden, on 27 March 2018.
102. The Inquiry obtained documents that indicated the CPP business plan was delayed in being presented to Council in 2017 by the CEO and this was because of “*political uncertainty*”.<sup>67</sup> Mr Mileham was asked about the lack of a business plan for the parking business, as required by the LG Act. It was put to him that a business plan had been prepared at one stage but he had withdrawn it from a Council agenda in October 2017. He said he had no recollection of doing that but if he had it would have been because he was not satisfied with the report. Mr Mileham denied that he had withdrawn the report because it was a Council election month and there were political reasons not to put the report before Council.<sup>68</sup>
103. The certified 2018 Return<sup>69</sup> stated the City had prepared a business plan for CPP in 2018.
104. The City’s Commissioners, at their 28 March 2018 meeting, qualified their adoption of the 2018 Return, noting, “*The City of Perth car parking operations **are not covered by a duly approved and Council endorsed business plan** as is required by Section 3.59 of the Local Government Act 1995*”.<sup>70</sup> [emphasis added]
105. The Inquiry finds that the City did not correctly answer Question 1 under the heading “*Commercial Enterprises for Local Government*” in its certified 2015 Return, 2016 Return and 2017 Return to the Department. The City should have answered ‘No’ on each of these Returns, as there was no business plan established and approved by Council for CPP in the 2015, 2016 and 2017 calendar years, as required by the LG Act and regulations.
106. In July 2018, the City developed and presented a draft business plan for the CPP to the Commissioners. That business plan was not endorsed by the Commissioners, because it did not address all aspects of the CPP business, including the current and future nett financial impacts on the City, strategic and operational risks, and the application of competitive neutrality principles.<sup>71</sup>

107. ACIL Allen noted that the draft business plan failed “to address many material aspects of the CPP business and its future”, including:

*“no consideration of the cost to serve, and so no consideration of the profitability and future risks to profitability of the CPP undertaking;*

*no forward capital works plan;*

*no statement of impact on the broader City’s finances, and the City-wide risks associated with over or underperformance of the undertaking”.*

108. Furthermore, it did not “address the requirements of the Act, as it [did] not provide consideration of risk, costs, competitive neutrality or impact on the City’s overall finances (except for revenue)”.<sup>72</sup> This is consistent with the evidence of Mr Hammond, who told the Inquiry:

*“The Business Plan that was submitted had estimated yearly revenue, gross revenue and that was it. So that is not a representation of the financial implications of the plan, it was a representation, according to the officer involved, that there was insufficient financial data in which to effectively prepare the financial income and expenditure for that Business Unit”.*

109. Mr Hammond explained he was a “strong advocate” for putting a business plan in place for CPP:

*“... not only for compliance but because that trading entity provided, from memory, 35 to 40 per cent of the City’s revenue, it was a considerable risk to the Council if we didn’t know what the nett proceeds were of that Business Unit after effectively taking into account organisational overheads that had been allocated”.*<sup>73</sup>

110. Mr Mianich candidly told the Inquiry:

*“I accept that I thought at the time it was probably, as I said, a bit light-on on particular financial projections but having said that, it was, I would hasten to add, largely being done for legislative compliance reasons rather than business planning reasons”.*<sup>74</sup>

111. It is almost incomprehensible that a business function which collected a substantial proportion of the City’s revenue had no business plan for more than 20 years. This is irrespective of whether the City was required by law to prepare such a plan. The Inquiry considers the failure to have a business plan for the CPP for such a long time to be a clear failure of good governance and sound financial management practices.

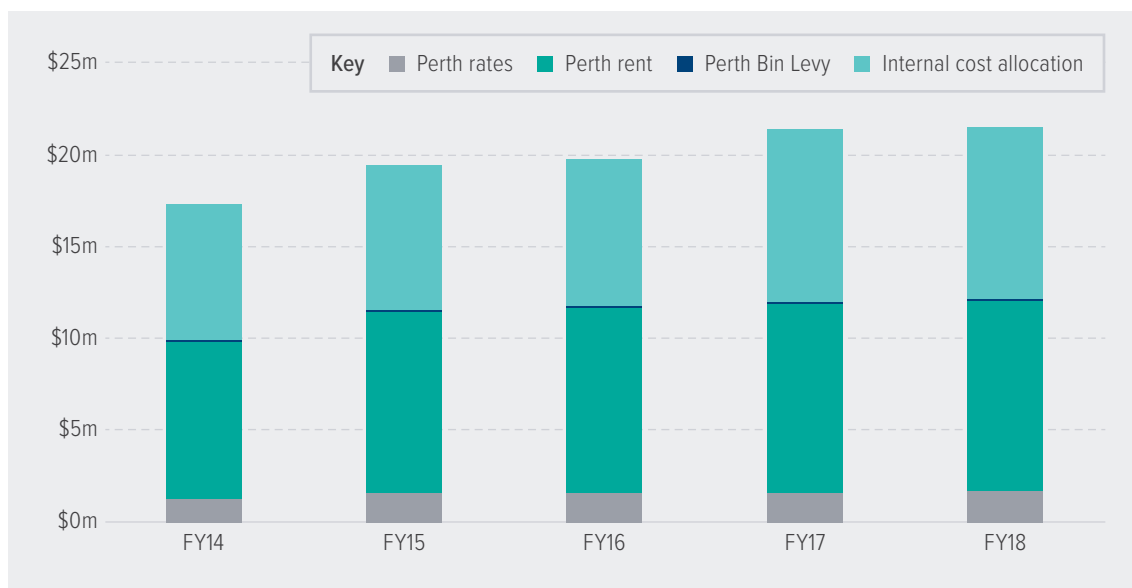
112. It is also concerning that when a business plan was finally prepared, it did not address material aspects of the business and was done largely to comply with legislative requirements and not for any strategic or business planning. It was a business plan in name only, paying lip-service to an obviously important financial imperative.

### Competitive neutrality

113. As established, the CPP was and is a significant commercial business for the City and a major trading undertaking. This business also competes in a market where there are other private providers of the same service. By virtue of the statutory status of a local government, the City and its CPP business enjoyed and enjoys a competitive advantage, because there is no requirement to pay some of the same taxes and charges as a private business. The ACIL Allen Report explained that in 1995, as part of the National Competition Process, all State and Territory governments undertook to ensure that publicly owned businesses did not enjoy such a competitive advantage.<sup>75</sup> This is called the National Tax Equivalence Regime (NTER).
114. Mr Nicolaou was asked about this concept at his hearing:
- “How is it enforceable?---It’s enforceable by the Commonwealth State agreements at the time and I think National Competition Policy is etched in the operations of any public corporation now.*
- So essentially the idea is to level the playing field?---Essentially.*
- And you saw no evidence that the City had taken into consideration this competitive neutrality concept?---No, we weren’t able to observe any recognition or accounting of that implicit advantage that the parking business receives.*
- Should it have been?---It should. It’s a significant business, given the size of its cash flow generation and it does operate in a competitive market and with those competitors required to pay tax, as any organisation would.”<sup>76</sup>*
115. The ACIL Allen Report further states:
- “... the City was unable to produce any documentary evidence that suggested it was familiar with the NTER or had an appropriate policy surrounding application of NTER principles. It may be that the internal rates and rents applied to the CPP business are simply mechanisms to transfer revenue from the CPP business to other aspects of the City’s operation. In addition, the City is not explicitly accounting for the largest of the NTER-related competitive neutrality concerns in its financial system, being company income tax. This puts the City’s parking businesses in a position of advantage over private sector providers.”<sup>77</sup>*
116. In short, there was nothing to indicate to ACIL Allen that the City considered competitive neutrality concerns or principles in operating the CPP. According to ACIL Allen, this put the City in a position of advantage over private sector parking businesses. These businesses are subject to company income tax, land tax on any premises they own, and they pay rates to the City either directly on properties owned or indirectly through lease arrangements.<sup>78</sup>

### Internal costs attributed to City of Perth Parking

117. ACIL Allen found that the CPP seemed to have a high level of internal costs allocated to it (Figure 2.29<sup>79</sup>). The City's internal costs are allocated to business units using activity-based costing approach.



**Figure 2.29:** City of Perth Parking indirect costs between FY 2014 and FY 2018.

118. Mr Nicolaou said:

*“... there has been an increase in indirect cost allocation to the City of Perth Parking business at a time when the business itself has been broadly flat in terms of its overall performance. So what we see here and the trends are showing in aggregate, that internal expenditure allocations increased by \$4.3 million from \$17.3 million in 2013/14, to \$21.6 million in 2017/18, an increase of 25 per cent.”<sup>80</sup>*

119. Further, ACIL Allen found that increases in indirect cost allocations occurred when the direct expenditure by the CPP was broadly unchanged.<sup>81</sup>

120. In his evidence before the Inquiry Mr Mianich gave his view that “in terms of materiality”, the increase in indirect cost allocations was “neither here nor there really”, because “It’s \$4 million in a business that’s turning over 70”.<sup>82</sup> Given the evidence in the preceding paragraphs and the other evidence before the Inquiry, the Inquiry does not accept that view.

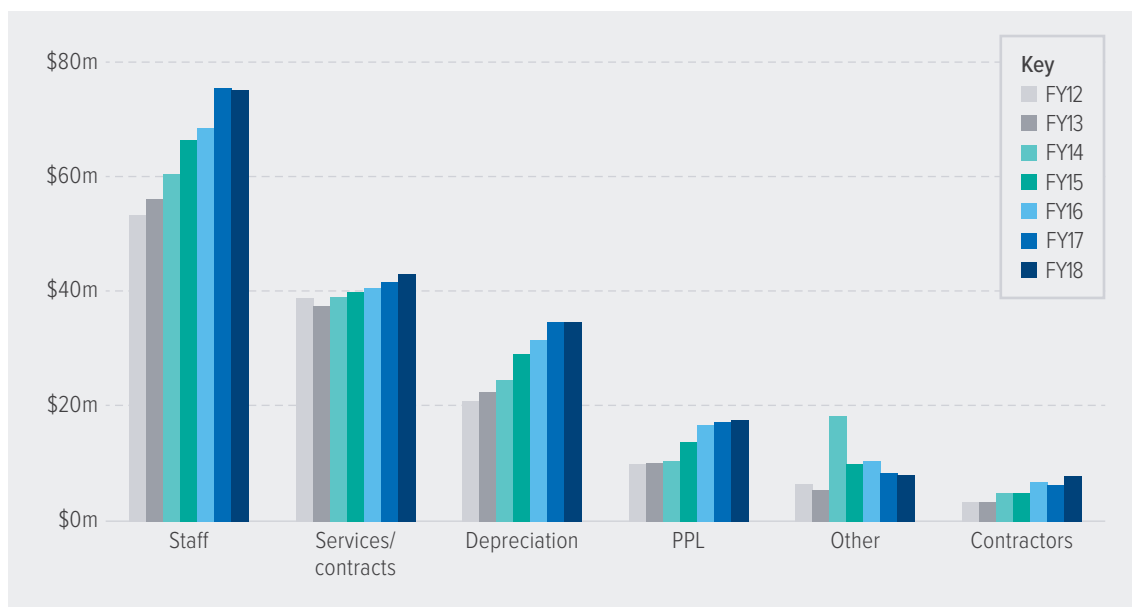
121. Mr Nicolaou explained:

*“Typically businesses would use an activity based cost model [to allocate internal costs]. Good practice dictates that, where you allocate based on an agreed methodology, internal costs to different businesses based on an agreed approach, whether it be the size of the business, the floor space in a building, it could be a variety of different factors that help you understand what internal costs should be allocated to a different business line ... broadly speaking, they should be allocated in a way that reflects their use.”<sup>83</sup>*

122. ACIL Allen requested, but the City's staff were unable to provide, a policy document which outlined the rationale and methodology for allocating expenditure between the City's business units.<sup>84</sup> This was despite internal cost allocations being a significant part of the City's financial framework, with the City's expense allocations averaging 58 per cent of its total expenditure over ACIL Allen's study period.<sup>85</sup> Given the size of the City, Mr Nicolaou was surprised that the City's methodology for allocating costs was not available.<sup>86</sup>
123. ACIL Allen formed the view that the absence of any documents explaining the basis for the City's internal cost allocations "*suggest the City's approach to [activity based costing] is not based on sound principles, and appears to be instead used as a tool to undertake cost-shifting across the organisation*".<sup>87</sup> Mr Nicolaou explained without a sound methodology to allocate internal costs, there is a risk that internal costs could be used to hide underperforming businesses within an organisation.<sup>88</sup>
124. In his evidence before the Inquiry, Mr Mianich denied that overheads may have been allocated to the CPP to improve the financial position of other directorates. Mr Mianich thought there were "*probably some logical reasons why that cost allocation has increased*" and provided hypotheses as to why allocations from other Units may have increased. However, other than to hypothesise, Mr Mianich was unable to provide a properly detailed explanation for why indirect cost allocations to the CPP were appropriate.<sup>89</sup>
125. According to Mr Mianich, there was "*quite comprehensive documentation going back a number of years as to the basis of how you would allocate overheads*". He indicated that the document was "*largely followed*" by the Finance unit responsible for allocating overheads. Mr Mianich gave the example of Mr Neil Jackson, a Capital Accountant with the City, as someone who would have definitely be aware of that document.<sup>90</sup> However, it is apparent from the ACIL Allen Report that Mr Jackson was not aware of it.<sup>91</sup>
126. It is concerning that at least one member of the City's Finance unit who should have been aware of this document, was not aware of it.
127. Based on the evidence before it, the Inquiry is not satisfied that the City had appropriate methodology and rationale for allocating internal costs. The Inquiry considers there is a risk that the allocation of costs to the CPP may have been disproportionate and hid the underperformance of other business units within the City.

## Expenditure

128. As a local government, the City has a range of services it is required to provide by law. These include waste collection, maintenance of public areas and parks, on-street parking services, building and food service activity approvals and application of other regulations, such as signage. In addition, the City provides a range of other services and conducts a number of additional activities, which are more in keeping with its role and ambition as a 'capital city' local government – including hosting and administering significant events, economic development and promotion activities, international engagement, sustainability and support for businesses.
129. The City organises itself in a range of directorates and business units, which have undergone a number of changes over the years. In addition, the City undertakes a large-scale and complex cost allocation exercise across each of its business units.
130. Overall, the City's total operating expenditure increased from \$140.6 million in FY 2012 to \$193.8 million in FY 2018, with annual average growth of 5.6 per cent over the study period.
131. Expenditure growth has been driven almost entirely by four expenditure groups (Figure 2.30) – staff expenditure (up \$22 million), depreciation expenses (up \$13.6 million), the Perth Parking Levy (up \$7.8 million) and contract labour expenditure (up \$3.2 million) over the study period.

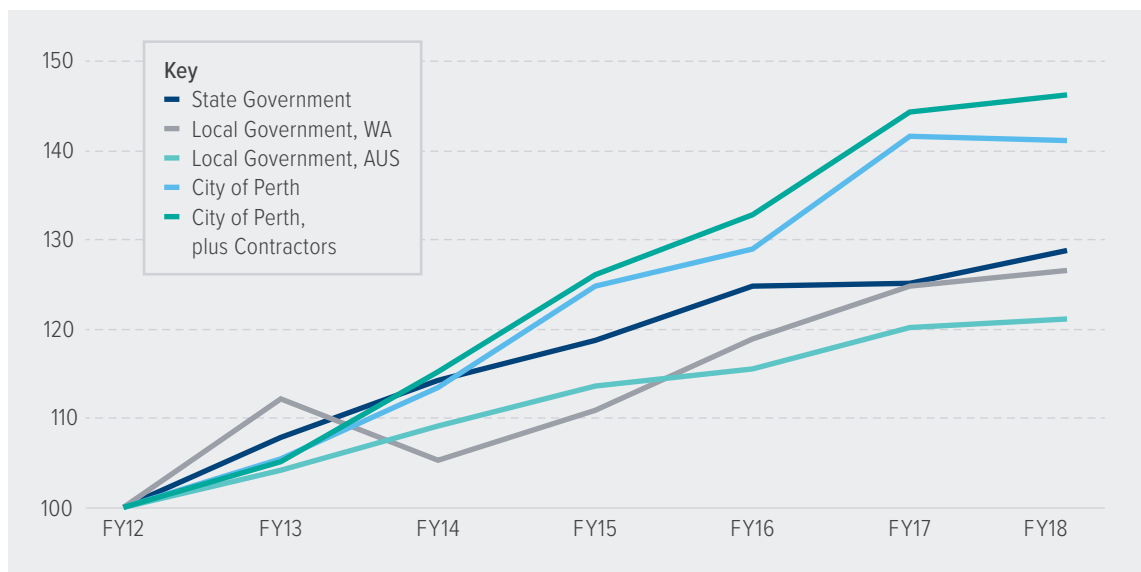


**Figure 2.30: City of Perth's annual operating expenditure, by category, expenses >\$5 million (FY 2018), \$ million, FY 2012 to FY 2018.**

132. Other costs also increased during the period of the Inquiry's Terms of Reference. The City's use of professional services contracts doubled and the City's expenditure on external legal advice increased, with total expenditure on legal fees averaging \$525,000.00 per annum.<sup>92</sup>
133. Staff and contract labour were the largest expenditure categories for the City and this has been examined further by the Inquiry.

### Staff and contract labour

134. Staff costs were the largest expense for the City.
135. These costs accounted for 41 per cent of expenditure between FY 2012 and FY 2018, growing from \$53.4 million to \$75.4 million, an increase of \$22 million.<sup>93</sup> At the same time, contract labour expenditure (namely, the City's expenditure on contractors and labour hire) also grew from \$3.5 million to \$7.7 million between FY 2012 and FY 2018, an increase of 124 per cent. Contract labour hire is often used by organisations to supplement an existing workforce in order to deliver services.
136. When combined, staff and contract labour costs together accounted for 47 per cent of the City's total expenditure (excluding the State Government levies) in FY 2018.<sup>94</sup> These costs grew from \$56.8 million to \$83.1 million between FY 2012 and FY 2018, an increase of 46 per cent.
137. ACIL Allen found the City's labour expenditure increased at a faster rate than publicly available benchmarks over the study period.<sup>95</sup> It rose 13.5 per cent faster than the State Government's direct employment costs, 15.6 per cent faster than other Western Australian local governments and 20.7 per cent faster than the local government labour expenditure at a national level (Figure 2.31). If the City had contained labour costs to the average local government labour expenditure benchmark for Western Australia, employment costs would have been \$40.4 million lower over the study period, and \$11.3 million lower in FY 2018 alone.



**Figure 2.31:** City of Perth labour expenditure index, versus overall Local and State Government benchmarks, Index; FY12=100.

138. ACIL Allen specifically noted there was strong growth in the City's expenditure on contractors and labour hire *"despite the City's expenditure on direct staff costs increasing at rates well in excess of a range of public sector staffing benchmarks"*.<sup>96</sup>



139. Mr Mianich and Mr Mileham noted that ACIL Allen’s data on staff costs would have included approximately \$7 million in termination payments, including payments to employees arising out of the 2015 restructure.<sup>97</sup> Mr Mianich gave evidence that termination payments were always excluded from analysis that was presented to Council on staff costs, because Mr Mianich felt it was *“a little misleading to present staff cost numbers ... without excluding, there were one-off termination costs”*.<sup>98</sup>
140. The Inquiry does not agree it was appropriate for these costs to be excluded. Costs arising from the termination of employees were legitimate employee costs to the City that should have been reported to Council, even if in Mr Mianich’s view that might have *“biased the data to higher cost”*.<sup>99</sup>
141. ACIL Allen acknowledged that its data on staff costs included redundancy payments arising out of restructures. That inclusion, along with the City’s lack of long-term records of its numbers of employees and contractors, made it challenging for ACIL Allen to track the *“underlying growth”* in the City’s employment costs.<sup>100</sup>
142. The Inquiry has been unable to verify Mr Mianich’s and Mr Mileham’s evidence on the approximate quantum of those payments. However, even if that evidence is accepted and the data adjusted, the City’s labour costs nevertheless increased by \$19.3 million over the study period. Further, it is clear from the ACIL Allen Report that the City’s labour costs were growing *before* the restructure was implemented in FY 2015 (Figure 2.30 and Figure 2.31). Each of the City’s five directorates increased their direct staffing costs over the study period.<sup>101 r</sup>
143. Mr Mileham and Mr Mianich both gave evidence that to control staff expenditure, the practice was implemented where any requests for additional staff had to be approved by the Executive Leadership Group (ELG) and the CEO.<sup>102</sup> However, Mr Mianich conceded that, based on ACIL Allen’s data, this was not effective in reducing the City’s staff costs.<sup>103</sup>

### Overall financial performance assessment

144. One of the principal findings made by ACIL Allen was that the City’s operational performance was deteriorating each year in the study period, with progressively narrower operating surpluses recorded on account of strong growth in expenditure and more modest growth in own-source revenue.
145. However, ACIL Allen noted that the City remained in a very strong financial position overall. According to its 2018 Annual Report, and a detailed balance sheet made available, the City held some \$114 million in cash or liquid financial assets and had a fixed asset base of in excess of \$1.1 billion, with no material liabilities carried against them. In addition, its taxing powers provided a certain revenue stream of close to \$90 million per annum, regardless of any other supplies or services it elected to provide.

r Note that the Economic Development and Activation Directorate was created following the 2015 restructure and its employment costs prior to FY 2015 were zero.

146. ACIL Allen summarised:

*“However, the City’s financial position is not guaranteed, nor should a strong balance sheet preclude it from ensuring it provides the most efficient and effective services (with an efficient revenue raising framework) for its residents and businesses”.*<sup>104</sup>

### Financial governance

147. Financial governance and reporting are important to a local government. It assists Council, its committees, the CEO and the City’s management to manage the strategic and operational decisions of the local government.

148. Crowe observed in their report:

*“... the City’s financial management is characterised by a transaction-based approach focussing on statutory compliance rather than an effective corporate services function providing valuable financial inputs into strategic decision-making”.*<sup>105</sup>

149. Good financial governance depends on having good information on which to base decisions. This information must record the true costs of the functions and activities of the organisation, in order to assess its performance.

150. Without this information, inefficiencies can be covered up. Business units could be underperforming and create a risk for the organisation, which is not identified.

151. In a situation like that of the City, where there is a source of “free cash flow” generated by CPP, there may not have been a need to focus closely on expenditure. Therefore costs, especially staff costs, may have grown to an unsustainable level without being properly examined.

152. In this regard, Mr Nicolaou said:

*“... what we observed through the whole study was that expenditure had been growing at a much faster rate than revenue, own source revenue of the City of Perth, and that had been going on over the entirety of that assessment period, and that’s unsustainable longer term, but when you have a business that generates so much cash flow, it can mask any of these emerging pressures that can occur from a financial point of view and that’s what we observed there and why maybe – we weren’t able to test this specifically with staff or the like – maybe why there wasn’t that sharp focus on expenditure control during that assessment period”.*<sup>106</sup>

153. What was and is needed, both in relation to revenue and expenditure, is a single view of the organisation from a financial governance point of view.

154. In commenting on the organisational structure, Mr Nicolaou said:

*“... it did seem very siloed, the organisation, and that came through particularly with the City of Perth Parking business which had its own financial model advisors that operated independent of the overarching City of Perth finance team, which was surprising and I guess the expectation would be that they are all under the same family, this is the City of Perth and there needs to be an integrated view, a comprehensive view, a single view of the whole organisation, not disparate parts coming together and then presenting themselves”.*<sup>107</sup>

155. This view was consistent with the evidence of Mr Mianich, who considered CPP did not engage with and wanted to be independent of the City's Finance unit. That led to tensions between the CPP's financial staff and the Finance unit, particularly when the latter wanted to extract financial data from CPP.<sup>108</sup>

### Key performance indicators

156. Use of key performance indicators (KPIs) assist Councils and CEOs in monitoring and improving service delivery by organisations. Effectiveness and efficiency indicators are the most common types of indicators. Financial indicators form part of a local government's accountability and good government.
157. KPIs enable sound judgements to be made about the performance of the local government. These judgements are made by ratepayers, council members, residents, the CEO and Administration as well as Federal and State Government. KPIs can also assist when making policy decisions affecting their constituents.<sup>109</sup>
158. In Western Australia, the legislation specifies seven indicators of financial performance which councils must include in their financial reports, namely: current ratio; asset consumption ratio; asset renewal funding ratio; asset sustainability ratio; debt service cover ratio; operating surplus ratio and own source revenue coverage ratio.<sup>110</sup>
159. Mr Nicolaou indicated that the City needs to have a good understanding of its cost base. The *"fact that there was not some adequate or any KPIs associated with, from a financial point of view, the cost of the business, that was a concern from our perspective"*. He added:
- "There certainly didn't seem to be the focus on expenditure or an expenditure control as part of good financial management, from our observations. There were KPIs that were put in place, they were KPIs that are required of Local Governments such as the City of Perth, so they are following what they have been tasked to do but one of the gaps that we observed in the range of KPIs that are used by the City is that none of them really tackle one of the key issues faced by any organisation, which is cost control".<sup>111</sup>*
160. ACIL Allen also considered the financial KPIs used by the City and compared them to those used by similar local governments in other states. Mr Nicolaou gave evidence that it was good practice for government bodies to have efficiency KPIs but *"there was no focused efficiency indicator that they deploy to measure how efficient the City of Perth is in delivering its services to the community"*.<sup>112</sup> That was of concern to ACIL Allen.
161. Mr Mileham gave evidence there was not enough focus on efficiency in the City's KPIs.<sup>113</sup> Mr Mianich thought the City *"could have possibly explored additional KPIs in relation to expenditure, expenditure level and growth"*.<sup>114</sup>
162. When combined with the 2017/2018 audit findings of the Auditor General<sup>s</sup> and the evidence by Mr Nicolaou, the Inquiry finds that the City was not able to report consistently on its statutory financial ratios. In addition, the lack of other KPIs meant that services were not appropriately monitored for performance and financial implications.

<sup>s</sup> Paragraphs 211-214 of this Section.

### Financial management reviews

163. The legislation places obligations on CEOs to ensure that reviews of key aspects of financial governance occur as a means of providing assurance over the systems and processes. The CEO is required to undertake a review of the appropriateness and effectiveness of the City's financial management systems and procedures<sup>115</sup> and a review of the appropriateness and effectiveness of the City's systems and procedures in relation to risk management, internal control and legislative compliance.<sup>116</sup> The CEO is required to report to the Council's audit committee on the results.
164. The Inquiry sought records from the City in relation to the CEO's compliance with regulation 5(2)(c) of the Financial Management Regulations. In a response to a Notice to Produce a Statement of Information, the City advised that no reviews complying with this regulation were conducted during the period of the Inquiry's Terms of Reference.<sup>117</sup> There is nothing in the City's records management system to indicate that a review had been conducted.<sup>118</sup>
165. Mr Mileham was shown, during his public hearing, regulation 5(2)(c) of the Financial Management Regulations. He was asked whether he had ever, during his time as CEO, undertaken a review of the appropriateness and effectiveness of the financial management systems and procedures of the local government. Mr Mileham gave evidence that *"I don't think I hit the timeframe"* but referred to the Deloitte Report produced during his time as CEO as a review that made recommendations in relation to the City's financial management systems.<sup>119</sup>
166. The Deloitte Report considered the City's compliance with legislation, the extent to which the City delivered rigour and transparency in its decision-making controls and risk management and whether the City had the right capabilities to deliver the best value for stakeholders. In assessing the City's capabilities Deloitte conducted a *"diagnostic assessment"* of the City's Finance function, which defined the level of *"capability maturity"* in Finance and identified measures to increase Finance's capability.<sup>120</sup>
167. Consequently, the Inquiry considers that the Deloitte Report did review the appropriateness and effectiveness of the City's financial management systems and procedures. However, it appears from Council minutes the Deloitte Report was not commissioned or presented to Council for the purpose of complying with regulation 5(2)(c) of the Financial Management Regulations.<sup>121</sup> That is a failure of governance.
168. It was Mr Mileham's statutory responsibility to undertake this review and report the results of the review to Council. Notwithstanding that, Mr Mianich, as the Director responsible for Governance and Finance since 2005, should have ensured Mr Mileham was aware of that responsibility.

### Integrated Planning and Reporting Framework

169. Legislative changes in 2011, introduced a requirement for all local governments to develop and adopt a *"plan for the future"* by the preparation of an Integrated Planning and Reporting Framework (IPR Framework) for establishing local priorities and linking this information to operational functions.<sup>122</sup>

The core components of the IPR Framework are:

- Strategic Community Plan;
- Corporate Business Plan;
- Informing strategies;
- Long Term Financial Plan;
- Asset Management Plan;
- Workforce Plan;
- Issue or Area Specific Plans; and
- Annual Budget.

170. The IPR Framework is cyclical, commencing with the development of the Strategic Community Plan, which includes the community's long-term and medium-term aspirations. The medium-term priorities form the front end of the Corporate Business Plan, with the desired work programme being developed and costed.
171. The *Local Government (Administration) Regulations 1996* require a Council to consider a Strategic Community Plan and Corporate Business Plan, or modifications of such a plan, submitted to it and it is to determine whether or not to adopt the plan or the modifications. An absolute majority is required.<sup>123</sup>
172. An outline of the City of Perth IPR Framework is contained in the “*City of Perth Annual Report 2017/18*” (Figure 2.32).<sup>124</sup>

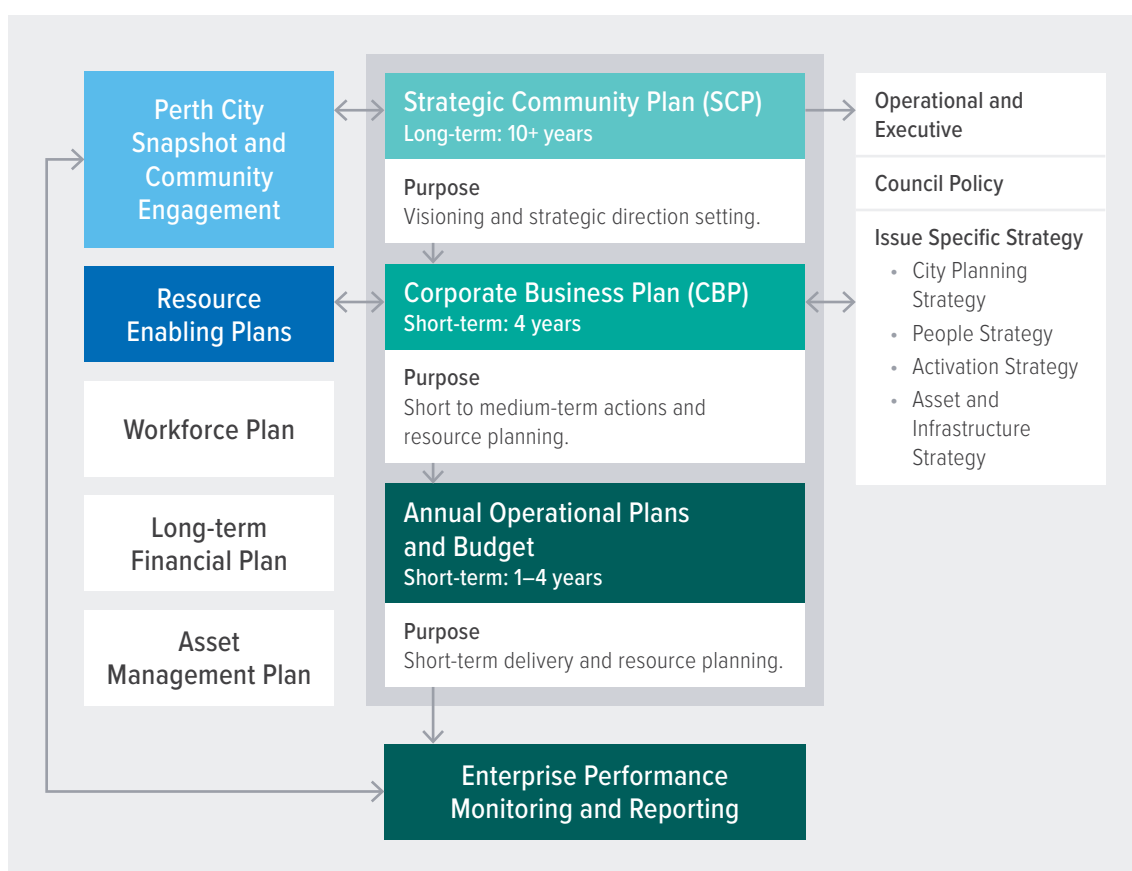


Figure 2.32: City of Perth Integrated Planning and Reporting Framework.

173. ACIL Allen reported that there was “*Limited integration*” of the City’s IPR Framework’s planning documents. In commenting on this, Mr Nicolaou said while the planning documents “*ticked the boxes in terms of its requirements under the Act*”:
- “... there just didn’t seem to be the integration of those planning documents between the very high level, the 10 year plans, right down to the annual budgets and then the documents that sit under that. So without those linkages, and those linkages ultimately come together through financial forecasting, without that then they have limited value as a tool to govern the performance of the City of Perth.”*<sup>125</sup>
174. ACIL Allen also indicated that it was unclear whether it was “*an effective tool to guide decisions by the City*”.<sup>126</sup>
175. Mr Nicolaou also said:
- “We weren’t able to observe any long-term financial forecasting that had the application or the detail necessary to link to long-term plans of the City of Perth from a strategic point of view. So if you have a strategic planning document that has some very good messages around visionary – very good visionary components to it but without the way to execute that plan and without the funding allocated to the actions to do that, then you’re not going to see the success come through in terms of the outcomes.”*<sup>127</sup>
176. Crowe summarised the problem in the following way:
- “Other reviews undertaken by consultants identified that the Strategic Community Plan and the supporting Corporate Business Plan do not effectively capture the organisation’s strategy. The Strategic Community Plan lacks a clear and complete articulation of the City’s strategic choices, priorities and targets. A decision was previously taken to exclude “business as usual” activities from the Strategic Community Plan and the Corporate Business Plan. Consequently, the documents do not explicitly define the contribution of all business units to the organisation’s strategic priorities, nor define and prioritise specific objectives for each business unit. The integration and linkage between the Strategic Community Plan, Corporate Business Plan and business unit level strategies is not explicitly articulated.”*<sup>128</sup>
177. Mr Mileham gave evidence the City “*had come from a very low base*” in relation to its IPR Framework and “*had more work to do to integrate all the planning documents*”. Mr Mileham compared the City’s progress on the IPR Framework to a half-built jigsaw puzzle.<sup>129</sup>
178. Mr Mianich accepted that the integration of planning documents “*was an area that the City needed to do more work in*” and was still a work in progress. Mr Mianich did not agree that the City’s IPR Framework had limited value as a tool to govern the City’s performance.<sup>130</sup>

179. The Inquiry finds, based on the observations made in this Section on the City's plans, that there was insufficient integration of the City's strategic and planning documents during the period of the Inquiry's Terms of Reference. Planning documents lacked the necessary level of detail to articulate fully, cost adequately and ensure accountabilities for the strategies and deliverables within the plans. The Inquiry considers that it is likely that this failure made it more difficult for the City's leadership (that is, managers, directors and the CEO) to make decisions, and impaired the Administration's ability to provide good government for the City.

## Planning

### Strategic Community Plan

180. The Strategic Community Plan is the Council's principal strategy and planning document. The Strategic Community Plan is developed through community engagement and must set out the vision, aspirations and objectives of the community in the City for at least a ten-year period. In making the Strategic Community Plan the City was to have regard to, among other things, the capacity of its current resources and the anticipated capacity of its future resources.<sup>131</sup> It is the guiding document for the remainder of the IPR Framework.
181. The Deloitte Report found the Strategic Community Plan and the Corporate Business Plan did not effectively capture the City's strategy, for three reasons:
- *"Business as usual"* activities were excluded from the plans. This meant that they did not explicitly define the contribution of all business units to the City's strategic priorities and did not define and prioritise specific objectives for each business unit. Business units in the Community and Commercial Services Directorate, for example, independently developed strategies to fulfil their operational requirements, but these strategies were not expressly aligned to the Strategic Community Plan.
  - Most business units did not have specific targets included in the Strategic Community Plan and Corporate Business Plan. As a result, managers within the City tended to view both plans as too broad, not directly actionable or irrelevant.
  - The Strategic Community Plan, Corporate Business Plan and business unit strategies were not integrated. Business unit strategies were developed in isolation with limited or no collaboration with other business units within the City. The City's strategies did not resolve trade-offs or conflict between competing priorities of different business units.
182. Deloitte concluded, as a consequence, that as at June 2017 the City's planning and strategy documents did not provide the clarity needed for leaders to make business decisions within the City. In the absence of a clearly defined organisational strategy, the City could not effectively prioritise and manage its portfolio of services and investments.<sup>132</sup>



### Corporate Business Plan

183. The City's Corporate Business Plan is a planning document that, consistent with its Strategic Community Plan, sets out the City's priorities for dealing with the community's objectives and aspirations. It governs the City's internal business planning by expressing the City's priorities by reference to operations within the capacity of the its resources. The Corporate Business Plan must develop and integrate the City's Workforce Plan, Long Term Financial Plan and the Asset Management Plan.<sup>133</sup> The Corporate Business Plan is to cover at least a four-year period and must be reviewed every year.<sup>134</sup>

184. Crowe examined the City's Corporate Business Plan and observed:

*"Whilst the way each local government lays out its Corporate Business Plan is highly discretionary, we found the City's Corporate Business Plan is devoid of key information, which does not enable ratepayers to understand how the City will fund its future commitments.*

*Whilst there is an overall financial forecast in the Long Term Financial Plan for each financial year, what is missing in the Corporate Business Plan is the analysis of cost for each strategy or enabling initiative. It appears this information was not included in the Corporate Business Plan because:*

- 1. The lack of appropriate overhead allocation model;*
- 2. Immature asset management; and*
- 3. Inadequate input into the formulation of the Corporate Business Plan by relevant stakeholders.*

*Moreover, the Corporate Business Plan lacks detail about the workforce plan".*<sup>135</sup>

185. The Crowe Report commented that its analysis of the 2015 and 2016 Corporate Business Plan revealed that these plans "... did not have key performance indicators that enabled Council and the community to monitor progress and impact". Crowe specifically referenced the Elizabeth Quay Project and observed that:

*"... the Corporate Business Plan should contain the requisite information elements in sufficient degree of granularity at one place, as required by the Department of Local Government and Communities' (as it was known) Integrated Planning and Reporting Framework Guidelines (September 2016), to enable the readers to appreciate the financial implications of the City's plans.*

*We consider the quality of the Corporate Business Plan is not commensurate with an operation of the scale and scope of the City, and not fully aligned to the intent of the requirements of the Integrated Planning and Reporting Framework".*<sup>136</sup>

186. Mr Mianich was responsible for the financial components of the Corporate Business Plan. Mr Mianich gave evidence to the Inquiry that there was no need to include financial data in the Corporate Business Plan, because that was not required by legislation, financial information was contained in the City's Long Term Financial Plan and the Corporate Business Plans of other local governments did not contain financial information.<sup>137</sup>
187. The Inquiry has not been greatly assisted by Mr Mianich's evidence on this issue. Even if it may not have been strictly necessary for the Corporate Business Plan to include financial data in order to comply with regulatory requirements, this does not mean that the Corporate Business Plan was appropriate or amounted to best practice given the scale and scope of the City's operations.

### Long Term Financial Plan

188. The Long Term Financial Plan is a key element of the IPR Framework that enables local governments to set priorities, based on their resourcing capabilities, for the delivery of Strategic Community Plan priorities.
189. The Long Term Financial Plan should include *"robust forecast budgets for four years accompanying the Corporate Business Plan"* to enable the development of annual budgets aligned with the local government's strategic objectives. It should also allow financial issues and their longer-term impacts to be identified early and highlight linkages between specific plans and strategies.<sup>138</sup>
190. ACIL Allen, however, found the Long Term Financial Plan:
- "... is of limited value as a planning document. It is a high level statement of the 10 year financial projections for the City, which is based on a series of high level assumptions that are not adequately reported in the Plan. The Long Term Financial Plan does not adequately articulate the business need to support these projections through more detailed projections of the City's revenue and expenditure projections by key business unit or Directorate. The Plan also does not provide any link to the City's other planning documents, particularly the Corporate Business Plan".*<sup>139</sup>
191. Crowe also noted that *"the City does not have the ability to accurately forecast and manage capital plan [sic] beyond the short-term"*. The City had a *"financial planning horizon"* of two years, but the Corporate Business Plan and Long Term Financial Plan required the City to plan, among other things, its anticipated capital expenditure four years and 10 years in advance.
192. Crowe considered that the City was limited in its ability to plan capital expenditure, because of its limitations in relation to project management and asset management. Furthermore, Crowe observed that the City's weaknesses in asset management *"reduce[ed] the City's ability to perform long term strategic asset planning with any degree of accuracy"*.<sup>140</sup>

193. Crowe noted that a key risk for the City arising out of its inability to accurately forecast its capital expenditure was the inadequate analysis, design or delivery of capital initiatives, which could result in additional expenses or time delays.
194. In this respect, Crowe noted in relation to one year's Long Term Financial Plan that there was no reference to the City's proposed implementation of an Integrated Parking Management System equating to \$17 million over two years.<sup>141</sup> In total, there were additional material adjustments of approximately \$45 million.<sup>t</sup>
195. The result of such adjustments, when combined with other errors,<sup>142</sup> was that the City's reserves fell to \$27 million from \$60 million and its cash fell from \$80 million to \$45 million. Crowe indicated that the *"magnitude of corrections is significant"*. The City would be at risk of experiencing liquidity issues if these issues were not properly managed. Crowe considered this was an example of how *"the consequences of inadequate financial planning could be high for an organisation of the scale, scope and complexity such as the City"*.<sup>143</sup>
196. This was consistent with the evidence of Mr Jorgensen, who told the Inquiry that the City's IPR Framework documents did not have *"reliable, long-term financial projections ... that were robust"*.<sup>144</sup>
197. In his evidence before the Inquiry, Mr Mianich agreed these adjustments to the Long Term Financial Plan were material and significant, but denied they were errors, on the basis that the Long Term Financial Plan was an *"iterative document"* to which changes were regularly made. Mr Mianich *"totally"* disagreed that these adjustments represented a failure of the City's processes and systems.<sup>145</sup>

### Workforce Plan

198. The City's Workforce Plan outlines the required resources, capabilities and competencies the City requires to deliver the objectives and initiatives in the Corporate Business Plan. It should also articulate the desired organisational culture, the organisational structure; and recruitment and retention strategy to support a productive and inclusive workforce.<sup>146</sup>
199. ACIL Allen found that one of the City's Workforce Plans was:
- "... of limited value as a planning document. It is a high level statement of projected workforce requirements by Directorate over the period between 2017 to 2021, but it does not adequately articulate the business need over this period; nor does it provide any link to the City's budget or Corporate Business Plan"*.<sup>147</sup>

<sup>t</sup> Report, Crowe, Review of Governance and Financial Matters, August 2019. This included *"Additional Core Systems costs of \$13.5 million (over four years); Increased costs of Perth Convention Centre Carpark subsidence works by \$5 million to \$25 million; Increased costs of IPMS by \$6 million to \$17.7 million"*; and expenditure of \$6.5 million in FY 2019 and \$10.5 million in FY 2020. Email, D Richards to R Mianich, 4.42 pm, 7 September 2018.

### Asset Management Plan

200. The Asset Management Plan provides guidance on the management of the City's assets from a "whole of life" cycle, including the services that will need to be provided, to inform the City's financial sustainability and service levels.
201. ACIL Allen found the City's Asset Management Plan:

*"... is of limited value as a planning document. There is very little detail presented in the Plan to allow for an adequate assessment of the City's maintenance requirements or future capital requirements. Significantly, the Corporate Asset Management Plan does not provide any link to the City's other planning documents, particularly the Long Term Financial Plan, Corporate Business Plan or Strategic Community Plan".*<sup>148</sup>
202. Mr Mianich conceded there was insufficient integration between the Asset Management Plan and the Long Term Financial Plan and the City had not previously invested appropriate resources into asset management. However, Mr Mianich gave evidence that this was an area in which the City had significantly improved since the restructure in 2015.<sup>149</sup>
203. The City's Commissioners, at their 28 March 2018 meeting, noted *the City "does not have the functional or integrated asset management strategy that carries the level of financial detail necessary to accurately inform its medium and long term financial planning functions"*.<sup>150</sup>

### Annual Budget

204. The Annual Budget is an annual detailed financial plan covering all aspects of a Council's operations and should reflect the resources generated by way of revenue and the resources consumed by way of expenditure. It is also the basis for the setting of rates and other fees and charges. The Annual Budget is guided by the Corporate Business Plan. Each year, an annual review is also undertaken as required by the LG Act.
205. Crowe outlined the City's annual budgeting approach:

*"The City has a decentralised budgeting process whereby the individual Directorates and Business Units develop their own budget estimates within the guidelines established by Finance".*

*"The responsibility of assessing the current operations in relation to priorities within the Strategic Community Plan and Corporate Business Plan rests with the Directors and Business Unit Managers".*

*"Operational budget estimates are limited by Council through the adopted budget parameters".*<sup>151</sup>
206. Consistent with other observations about the limitations of a siloed approach, a decentralised budgeting process is patently unsuitable for a large local government like the City.

## Reporting

### Financial Report

207. The Council prepares a Financial Report for the end of the financial year.
208. According to the Department, *“Financial Reporting is primarily aimed at external users for the purposes of accountability”*. The primary benefits are described by the Department in the following way:
- “The primary benefits of financial reporting are:*
- it makes the council accountable to the community for its financial management of local government operations; and*
  - it provides the community and other interested parties with access to information about the current financial status of the council and its operational performance for the period in question.*
- The purpose of financial reporting, or the preparation of annual financial statements, is to communicate information about the financial position and operating results of a council to those who need to know or have an interest in council operations”.*<sup>152</sup>
209. The Financial Report is to include: a Statement of Financial Position; Statement of Comprehensive Income by nature or type and by programme; Statement of Changes in Equity and Statement of Cash Flows; a Rate Setting Statement and *“seven financial ratios required under section 50(1) of the Local Government (Financial Management) Regulations 1996”*.<sup>153</sup>
210. The City’s Financial Report from 2017/2018 is audited by the State’s Auditor General.<sup>154</sup>
211. The Auditor General audited the City’s financial report for the year ending 30 June 2018. As the period 1 July 2017 to 1 March 2018 is within the period of the Inquiry’s Terms of Reference, the results of the audit are relevant. Importantly, the Auditor General found:
- In relation to the City’s financial ratios, “there were instances where the existing ratio calculations were not consistent with the information contained therein [in the Financial Report] or reporting requirements”. A moderate finding was made, meaning it was of sufficient concern to warrant action being taken by the entity as soon as practicable. Accordingly, the Auditor General recommended that “Ratios should be reported consistently and in accordance with the Local Government (Financial Management) Regulations 1996”.*
  - The “City’s accounting records, supporting schedules, documents, and other files (including a finalised trial balance and draft financial statements) were not finalised and were not in a position for audit commencement”. In short, they were not ready for auditing by 30 September 2018. A moderate finding was also made. The Auditor General recommended a “more rigorous process be implemented that incorporates accepted timelines, collaboration from all stakeholders and finalised reconciliations and supporting schedules to enable an efficient and effective reporting and auditing process”.*<sup>155</sup>

212. Financial ratios are designed to provide users of annual financial reports with a clearer interpretation of the performance and financial results of a local government and a comparison of trends over a number of years.<sup>156</sup> Timely and accurate data and information is essential to being transparent and accountable for the City's performance. Errors and inconsistencies in key performance measures can mean that councils, the Department and the ratepayers and residents may not have accurate information to assess the City's performance and participate in discussions related to financial matters.
213. The unavailability of the City's accounting records for audit by the Auditor General in accordance with its statutory obligations<sup>157</sup> suggests that the City's systems, processes and people did not have the capability to meet legislative obligations and support strategic level performance monitoring. The City acknowledged the *"trial balance was not finalised as at 30th September"*.<sup>158</sup> If a local government is unable to comply with the timeframe for the provision of the documents to audit, then an application may be made to the Minister for Local Government for an extension of time. There is no evidence before the Inquiry that the City applied to the Minister for an extension of time.<sup>159</sup>

### Management reporting

214. Compliance with statutory requirements should not be an end in itself. The purpose of financial management, planning and reporting requirements under the LG Act is to ensure that a local government manages its finances and operations strategically and effectively. This will not happen if reporting or strategic requirements are completed merely to comply with relevant legislation and not to help plan for the future of the City.
215. There is evidence before the Inquiry of the City's inability to extract workforce data in a timely manner as well as the fact that the City did not have the capability to provide the CEO, Directors and Managers with accurate financial and other management information in a timely manner.

### Workforce data

216. Access to accurate workforce information is essential to managing the City's costs and planning for the future.
217. Determining the financial impact of the workforce staff has also been a challenge for the Inquiry. Mr Nicolaou, at his hearing, commented on the difficulty in obtaining workforce information from the City. He said the City had no accurate record of how many people were working for it or had worked for it at any time in the past. He said:

*"We weren't able to get a good record of head count movements over that period of time ...*

*...*

*There was just no common single point of truth or single source of truth with respect to their HR from a FTE point of view, full time equivalent job point of view, so we had difficulty in getting that data".<sup>160</sup>*

218. Mr Nicolaou was asked if he thought this was unusual. He said:

*“It was unusual because head count, full-time equivalent numbers, it’s a pretty key input into any budget setting and it’s an important indicator of the efficiency or otherwise of how an organisation’s running because it’s the key input into any activity that the City undertakes.”<sup>161</sup>*

219. ACIL Allen concluded:

*“This lack of centralised HR management information, and lack of management information/targets, are likely to be contributing to the substantial growth in the City’s direct employment and contractor costs.”<sup>162</sup>*

220. This is consistent with the Deloitte Report, where Deloitte found:

*“Finance and HR [Human Resources] systems are not configured to provide an integrated view of workforce data. Generation of workforce reports is a manual, time consuming process with inputs from a mix of systems-based data and information provided by individual business unit managers.*

*Furthermore, the ELG [Executive Leadership Group] reported discrepancies in the data provided in the HR monthly report and indicated they were reluctant to rely on it to make decisions given the inaccurate information.”<sup>163</sup>*

221. Deloitte concluded the lack of timely human resource information inhibited the City from making informed decisions about workforce resourcing.

222. Mr Jorgensen, CEO, gave evidence that he experienced difficulties obtaining accurate information on the number of staff at the City. When Mr Jorgensen commenced at the City, he asked how many staff there were on the payroll:

*“The best I could get initially was that there was around about 750 staff, give or take 10 or 20, which I found an unacceptable answer at that point in time because, give or take 10 or 20 is actually give or take several millions of dollars or not”.*

223. Mr Jorgensen said that the problem was that there were *“Two disparate systems that didn’t accurately talk to each other”*. *“It seemed that the numbers in the financial systems did not correlate to the numbers in the human resource management system.”<sup>164</sup>*

224. This is consistent with the evidence of Mr Mianich who explained that employees were paid through the City’s payroll system, but the data for contractors engaged by the City (to replace employees that had resigned) was in the City’s finance system. The City’s payroll system might show there were 730 employees in any given fortnight, whereas *“the total actual working number”* was 760.



225. According to Mr Mianich, *“it was very difficult to get an instantaneous set of data with regard to the number of contractors that were filling in for substantive positions at any one instant in time”*, which meant *“it was very, very difficult to get an instantaneous number on the exact number of head count, if you like, that was present in the building at an instant in time”*. It would take days to provide the accurate number of staff working at the City. Mr Mianich did not agree that this was a problem or an unsatisfactory outcome, but agreed *“It was far from ideal”*.<sup>165</sup>
226. Mr Nicolaou gave evidence that there did not appear to be any financial or governance controls to restrain or monitor the City’s growth in staff and labour costs. The ELG, the CEO and the Director of Corporate Services were, in Mr Nicolaou’s view, responsible for ensuring those controls were in place. If the City, for example, had KPIs regarding its expenditure on employee and contract labour, that *“could at least create some triggers to challenge any growth over and above an adequate benchmark”*.<sup>166</sup>

### Financial data

227. The Deloitte Report found, as at June 2017, *“Management reporting is inconsistent and does not provide the executive leadership with the information required to make effective decisions”*. From interviews with 33 senior management staff and governance, finance and procurement specialists, the quality of management information available to directors and managers was consistently reported to be poor. Directors and managers raised concerns with Deloitte about the scope, format, accuracy and timeliness of regular budget reporting.
228. The Deloitte Report identified that the City’s Finance unit *“faced challenges providing consistent and useful reporting, due to the lack of standardised, automated reports, the complex structure of the City’s chart of accounts, and the insufficient integration across the City’s various information systems”*. Ultimately, the report found:
- “Unnecessary effort is spent on compiling data and reconciling differences, rather than using reports to draw insight. The lack of reliable and efficient management reporting impacts the City’s ability to maintain oversight of operations and make informed and timely decisions”*.<sup>167</sup>
229. The Deloitte Report’s findings are consistent with the evidence of Mr Jorgensen, who provided the Inquiry with a *“spaghetti diagram”* showing the complexity and interdependency of multiple systems within the City and the large number of manual interventions by staff required to move data from one system to another.<sup>168</sup>
230. This is also consistent with the results of a *“Strategic Financial Management Review”* conducted in February 2019, which found that poor integration and data transfer arrangements between the City’s *“confusing mix of financial related technology”* meant that *“much time is spent manually handling the same data multiple times to complete reports”*.<sup>169</sup>

231. Mr Mileham gave evidence that as Director Planning and Development, he found that financial information was difficult to obtain. Given that Mr Mileham commenced as Director Planning and Development in September 2012 and continued in that role until January 2016, the Inquiry infers that the difficulties experienced in obtaining financial information had existed for some time and at least prior to his appointment as CEO in January 2016.
232. Mr Mileham told the Inquiry that at the time he became CEO, the City's model of financial management meant:
- "... those conditions were experienced by all Directorates, that they had to re-interpret what you would call deep financial information out of basically a financial system not built for managers who are non-financial, they would have to re-interpret, and they would doing that ad hoc and informally".<sup>170</sup>*
233. Further, as CEO, Mr Mileham found that management reporting was not sufficient.<sup>171</sup> Mr Mileham's evidence was consistent with the evidence of:
- Mr Hammond, who said *"the ability for Councillors, and indeed the CEO to obtain accurate, timely, and informative financial data was just not there"*,<sup>172</sup> and
  - Mr Jorgensen, who observed when he joined the City that the centralised finance system was not delivering what the City's directorates required.<sup>173</sup>
234. To overcome the difficulties experienced by directorates in obtaining financial information, during Mr Mileham's tenure as CEO *"Directorate Accountants"* were employed within each directorate, separate from the City's Finance unit, to assist directors in analysing and extracting financial information in a form that would be useful to them.<sup>174</sup>
235. Mr Mianich gave evidence that this model was fundamentally flawed.<sup>175</sup> According to Mr Mianich, it was intended that directorate accountants would report to the Manager, Finance and the relevant director, but when the structure was implemented:
- "... the Directors usurped the function totally. So they virtually cut off the reporting arrangement that was agreed with the Manager, Finance. So it proved very difficult for the Finance Unit to extract data and to get information from the Directorate Accountants. They seemed to be extremely, dare I say it, siloed in their view as to just presenting the Directorate view and really taking a very defensive view of the Directorate, rather than looking at a whole of organisational view".<sup>176</sup>*
236. Mr Mileham's view was that the directorate accountant model *"improved visibility for the Directors, or was intended to"*. However, this arrangement was *"certainly not intended to be a long-term solution"*.<sup>177</sup>

237. Mr Mianich gave evidence to the Inquiry that at the time he resigned from his employment at the City in June 2019, there were a number of initiatives in progress to improve the City's capability in relation to human resources, finance and information technology. He said they were undertaken under his oversight as Director.
238. Even if that is accepted, it is clear from the evidence that the difficulties obtaining accurate, useful and timely financial information had existed for a number of years.<sup>u</sup> At the time of his resignation, Mr Mianich had been Director Corporate Services and had overseen human resources, finance and information technology at the City for the previous 14 years.
239. The Inquiry finds that Mr Mianich, should have done more at an earlier stage to ensure human resources and financial information and data was accurate, useful and timely.

#### Internal audit

240. Internal audit provides independent, objective assurance and consulting to add value and improve business operations. It is a key element of good corporate governance in organisations and improves both financial and non-financial management and accountability. Core internal audit activities incorporate corporate governance, ethics, and fraud risks and controls.<sup>178</sup>
241. Crowe examined the internal audit framework of the City. The City has an in-sourced internal audit function comprised of two staff members.
242. A '3 lines of defence' model<sup>179</sup> is most commonly referenced when describing the mechanisms in place to provide assurance to the Council, CEO, executive and stakeholders.<sup>180</sup>
- The 1st line of defence is where the risk originates. It is also where controls are implemented for managing the risks as well as having in place mechanisms to demonstrate controls are working effectively.
  - The 2nd line of defence monitors, reviews and tests effectiveness of 1st line control and management of risks.
  - The 3rd line of defence is independent assurance. Internal audit is a key component as well as external audit, including agencies such as the Office of the Auditor General.
243. Crowe found that:
- "The City's internal audit function is not responsive to the organisational challenges and provides limited support in strengthening governance, risk and control. Internal audit has primarily focused on compliance testing of controls and reported exceptions to management".*

<sup>u</sup> For example, the evidence of Mr Mileham that the City's chartered accounts which were complex and "had been built up ad hoc over many years" and which were "fundamentally redesigned": Transcript, M Mileham, public hearing, 9 October 2019, p 64.

244. Internal audit functions are well positioned to share insights with the Audit Committee and executive. By reporting on themes and trends (rather than only on the findings of individual audits), internal audit can use the outcomes of audit activity to provide strategic organisational and systemic perspectives.

245. Crowe found that was not the case at the City, where:

*“Internal audit findings do not consistently embody a root cause analysis nor themes-based reporting that links the outcomes of internal audit activities. Internal audit reports are static in nature, focussing on instances of non-compliance and lack any strategic perspective”.*

Further, they note:

*“Without conducting a root cause analysis and themes-based reporting, the underlying or systemic issues may not be identified. By focussing on the symptom rather than the causal factor, that is, addressing the issue at the superficial level only, the effects of such risk may be recur in the future”.*<sup>181</sup>

246. Internal audit reports were found lacking in key elements. The City’s internal audit reports did not clearly articulate the risks the internal audit activities were meant to address.

247. Crowe noted that leading practice suggests that, as a minimum, each internal audit issue identified should be reported addressing five information elements:

- Criteria – These are the standards or measures used in making an evaluation.
- Condition – The factual evidence found during the examination. This may be non-compliance with established law, regulation and management practice; or deficiency in the control structure.
- Cause – The reasons for difference between expected (criteria) and actual condition.
- Consequence – The risk or exposure the organisation experienced because the condition is not consistent with the criteria.
- Corrective Action – Recommended action to correct existing conditions or improve operations.

248. Crowe commented:

*“We found the City’s internal audit report structure does not consistently feature all of these elements.*

*There is limited analysis, if any, on the ‘Cause’ of the identified issue. Additionally, the ‘Criteria’ is not visible for the reader to understand the object against which the ‘Condition’ has been evaluated”.*

249. The City's internal auditor advised this had been an oversight. However, Crowe commented:

*"We found this deficiency to be extraordinary because risk-based reporting is a rudimentary capability reasonably expected to exist in any professional Internal Audit function.*

*Considering the City's complex business arrangements and governance challenges, the City's Internal Audit function should have a rigorous process for capturing the risks, focussing internal audit activities and clearly reporting on those risks".<sup>182</sup>*

250. Furthermore, there were numerous elements of a good internal audit programme<sup>v</sup> missing at the City. The City did not have a strategic internal audit plan or an assurance map and its audit function was not independently assessed against the International Professional Practices Framework.<sup>183</sup>

251. The Inquiry finds that the City should have adopted better practice in auditing, established a strategic internal audit plan and prepared an assurance map.

252. The resourcing of the City's internal audit unit, comprising of two staff, was examined. Crowe commented:

*"We found that the quantum of hours assigned to in-house Internal Audit activities annually (approximately 3000 hours) appears to be excessive considering the compliance nature of the program and the quality of the reports produced".<sup>184</sup>*

253. Deficiencies in the internal audit capability in terms of its model, capability, planning and processes have resulted in a less than robust 3rd line of defence for the City.

254. The Inquiry finds that the City's internal audit function was not sufficient for a local government of this size and complexity in business operations. The audit programme was limited to compliance audits. Audit reports did not reflect the risks of the audit and did not provide for better practice audit report structure and content elements. The capability of the audit function was limited with an excessive number of hours taken to perform compliance audits. The audit function had not been independently audited against best practice audit standards.

#### **Evidence given by Mr Murray Jorgensen and Mr Andrew Hammond**

255. Mr Jorgensen and Mr Hammond gave evidence to the Inquiry in public hearings held on 9 and 10 October 2019.
256. Both Mr Jorgensen and Mr Hammond have had considerable experience in a variety of local governments in Western Australia. Both took office at the City only after the end of the period covered by the Inquiry's Terms of Reference. Both inherited and dealt with financial management issues from the period covered by the Terms of Reference.

<sup>v</sup> The standards applied to Internal Audit are the 'International Standards for the Professional Practice of Internal Auditing' contained in the 'International Professional Practices Framework' issued by the Institute of Internal Auditors ("IIA"). Standard 2000 – Managing the Internal Audit Activity – of the International Standards for the Professional Practice of Internal Auditing.

### Mr Murray Jorgensen

257. Mr Jorgensen provided a statement to the Inquiry, in which he set out his observations about the City at the time he commenced there, and the actions taken and proposed.

258. During his examination, Mr Jorgensen was asked:

*“One of the words we have heard in this Inquiry time and time again, Mr Jorgensen, and I think it might be in respect of what you’re talking about, is that there was something of a siloed mentality as between the Directorates; is that something that you observed?---That’s certainly what I’ve observed and when working with many other executives in Local Government, siloed or competitive executives aren’t as effective as collaborative, dynamic ---*

*This is something, is it, that you have seen in other environments other than the City of Perth?---Correct.*

*Are you able to express a view, based on your long experience in Local Government, whether or not it’s more usual than not to have siloed mentalities within Local Governments?---I would only be able to refer to the local authorities that I’ve either worked with or seen, so I can’t talk about something that would be scientifically tested across all Local Governments, but generally – the best way to describe it is, it would be one or the other. You’re either siloed and competitive, or you’re effective and collaborative and certainly the effective Local Governments have collaborative Directorates.*

*And you’ve seen, as I understand it, both of these environments in your time in Local Government?---Yes, but not as bad as probably the City of Perth.*

*In terms of the siloed mentality?---Yes.”<sup>185</sup>*

259. Mr Jorgensen provided a newly developed corporate governance framework as an attachment to his statement. In his examination, he described the integrated planning model contained in that document.

260. He said:

*“Good governance should be informed by really understanding the community’s vision and aspirations and their goals and that usually comes from very detailed community engagement. So it’s not about how you deliver it but it’s about what sort of City or Local Government you really want to become. That community vision and aspiration is articulated in the Community Strategic Plan or the Strategic Community Plan. That usually has a minimum of a 10 year horizon, so it’s quite a long-term thing. So, for example, you want to reduce homelessness to zero within the City of Perth, would be a Strategic Community Plan aspiration. How you would do that then flows on to the next document which is the Corporate Business Plan.*

*This Business Plan works on a four year horizon and takes the aspirational content down into, effectively, a cunning plan, if you want to call it that, to deliver the services and deliver the projects that the community desires and the Council sees as a priority.*

...

*So if we take that homelessness as an example, there might be a homelessness strategy arising out of the Strategic Community Plan. That then informs the Corporate Business Plan on how the organisation will actually deliver that over the next four years and it always incorporates financials.*

...

*There's a number of then service plans or operational plans, sometimes Local Government call them Business Unit Plans. We have elected to focus on service at the City of Perth, so we call them a Service Plan and that is then how the individual team or teams at the City will deliver that over the next few years, and it also picks up documents like our Asset Management Plan or our asset renewal or our Capital Works Projects Plans.*

*... the Long-Term Financial Plan is pulled together from all of those various inputs, but again, it has a 10 year horizon. So everything with a long-term view of 10 years but quite specifically, the Corporate Business Plan and Service Plans are more of a four year operational timeline.*

...

*So the annual budget is then populated from all of these input documents, whereas traditionally at the City of Perth, it would be fair to say that the budgets basically came from the bottom up, which was more, this is what the service team needs".<sup>186</sup>*

261. He said that this Model was being developed and would be completed by April 2020 as part of the City's Corporate Recovery and Implementation Plan.

262. He gave an example of the problems this caused:

*"I can recall shortly after starting at the City of Perth one of the major financial documents presented to the Commissioners that, as CEO being 100 per cent responsible for everything, I was embarrassed that a financial statement was presented to the Commissioners but because it had been manually prepared, which in this day and age is interesting, so it was manually prepared but the brackets on a \$55 million figure were excluded so when they were manually added up it meant that there was a \$110 million difference... So the confidence level in the manual reporting certainly wasn't high at the Commissioner or at my level".<sup>w</sup>*

<sup>w</sup> Transcript, M Jorgensen, public hearing, 9 October 2019, p 118-119. When giving evidence before the Inquiry, Mr Mianich rejected the proposition that this error had the potential to expose the City to reputational risk or reflected poorly on the City because "I would say not many people, if any, would be reading the cash flow statement of a Council for a month" and "They possibly wouldn't have even noted it". Transcript, R Mianich, public hearing, 9 October 2019, p 16-17. The Inquiry does not accept this evidence. A \$110 million error in the City's financial reports had the obvious potential to reflect poorly on the City and/or damage the City's reputation, even if that risk did not eventuate at the time.



263. Mr Jorgensen said that currently the directorate accountants are being brought into one team and the information into one repository *“The field experience, if you want to call it, is being centralised to ensure that the system actually delivers what the field needs”*.
264. Mr Jorgensen agreed that the previous system of independent accountants in each directorate created a problem that information which was relevant to more than one directorate would not necessarily be shared, and corporate knowledge about how to do certain things was also not shared.
265. He said that as a result of the changes the staff in the Finance directorates felt they were *“making progress and getting the City better and reinvigorated”*.
266. Mr Jorgensen was asked how he thought the finance system got to the state of *“a spaghetti system of different financial systems in different directorates”*. He said he thought it had probably been a series of incremental decisions, each on its own not important. He said *“previously Directorates and teams could buy things and effectively bolt it on”* to the system. He said, *“I genuinely don’t understand the thinking but it would be fair to say that, I’m just surprised it didn’t receive higher priority”*.<sup>187</sup>
267. When asked on his reaction to the *“spaghetti diagram”* Mr Jorgensen said:  
*“On one hand, I suppose it would have been almost disbelief but then on the other hand it was, well, that now explains a lot. Despite the confusion that it created, it was at least comforting to know we understood the extent of the problem and now we have got a Financial Transformation and an Information Transformation Program to address this, and one of the reasons I said yesterday it may take up to three years to solve it, although I’m confident we will break the back of it by the end of this financial year, it is a very complex and difficult thing to turn around overnight”*.
268. He said that the Financial Transformation Plan is expected to have the following impact on the City’s ability to deliver services:  
*“Initially it will be our ability to extract and interpret quality realtime data. So hopefully the first benefit would be better decisions based on better data. The second thing is, there should be definitely efficiency savings without the need for all of those manual interventions. As the systems are reformed, there should be a serious ability to, over time, reduce the number of staff involved in the collation of that information. Then the third benefit I would see would be the minimisation of risk. I used yesterday the example of missing brackets on a manual document around a figure of \$55 million which extrapolated to \$110 million error in some statements. Hopefully that would be minimised in the future which is a risk to the City”*.<sup>188</sup>

269. Mr Jorgensen commented on the culture of directorates when he commenced at the City. In relation to the members of the Executive, he said:

*"I think if each of them were interviewed separately, they would say there was a level of competition, regular unhealthy tensions and I've even heard them using the words, throwing each other under the bus.*

*When you say you've heard, is this something you've overheard yourself or somebody said to you?---The Executive have mentioned that to me and it was certainly a concern they had of the functioning of the Executive when I got there. It has dissipated now. It's certainly a collaborative Executive at the moment, a respectful Executive".*

270. Finally, Mr Jorgensen said:

*"Probably one final point is that finance from my perspective is a critical and integral part of the Strategic Planning and Integrated Reporting Planning Framework. Yes, there was some planning documents in place but not with reliable, long-term financial projections on them that were robust. So one of the challenges we have got at the moment, which we are definitely working on the solution, is the integration of finances into the strategic planning. So one thing is to have aspirations, the other thing, like your own personal budget, you've got to have the ability to pay for it and we are bringing that together at the moment".<sup>189</sup>*

#### Mr Andrew Hammond

271. Mr Hammond, Chair Commissioner, City of Perth provided a statement to the Inquiry, in which he set out his observations about the City at the time he commenced there, and actions taken and proposed.
272. When asked about how members of a local government serve the community, he said:
- "The members of the government serve the community, firstly by effectively utilising the system that has been put in place with integrated strategic planning. The legislation and the regulations, and also the pertinent guidelines that have been issued by the Department of Local Government, provide for a system where a Council's role is to extract and distil the vision for their community, and that vision for the community, being a Strategic Community Plan, should encapsulate the aspirations that help to serve the community's vision, and should also be clear on the objectives that should be reached in order to achieve those aspirations or move towards those aspirations. It is the role then of the Chief Executive Officer to establish a Corporate Business Plan that is capable of applying the resources and the logistics necessary to achieve the objectives of the Strategic Community Plan that has been, if you like, sponsored by the Council".*

273. He spoke about the role of the CEO:

*“... I think the term CEO in the context of strategic planning means the organisation. So it’s the role of the CEO obviously to foster, to mentor, to establish the necessary human resource to be able to effectively execute the Corporate Business Plan. That obviously includes the Executive, which should be working as one with the Chief Executive, it includes the management group but it also includes all staff”.*<sup>190</sup>

274. Mr Hammond was asked about accessing key financial information at the City:

*“Was it difficult to obtain financial data to explain the big picture?---Yes.*

*When you commenced on 2 March 2018?---Yes, absolutely.*

*Can you tell me why?---Well, on 2 March 2018 I didn’t know – it’s become apparent since then that the reporting and the financial accounting systems were less than good and the way that the accounting system was, I guess, not interconnected effectively with other programs around the place, and also we did find out that there was not actually an enterprise approach to accounting and each division had its own accountant, and in some cases, as we understand it, actually its own accounting records.*

*...*

*However, it would be fair to say that the ability for Councillors, and indeed the CEO to obtain accurate, timely, and informative financial data was just not there”.*

275. He explained that the CEO had engaged a Strategic Director of Finance:

*“... because there was an inability to, I think obtain an acknowledgment from the staff involved as to the importance of an Integrated Strategic Planning Framework and the need for documents like the Corporate Business Plan to be fully populated with financial projections and also a need for team-based plans that could give Council and the Executive the opportunity to almost forensically understand what each team was up to and what their activities were likely to be for the next three to five years”.*<sup>191</sup>

## Findings

### Finding 2.3.3 – 1

The Inquiry makes the following findings:

- i. The financial management of the City was adversely affected by a ‘siloed’ structure in which, in addition to a financial section within Corporate Services, each directorate and some units had their own accountants and financial staff who operated independently. This led to a lack of information sharing, good record-keeping and centralised control of finances.
- ii. The financial surplus of revenue over expenditure of the City decreased during the period, although revenue still exceeded expenditure, primarily due to the revenue from CPP.
- iii. The costs of staff and contract labour was the largest expenditure by the City and grew in excess of the Consumer Price Index and expenditure by other local governments during the period 2012 to 2018.
- iv. The City failed to keep an accurate record of the number of people it employed, either as employed staff or as workers on contract.
- v. The City was not able to report consistently on its statutory financial ratios. In addition, the lack of other KPIs meant that services were not appropriately monitored for performance and financial implications.
- vi. The City’s KPIs did not include a measure of financial efficiency.
- vii. The City did not have a business plan for CPP, contrary to section 3.59 of the LG Act. Given the City’s reliance on revenue collected by the CPP, that was a significant failure.
- viii. The City provided inaccurate information to the Department in its 2015, 2016 and 2017 Returns in relation to its failure to prepare a business plan for CPP.
- ix. The City did not comply with the principles of competitive neutrality, because it did not ensure that CPP did not enjoy a competitive advantage based on its public ownership.
- x. The internal costs allocated to the parking business have not been properly recorded or justified. It is possible that other costs, not truly attributable to the parking business, may have been allocated to it.
- xi. There was insufficient integration of the City’s strategic and planning documents. Planning documents also lacked the necessary level of detail to fully articulate, adequately cost and ensure accountabilities for the strategies and deliverables within the plans.

## Finding 2.3.3 – 1 (contd)

- xii. The City did not have appropriate systems and governance in place to manage and monitor its financial performance.
  - Information that should have been available to monitor the operations of the City, including staffing numbers, was not readily available.
  - There was limited maturity in the financial performance measures that would have allowed closer monitoring of the City's financial performance by the Council and the CEO.
  - The financial system and practices meant that timely and accurate information was not available.
  - The planning documents under the IPR Framework were not integrated. The Corporate Business Plan and other supporting documents did not demonstrate a strategic or long-term focus. They were hampered by the shortcomings in the financial management systems and practices stemming from a short-term and transactional data focus.
- xiii. Mr Mianich should have done more at a much earlier stage to ensure that human resource and financial information and data was accurate and available in a timely manner to managers, Directors, the ELG and Council.
- xiv. The City's internal audit function was not sufficient for a local government of the City's size and complexity in business operations.
  - The audit programme was limited to compliance audits. Audit reports did not reflect the risks of the audit and did not provide for better practice audit report structure and content elements.
  - The capability of the audit function was limited, with excessive hours taken to undertake compliance-based audits.
  - The City should have adopted better practice in auditing, established a strategic internal audit plan and prepared an assurance map.
- xv. The audit function had not been independently audited against best practice audit standards.
- xvi. Mr Mianich, as Director, Corporate Services, should have done more to ensure Mr Mileham was aware of his obligation to undertake a review of the City's financial management systems and report to Council as required by regulation 5(2)(c) of the Financial Management Regulations.
- xvii. Deficiencies in the City's financial management and human resource systems and practices meant that appropriate information may not have been available for Council and its Committees as well as the Administration.
- xviii. As CEO, Mr Mileham was responsible for ensuring information was available to the Council so that informed decisions could be made. The Inquiry notes that the deficiencies in the City's financial management and human resource systems and practices pre-dated his appointment as CEO.



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## Perth Public Art Foundation and the 2016 CowParade

### Introduction

1. This Section concerns the City of Perth's (City) relationship with the Perth Public Art Foundation (Foundation) and the hosting of an event called the CowParade in late 2016 by the City and the Foundation.
2. The Foundation is a not-for-profit charitable incorporated association established, initially as the City of Perth Art Foundation, by the City in 1996.
3. By clause 6.1 of its Constitution, the Foundation is:

*"dedicated to developing partnership and fundraising activities to stimulate the commissioning of quality public artworks and support artistic collaboration for the benefit of the people of Perth, Western Australia, ensuring a healthy creative dimension to the City of Perth".<sup>192</sup>*

4. Between the middle of 2015 and 30 June 2018, the Foundation was wholly funded by the City pursuant to a document called a "*Funding Agreement*"<sup>193</sup>, but referred to by the Foundation and the City as a "*principal partnership agreement*" (Foundation Funding Agreement).<sup>194</sup>
5. The CowParade is an international public art project owned by a company headquartered in the United States of America called CowParade Holdings Corporation (CPHC). The project involves life-sized cow sculptures being painted or otherwise decorated and placed in various locations around the city. CowParade was staged in Perth, with the involvement of both the City and the Foundation, in October to December 2016.

6. To stage the CowParade, the City struck two agreements: one with CPHC, which the Inquiry will call the CowParade Holdings Corporation Agreement (CPHC Agreement),<sup>195</sup> and one with the Foundation, which the Inquiry will call the Perth Public Art Foundation CowParade Agreement (Foundation CP Agreement).<sup>196</sup>

## Timeline

2015	9 June	Council approved a principal partnership sponsorship with the Foundation for a period of three years, from 11 June 2015 to 10 June 2018.
2016	During April	Funding Agreement between City and Perth Public Art Foundation Inc was signed.
	13 June	CowParade Perth Event Agreement and Licence between the City and CowParade Holdings Corporation was signed.
	22 June	The Foundation provided a Letter to the City attaching Partnership Package and Conditions.
	29 June	The 2016 CowParade – Perth budget was prepared by the Foundation.
	27 July	Program/Project Funding Agreement for Funding of CowParade 2016 between the City and the Foundation was signed.
	31 Oct – 11 Dec	CowParade was staged in Perth.
	15 December	Letter from the Foundation to the City, attaching the Funding Agreement signed in April 2016, referred to as 'Principal Partnership Agreement'.

## Issues identified

7. In considering the City's relationship with the Foundation and the hosting of the CowParade, the Inquiry was guided by its Terms of Reference. In particular, clauses A.1, A.3(i), A.3(iii) and A.3(iv), concerning good government, grants administration, relationships and sponsorships.

8. More specifically, the Inquiry focussed on the:

- nature of the relationship between the City and the Foundation, including in respect of the Foundation's Executive Director, who is, at the time of writing, a City employee "seconded" to the Foundation; and
- City's application of its sponsorship and procurement policies to the Foundation Funding Agreement, the CPHC Agreement and the Foundation CP Agreement.



## Investigation by the Inquiry

### Witnesses

9. The Inquiry interviewed, and held private and public hearings, involving a number of people in the course of investigating this Section. In considering the issues identified, the Inquiry reviewed more than 2,000 pages of documentary material and examined four witnesses. The positions given below for council employees are the positions they held at the time of the events described in this Section:

- Ms Nicola Brandon was the Acting Manager of Marketing and Communications for the relevant period. Ms Brandon was intimately involved in the CowParade project, including in relation to the CPHC Agreement and the Foundation CP Agreement. While Ms Brandon's recollection was incomplete at times, that is not unusual given the time which had elapsed since the events which were the subject of her evidence. Ms Brandon was a truthful witness.
- Mr Nathan Giles was the Executive Director of the Foundation and an employee of the City. Mr Giles is not on the governing board of the Foundation. Mr Giles gave evidence about the nature of his relationship with the City and the nature of the relationship between the Foundation and the City.
- Ms Emma Landers was the Manager of Community Facilities during her involvement in the preparation of the Foundation Funding Agreement. As with Ms Brandon, Ms Landers presented as a truthful witness, although her recollection was incomplete at times, also likely owing to the passage of time.
- Ms Annaliese Battista was the Director of Economic Development and Activation. Ms Battista had limited relevant involvement with the Foundation and the CowParade. However, her evidence was helpful to clarify, to a degree, certain matters arising from the evidence of Ms Brandon.

## Evidence obtained by the Inquiry

### Foundation Funding Agreement

10. Before the Foundation Funding Agreement was drafted and executed, the relationship between the City and the Foundation was governed by a memorandum of understanding (MOU). However, the arrangements contemplated by that document were unsatisfactory,<sup>197</sup> and it lapsed at the end of its term in the middle of 2015.
11. Just before it did, on 9 June 2015, the Council approved a *"principal partnership sponsorship"* with the Foundation for a period of three years, from 11 June 2015 to 10 June 2018, and authorised the Chief Executive Officer (CEO) to enter into a formal funding agreement between the City and the Foundation to *"clarify respective roles and responsibilities"*.<sup>198</sup>

12. The Foundation Funding Agreement is the agreement which was ultimately entered into by the City to formalise this arrangement. It took some time to finalise and appears to have been finally executed on or about 15 December 2016.<sup>199</sup> Its effect was back-dated to align with the cessation of the MOU some 18 months earlier.<sup>200</sup>
13. In effect, the Foundation Funding Agreement provided for the complete funding of the Foundation – other than ad hoc project funding such as the CowParade – by the City. The funding under that agreement was \$529,936.00, comprising \$429,036.00 in salary and benefits paid directly by the City to Mr Giles, \$148,900.00 for the Foundation’s general administrative costs and \$15,000.00 for costs associated with the strategic development of the Foundation. The City also committed to providing approximately \$30,000.00 of in-kind funding for office accommodation, information technology and the like.<sup>201</sup>
14. On its face, the City’s sponsorship policy should have been applied to the Foundation Funding Agreement, because it set up, to adopt the language of the policy, a “*partnership sponsorship*”.<sup>202</sup> However, it appears on the evidence before the Inquiry, that the City never considered whether or how the City’s sponsorship policy applied to the Foundation Funding Agreement, or vice versa.
15. Ms Landers, who was involved in the preparation of the Foundation Funding Agreement between July 2015 and January 2016,<sup>203</sup> agreed that the City’s sponsorship policy, in the form in which it existed at the time, appeared to cover agreements like the Foundation Funding Agreement. Ms Landers also agreed, that if the application of the sponsorship policy been considered at the time, it would have raised a red flag for her.<sup>204</sup>
16. That red flag was that the policy expressly prohibited the City from using arts and cultural sponsorships and grants to meet organisational operating costs.<sup>205</sup> Had that policy been applied, the Foundation Funding Agreement – which as described above, funds “*only*” organisational operating costs – could not have been approved.
17. Consequently, during the period of the Inquiry’s Terms of Reference, the City advanced over \$500,000.00 in funding to the Foundation, not only in the absence of any policy governing that expenditure, but also contrary to a policy which did exist. While that is not beyond the power of the Council, it was irregular and it was not good government.
18. For transparency and accountability reasons, the City’s commitment to expenditure in the Foundation Funding Agreement should have been reviewed against an existing policy governing the expenditure. If Council formed the view that an appropriate policy did not exist, a policy should have been prepared and adopted before the decision to commit over \$500,000.00 in funding was made.
19. In addition, during the period of the Inquiry’s Terms of Reference, the City took no steps to audit the payments made to the Foundation under the Foundation Funding Agreement. Given the sums advanced to the Foundation, this is surprising and, in view of that fact and the absence of any governing policy controlling the expenditure, it is concerning. Fortunately, an audit undertaken by a consultant engaged by the Inquiry identified no material irregularities.<sup>206</sup> However, expenditure of this type and level should form part of the City’s internal audit processes.

### City's employment of the Foundation's Executive Director

20. One of the *"roles and responsibilities"*, which was to be clarified by the Foundation Funding Agreement, was the employment by the City of the Executive Director of the Foundation, Mr Giles.
21. However, in practice, this was not clarified by the Foundation Funding Agreement.
22. As Mr Giles told the Inquiry, while he is *"an ordinary employee of the City"*, *"There's confusion around my role and my employment and that still reigns"*.<sup>207</sup>
23. That confusion is not new. In a document entitled *"Notes on Agreement between City of Perth and Perth Public Art Foundation"* dated on or about 1 December 2015, Dr Duncan McKay, who was at the time the City's Public Art Program Co-ordinator, wrote:
 

*"As we know there are a range of complications and conundrums based around the employment arrangements for [Mr Giles] including:*

  - Being a City employee but answerable to an independent governing board.*
  - Being in direct contact with and answerable to elected members of the City of Perth (patron, board members), rather than being limited to reporting through restricted lines of communication as other employees are.*
  - Being an employee of the City of Perth, but able to operate beyond the scope of the City's code of conduct with respect to external communications.*
  - Being on the payroll of a local government, but working within an independent organisation that is not bound by the Local Government Act"*.<sup>208</sup>
24. At the relevant time, Mr Giles was employed by, and his salary was paid by, the City. He reported to and took direction from the governing board of the Foundation.<sup>209</sup> He did not report to anyone within the City, including the CEO.<sup>210</sup> He was not bound by the City's procurement policy.<sup>211</sup> He was not inducted into the City's Code of Conduct. He was not permitted to access the City's content management system. He considered that he was not permitted to speak to other staff at the City, other than in respect of the Foundation's business. He had direct contact with those members of the Council who were on the governing board of the Foundation, including Ms Scaffidi, the Lord Mayor, who was the Foundation's Patron. He was not subject to the *"CEO Inbox"* protocol implemented by the CEO at the time, Mr Martin Mileham.<sup>212</sup>
25. The confusion around Mr Giles's unique role is reflected in the description given to his position in the Foundation Funding Agreement as a *"secondment"*, and the confusion about that term was evident in internal City correspondence at the time the Foundation Funding Agreement was prepared.<sup>213</sup> It seems that, despite that term not accurately describing Mr Giles's position at the City, it was nonetheless adopted for the purposes of the Foundation Funding Agreement.

26. It is unacceptable for the City, which is responsible for the expenditure of public funds, to have employed Mr Giles without ensuring the proper and clear delineation of his role, responsibilities and reporting obligations. It presented a real, if not realised, risk to the City that Mr Giles was not inducted into the City's Code of Conduct and was not accountable to anyone within the City, despite being an employee.<sup>x</sup>
27. The Inquiry understands that the Foundation's payroll and Mr Giles's employment were to be transferred from the City to the Foundation effective from 1 January 2020.<sup>214</sup> The costs associated with this process were to be met by the City and the City endorsed the approach *"to improve governance and transparency in the implementation of the"* Foundation Funding Agreement.<sup>215</sup>

#### CowParade Holdings Corporation Agreement

28. The City and the Foundation brought the CowParade to Perth in late 2016. Within the City, it was managed by Ms Brandon (marketing) and her colleague Ms Tabitha McMullan (art). Mr Giles was heavily involved for the Foundation.
29. The decision to stage the CowParade did not go before the Council, because it was considered an activation within the ordinary budget of the City's Economic Development and Activation Directorate.<sup>216</sup> The concept was, however, presented to the Lord Mayor, and to the Council, with the latter presentation likely occurring at a Council Briefing Session at which minutes were not taken.<sup>217</sup>
30. The CPHC Agreement was signed by Ms Battista, pursuant to her delegated authority to commit City funds as a Director of the City,<sup>218</sup> on 15 June 2016.
31. The CPHC Agreement contains some unusual clauses. For example, the applicable law and dispute resolution clause requires disputes between the City and CPHC to be referred to arbitration before a single arbitrator in Hartford, Connecticut, United States of America, and the law governing the agreement was to be the law of the State of Connecticut.<sup>219</sup> No one at the City appears to have noticed that clause, or considered it an unusual thing for the City to have agreed to be bound by. Neither Ms Brandon nor Ms Battista could recall sending the CPHC Agreement to lawyers for advice before its execution, although Ms Brandon said she referred it to someone called Con, who Ms Brandon said was *"a senior accountant in our Finance division"*.<sup>220</sup> Had a dispute arisen between the City and CPHC, this clause would likely, from the City's perspective if not CPHC's, have made the efficient and cost-effective resolution of that dispute difficult. The Inquiry recommends the City not agree to such foreign jurisdiction clauses in the future.
32. In respect of the procurement exercise conducted by the City to engage CPHC, Ms Brandon said she thought CPHC would have been a sole supplier.<sup>221</sup> Given the nature of the project and that CPHC owned the exclusive rights to the CowParade, the Inquiry agrees and so finds.

x By clause 4(6) of the Foundation Funding Agreement, Mr Giles is subject to a level of direction from the CEO. However, he has not received a direction of that type: Transcript, N Giles, private hearing, 2 October 2019, p 13.

33. Ms Brandon could not recall whether the City's sole supplier procedure was followed when CPHC was engaged, although she thought it would have been. In addition, Ms Brandon said she would have sought advice about it from Ms Battista, at least in a meeting and possibly in writing.<sup>222</sup>
34. Ms Battista told the Inquiry that CPHC would have been a sole supplier and that she would expect the paperwork in respect of that to have been completed.<sup>223</sup> However, she had no recollection of being involved and could not recall Ms Brandon raising it with her, although she believed Ms Brandon would have done so.<sup>224</sup>
35. As best the Inquiry can determine, there is no record of the CPHC Agreement being subject to the City's sole supplier procedure. Neither Ms Brandon nor Ms Battista could explain why, if the procedure was followed, it was not recorded in the City's systems, although Ms Brandon speculated that it might not have been filed.<sup>225</sup>
36. In the event, the Inquiry is unable to determine whether, in respect of this procurement exercise, the sole supplier procedure was followed but not documented, or whether it was simply not followed. The Inquiry accepts, as Ms Brandon observed,<sup>226</sup> there was no reason not to follow the sole supplier procedure, since CPHC was self-evidently the sole supplier of the CowParade. Either way, the process adopted appears to have been deficient either in its application or documentation.

#### Perth Public Art Foundation CowParade Agreement

37. Alongside the CPHC Agreement, which was executed to bring the CowParade to Perth, the City also executed the Foundation CP Agreement.<sup>227</sup> That agreement, a copy of which could not be located in the City's records but which was produced by Mr Giles at the Inquiry's request, was executed by Mr Giles for the Foundation and Ms Brandon for the City, on 27 July 2016. The contract price was \$221,210.00, pursuant to a budget prepared for the City by the Foundation.<sup>228</sup>
38. The Foundation CP Agreement was, in effect, an agreement by which the City funded the Foundation as a service provider to deliver components of the CowParade project. It is an unusual document, with a number of odd features.
39. First, it is purportedly executed for the City by Ms Brandon who, at the time, held the role of Acting Manager, Marketing and Communications. In that role, Ms Brandon's authority to commit funds on behalf of the City was capped at \$100,000.00. Therefore, on the face of the executed copy produced to the Inquiry by Mr Giles, the document was not properly executed by the City pursuant to section 9.49A of the *Local Government Act 1995* (LG Act), which raises questions about its enforceability.

40. In evidence given on 3 October 2019, Ms Brandon could not explain how she thought she could execute the document in July 2016, although she speculated that she would have been acting on advice and would have sought approval from Ms Battista and Mr Mileham. However, while she said she could recall getting approval, she could not recall seeking that advice or having a conversation with Ms Battista or Mr Mileham about it.<sup>229</sup> In an affidavit filed on 19 December 2019 in support of an application to inspect certain documents held by the Inquiry, Ms Brandon stated, among other things, that:
- She recalled that a few days after signing the Foundation CP Agreement she had a conversation with Ms Battista and Ms Battista told her she did not have the authority to sign the Foundation CP Agreement.<sup>230</sup> This is not consistent with Ms Brandon's evidence to the Inquiry on 3 October 2019 that Ms Battista approved her signing the agreement.
  - The version of the Foundation CP Agreement that she had signed was returned to Ms Battista.<sup>231</sup>
  - For this reason, she believed that the version of the Foundation CP Agreement shown to her during her examination was not the final version of the Foundation CP Agreement.
  - She believed that there was another version of the Foundation CP Agreement that would contain a different signature.<sup>232</sup>
41. Having received this additional evidence from Ms Brandon the Inquiry conducted further searches of the City's records. No alternative or additional version of the Foundation CP Agreement was located, nor was any record of a written exchange between Ms Battista and Ms Brandon about the execution of the agreement.
42. Furthermore, Ms Battista had no recollection of Ms Brandon ever raising the issue. Ms Battista said the first time she heard of the issue was when it was raised with her during the course of her private examination before the Inquiry, and that until that time she had never seen a signed copy of the Foundation CP Agreement. Ms Battista denied any suggestion that she would have, in those circumstances, told Ms Brandon that Ms Brandon could, in any event, execute the document. As Ms Battista explained, *"the simple solution in that case is my delegated authority was \$250,000, so I would have signed it"*.<sup>233</sup>
43. In the face of Ms Battista's evidence, the changing nature of Ms Brandon's evidence, and the absence of contemporaneous documentary records, Ms Brandon's recollections must be doubted. What is clear is that Ms Brandon signed a copy of the Foundation CP Agreement, the signed copy entered Mr Giles's custody, he produced it to the Inquiry at the Inquiry's request because the City had no record of it, and no other version of the agreement has been located. It is, therefore, more likely than not that Ms Brandon executed the Foundation CP Agreement without obtaining advice from Ms Battista. Ms Brandon, through her counsel, accepted this at a hearing before the Inquiry on 19 December 2019.<sup>234</sup>

44. The most plausible explanation for Ms Brandon signing the agreement is that she was either unaware of, or overlooked when reviewing the Foundation CP Agreement, the fact that the contract sum exceeded her authority. However, there is no evidence of any improper motive by Ms Brandon; the Foundation CP Agreement was uncontroversial, and as Ms Battista explained, had the issue been raised with her she would, after taking advice, have executed the agreement, because it was *“quite a straightforward transaction”*.<sup>235</sup>
45. The second unusual feature about the Foundation CP Agreement is that it incorporates, by reference, the City’s payment to the Foundation of a service fee calculated at, in effect and subject to some exclusions, 10 per cent of the underlying contract price.
46. This fee is set out in the budgets prepared by the Foundation for the project. In the original budget, for example, issued to Ms Brandon for the City on 22 June 2016,<sup>236</sup> the service fee is set at \$16,670.00, being 7.5 per cent of the contract price of \$221,210.00.<sup>237</sup>
47. Mr Giles, Ms Brandon and Ms Battista were asked about this fee.
48. When asked what the service fee was, Mr Giles explained:

*“As I sort of referred to earlier, one of the long-term aims of the Perth Public Art Foundation is greater financial independence from the City of Perth and so with that, the board decided that a fee – no, the board didn’t decide that, that was actually built into the project concept presented to the City of Perth which they agreed that there would be a fee that we would take for doing this on behalf of the City”*.<sup>238</sup>
49. Mr Giles said the sum as charged in respect of the CowParade project was discussed with people at the City, including with Ms Brandon. He agreed that the sum reflected the Foundation’s profit margin.<sup>239</sup>
50. Ms Brandon explained that it was *“agreed that [the fee] would be paid for the time, I suppose, as a supplier to manage and deliver the whole art part of the project”*.<sup>240</sup> Ms Brandon accepted that she would have been involved in agreeing the fee, although she said her colleague, Ms McMullan and her Director, Ms Battista, would also have been involved.<sup>241</sup>
51. Ms Brandon’s evidence was that to her recollection, as at the date of the Foundation CP Agreement, she was unaware of the details of the Foundation Funding Agreement. Ms Brandon said she could not recall whether anyone raised with her the appropriateness of paying the Foundation’s service fee in circumstances where the City was already meeting the Foundation’s operational expenses under the Foundation Funding Agreement. In addition, she could not recall challenging it herself, although she said she may have done.<sup>242</sup>



52. Ms Battista could not recall any discussion about the fee, but volunteered that it was not unusual for contractors to charge the City a service fee. However, Ms Battista also observed that it was unusual for a fee of that type to be charged by the Foundation, given the City had executed the Foundation Funding Agreement. Ultimately, Ms Battista thought that charging the fee was not unreasonable given the City was, in engaging the Foundation to manage the CowParade, asking it to do “*something over and above*” what was required by the Foundation Funding Agreement.<sup>243</sup>
53. In the course of its investigations, the Inquiry engaged a consultant to advise on, among other things, the Foundation’s service fee. The consultant reached the view that, on the materials available to it, the fee was “*a duplication of management expense that was otherwise met from the [Foundation Funding Agreement]*”, that “*there was no adequate explanation of the basis or [sic] the 10% service fee*”, and that the charging of the fee was in those circumstances “*double-dipping*”.<sup>244</sup>
54. While the Foundation’s commercial motivation for charging the fee is understandable and a move towards independence from the City is a desirable move, it was inappropriate for the City to agree to pay a service fee to the Foundation in circumstances where, through a combination of the Foundation Funding Agreement and the Foundation CP Agreement, the City was already meeting all of the Foundation’s direct and operational expenses for managing the CowParade.
55. The Inquiry recommends that any contracts similar to the Foundation CP Agreement which are contemplated between the City and the Foundation be carefully scrutinised and that any service fee, if levied, is carefully considered to determine whether it is appropriate for the City to engage the Foundation on those terms. It may, for example, be that the level of funding given to the Foundation by the City is reduced in future so that the City does not meet all of the Foundation’s expenses. If that occurs, payment of a service fee might be appropriate.
56. The third unusual feature of the Foundation CP Agreement is that, like the CPHC Agreement, it was either executed without regard to the City’s procurement policies or, if it was executed in compliance with those policies, as the evidence of Ms Brandon and Ms Battista suggests it would have been, that process was not documented.
57. As with the CPHC Agreement, the Inquiry has not been able to locate any record of the City complying with its purchasing policies, including its sole supplier procedure, in respect of the Foundation CP Agreement. As with the CPHC Agreement, neither Ms Brandon nor Ms Battista could explain why that is the case.<sup>245</sup>

### Fundraising and return of funds to the City

58. A final matter commented on in this Section is the remittal to the City by the Foundation of \$115,000.00 in funds raised by the Foundation during the course of the CowParade.
59. The return of those funds raises two questions.
60. The first is whether the Foundation may permissibly remit funds to the City in this way. In that respect, clause 6.3 of the Foundation's Constitution provides, in part, that *"the property and income of the Foundation shall be applied solely towards the promotion of the Objects and Purposes in accordance with the Strategic Plan"*.<sup>246</sup>
61. The Foundation's *"Objects and Purposes"* are set out in clause 6. On the face of that clause, remittal of monies to the City may not be within its power. While this is not the place for a detailed analysis of charities law, if the Foundation wishes to remit funds of this type to the City in the future, it should take appropriate advice about whether that remittal is supported by the Foundation's *"Objects and Purposes"*.
62. The second question is whether it is appropriate for the City to accept the remittance of monies in these circumstances. As the consultancy engaged by the Inquiry observed in its report, the City is vulnerable to the risk of a conflict, actual or perceived, if there were a circumstance that involved the City exercising discretionary powers in favour of a third party that had contributed to the Foundation. That position of conflict may extend to the Foundation itself if the Foundation financially and otherwise separates itself from the City, as it is in the process of doing.
63. Aligned to that concern is the risk that, in accepting funds remitted by the Foundation, the City exposes itself to potential allegations that third parties are, through donations to the Foundation, indirectly *"buying"* the support of Council or council members.
64. There is no evidence before the Inquiry of this having happened, and Mr Giles explained that the CowParade was and is the only project in which funds were remitted by the Foundation to the City in this way.<sup>247</sup> However, the practice does pose a risk to the City's independence. Absent cogent reasons for its continuation, the Inquiry recommends the practice cease. The Inquiry also recommends the implementation of proper safeguards.

## Findings

### Finding 2.3.3 – 2

The Inquiry makes the following findings:

- i. The Foundation's Executive Director was, during the period of the Inquiry's Terms of Reference, an employee of the City:
  - who reported, not to someone within the City, but to the governing board of the Foundation; and
  - in respect of whom City policies (for example, the City's Code of Conduct and procurement policy and others) were not enforced.
- ii. The City did not apply its sponsorship policy to the Foundation Funding Agreement, notwithstanding that the policy expressly accommodated funding "*principal partnerships*".
- iii. Had the City applied the sponsorship policy to the Foundation Funding Agreement, that agreement would not have satisfied the requirements of the policy as the policy prohibited grants or sponsorships for operational expenditure.
- iv. During the period of the Inquiry's Terms of Reference, the City provided over \$500,000.00 in funding to the Foundation under the Foundation Funding Agreement, in circumstances where that funding was not governed by a City policy.
- v. On the evidence before the Inquiry, the City's record-keeping was, in respect of the Foundation and the CowParade, inadequate in that:
  - the City could not produce to the Inquiry an executed copy of the Foundation CP Agreement; and
  - if the City's procurement policies were applied to the Foundation CP Agreement and the CPHC Agreement, the application of those policies was not documented.
- vi. Ms Brandon, possibly because she was unaware of the limits on her delegated authority or because she overlooked the fact that the contract sum was greater than her delegated authority, acted beyond her delegated authority to commit City funds by purporting to execute the Foundation CP Agreement on behalf of the City.
- vii. On its face, the Foundation CP Agreement was not properly executed by the City pursuant to section 9.49A of the LG Act, raising questions about its enforceability.
- viii. Notwithstanding the findings above:
  - there is no evidence to suggest Ms Brandon was motivated to sign the Foundation CP Agreement by any improper motive or for any improper purpose; and
  - the Foundation CP Agreement was (other than in respect of the payment of a service fee to the Foundation) uncontroversial and would have been executed by Ms Battista had she been asked to do so.

**Finding 2.3.3 – 2 (contd)**

- ix. It was inappropriate for the City to agree to pay a service fee to the Foundation in circumstances where the City was already meeting all of the Foundation's direct and operational expenses for managing the CowParade.
- x. The practice of the Foundation remitting funds raised by it to the City placed the City in a position of real or perceived conflict between its duties as a local government regulator or decision-maker and its interest in receiving that funding.
- xi. There is no evidence that the City undertook activities to acquit or audit the funding provided to the Foundation under the Foundation Funding Agreement.

## Endnotes

- 1 *Local Government Act 1995*, s 2.7(1)(a), (2)(a).
- 2 *Local Government Act 1995*, s 5.41(a), (b).
- 3 *Local Government Act 1995*, s 5.41(h), 6.5.
- 4 *Local Government Act 1995*, s 7.1A; *Local Government (Audit) Regulations 1996*, reg 14, 16.
- 5 *Local Government (Financial Management) Regulations 1996*, reg 33A.
- 6 Transcript, R Mianich, public hearing, 8 October 2019, p 10.
- 7 Website, Department, Integrated planning and reporting; Guidelines, Department, Integrated Planning and Reporting Framework and Guidelines, October 2010.
- 8 *Local Government (Administration) Regulations 1996*, reg 19DA (4).
- 9 *Local Government Act 1995*, s 6.2; Factsheet, Department, Local Government Budget Process – Timeline and Considerations.
- 10 *Local Government Act 1995*, s 6.4.
- 11 *Local Government (Financial Management) Regulations 1996*, reg 33A(2A).
- 12 Guidelines, Department, Rating Policy: Differential Rates, March 2016.
- 13 *Local Government (Financial Management) Regulations 1996*, reg 22(1)(d).
- 14 *Local Government Act 1995*, s 6.2(2)(c).
- 15 Manual, Department, Western Australian Local Government Accounting Manual, section 5: Financial reporting, 3 September 2012, p 14.
- 16 *Local Government Act 1995*, s 6.34.
- 17 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 18 Report, Crowe, Review of Governance and Financial Matters, August 2019.
- 19 Website, Department, My Council, Revenue tab, 2017/2018, 2016/2017 and 2015/2016 financial years; Expenditure tab 2017/2018, 2016/2017 ranked 3rd highest and 2015/2016 ranked 2nd highest.
- 20 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 21 Presentation, Council Briefing Session, Budget, May 2016.
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- 24 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 25 Report, ACIL Allen, City of Perth Financial Review, May 2019, p 27.
- 26 Transcript. J Nicolaou, public hearing, 7 October 2019, p 6.
- 27 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 28 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 29 Presentation to the Inquiry, ACIL Allen, 4 October 2019.
- 30 Presentation to the Inquiry, ACIL Allen, 4 October 2019.
- 31 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 32 Guidelines, Department, Rating Policy – Differential Rates (s.6.33), March 2016.
- 33 Presentation to the Inquiry, ACIL Allen, 4 October 2019.
- 34 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 35 Presentation to the Inquiry, ACIL Allen, 4 October 2019.
- 36 Presentation to the Inquiry, ACIL Allen, 4 October 2019; Transcript. J Nicolaou, public hearing, 7 October 2019, p 8.
- 37 Presentation to the Inquiry, ACIL Allen, 4 October 2019; Transcript, J Nicolaou, public hearing, 7 October 2019, p 16.
- 38 *Local Government Act 1995*, s 6.34.
- 39 Statement of Information, City of Perth, No. 020 of 2019, M Jorgensen, 1 November 2019.
- 40 Statement of Information, City of Perth, No. 020 of 2019, M Jorgensen, 1 November 2019.
- 41 Statement of Information, City of Perth, No. 020 of 2019, M Jorgensen, 1 November 2019.
- 42 Statement of Information, City of Perth, No. 020 of 2019, M Jorgensen, 1 November 2019.
- 43 Section 2.3.4 Procurement and Contracting – Refurbishment of Council House.
- 44 Transcript, D Richards, private hearing, 15 July 2019, p 8-9.
- 45 Statement of Information, City of Perth, No. 020 of 2019, M Jorgensen, 1 November 2019.
- 46 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 47 Transcript, J Nicolaou, public hearing, 7 October 2019, p 11.
- 48 Report, ACIL Allen, City of Perth Financial Review, May 2019; Presentation to the Inquiry, ACIL Allen, 4 October 2019.
- 49 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 50 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 51 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 52 Transcript, J Nicolaou, public hearing, 7 October 2019, p 20.
- 53 Report, ACIL Allen, City of Perth Financial Review, May 2019.

- 54 Transcript, R Mianich, public hearing, 9 October 2019, p 20.
- 55 Transcript, M Mileham, public hearing, 9 October 2019, p 69-70.
- 56 Transcript, A Hammond, public hearing, 10 October 2019, p 32-33.
- 57 *Local Government Act 1995* – Transitional provisions, Schedule 9.3, Division 1, cl. 40; *Local Government Act 1995*, s 3.59(8).
- 58 *Local Government Act 1995*, s 3.59(2), (8); Schedule 9.3, Division 1, clause 40(1), (2).
- 59 *Local Government Act 1995*, s 3.59(3); *Local Government (Functions and General) Regulations 1996*, reg 10(1)(a).
- 60 Transcript, M Mileham, public hearing, 9 October 2019, p 73.
- 61 Transcript, M Mileham, public hearing, 9 October 2019, p 75.
- 62 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017.
- 63 *Local Government Act 1995*, s 3.59(8), Schedule 9.3, Division 1, cl. 40.
- 64 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017.
- 65 Compliance Audit Return, 2015, signed L Scaffidi and M Mileham 16 March 2016; Compliance Audit Return, 2016, signed L Scaffidi and M Mileham 14 March 2017; Compliance Audit Return, 2017, signed E Lumsden and M Mileham 27 March 2018; Compliance Audit Return, 2018, signed G McMath and M Jorgensen 26 February 2019.
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- 69 Compliance Audit Return, City of Perth, 2018, signed G McMath and M Jorgensen 26 February 2019.
- 70 Minutes, Commissioners Ordinary meeting, 28 March 2018.
- 71 Minutes, Commissioners, Ordinary meeting, 31 July 2018, item 13.4.
- 72 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 73 Transcript, A Hammond, public hearing, 10 October 2019, p 29-30.
- 74 Transcript, R Mianich, public hearing, 8 October 2019, p 71.
- 75 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 76 Transcript, J Nicolaou, public hearing, 7 October 2019, p 23.
- 77 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 78 Report, ACIL Allen, City of Perth Financial Review, May 2019; Transcript, J Nicolaou, public hearing, 7 October 2019, p 23.
- 79 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 80 Transcript, J Nicolaou, public hearing, 7 October 2019, p 13.
- 81 Report, ACIL Allen, City of Perth Financial Review, May 2019; Transcript, J Nicolaou, public hearing, 7 October 2019, p 13.
- 82 Transcript, R Mianich, public hearing, 8 October 2019, p 87.
- 83 Transcript, J Nicolaou, public hearing, 7 October 2019, p 13.
- 84 Report, ACIL Allen, City of Perth Financial Review, May 2019; Transcript, J Nicolaou, public hearing, 7 October 2019, p 14, 26.
- 85 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 86 Transcript, J Nicolaou, public hearing, 7 October 2019, p 27.
- 87 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 88 Transcript, J Nicolaou, public hearing, 7 October 2019, p 27.
- 89 Transcript, R Mianich, public hearing, 8 October 2019, p 87.
- 90 Transcript, R Mianich, public hearing, 8 October 2019, p 81-85.
- 91 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 92 Report, ACIL Allen, City of Perth Financial Review, May 2019.
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- 94 Presentation to the Inquiry, ACIL Allen, 4 October 2019; Transcript, J Nicolaou, public hearing, 7 October 2019, p 9.
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- 96 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 97 Transcript, R Mianich, public hearing, 8 October 2019, p 29, 33; Transcript, M Mileham, public hearing, 9 October 2019, p 65.
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- 100 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 101 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 102 Transcript, R Mianich, public hearing, 8 October 2019, p 29-30; Transcript, M Mileham, public hearing, 9 October 2019, p 67.
- 103 Transcript, R Mianich, public hearing, 8 October 2019, p 29-30.
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- 106 Transcript, J Nicolaou, public hearing, 7 October 2019, p 24.
- 107 Transcript, J Nicolaou, public hearing, 7 October 2019, p 29.

- 108 Transcript, R Mianich, public hearing, 9 October 2019, p 20.
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- 111 Transcript, J Nicolaou, public hearing, 7 October 2019, p 19.
- 112 Transcript, J Nicolaou, public hearing, 7 October 2019, p 28.
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- 114 Transcript, R Mianich, public hearing, 9 October 2019, p 27.
- 115 *Local Government (Financial Management) Regulations*, reg 5(2)(c).
- 116 *Local Government (Audit) Regulations 1996*, reg 17.
- 117 Letter, M Ridgwell, 25 October 2019.
- 118 Email, M G Khoo to J Carmichael, 6.34 pm 24 February 2020.
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- 122 Website, Department, Integrated planning and reporting; Guidelines, Department, Integrated Planning and Reporting Framework and Guidelines, October 2010.
- 123 *Local Government (Administration) Regulations 1996*, reg 19C(7) and 19DA(6).
- 124 Report, City of Perth Annual Report 2017/18.
- 125 Transcript, J Nicolaou, public hearing, 7 October 2019, p 25-26.
- 126 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 127 Transcript, J Nicolaou, public hearing, 7 October 2019, p 26.
- 128 Report, Crowe, Review of Governance and Financial Matters, August 2019.
- 129 Transcript, M Mileham, public hearing, 9 October 2019, p 96.
- 130 Transcript, R Mianich, public hearing, 8 October 2019, p 56.
- 131 *Local Government (Administration) Regulations 1996*, reg 19C.
- 132 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017.
- 133 *Local Government (Administration) Regulations 1996*, reg 19DA(3)(a)-(c).
- 134 *Local Government (Administration) Regulations 1996*, reg 19DA(2), (4).
- 135 Report, Crowe, Review of Governance and Financial Matters, August 2019.
- 136 Report, Crowe, Review of Governance and Financial Matters, August 2019.
- 137 Transcript, R Mianich, public hearing, 9 October 2019, p 4.
- 138 Guidelines, Department, Integrated Planning and Reporting: Long Term Financial Plan Guidelines, September 2016, p. 1.
- 139 Report, ACIL Allen, City of Perth Financial Review, May 2019.
- 140 Report, Crowe, Review of Governance and Financial Matters, August 2019.
- 141 Letter, M Jorgensen to R Mianich, 12 March 2019.
- 142 Letter, M Jorgensen to R Mianich, 12 March 2019.
- 143 Report, Crowe, Review of Governance and Financial Matters, August 2019.
- 144 Transcript, M Jorgensen, public hearing, 9 October 2019, p 122.
- 145 Transcript, R Mianich, public hearing, 9 October 2019, p 10-12.
- 146 Guidelines, Department, Integrated Planning and Reporting Framework and Guidelines, October 2010, website, accessed 28 October 2019.
- 147 Report, ACIL Allen, City of Perth Financial Review, May 2019.
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- 149 Transcript, R Mianich, public hearing, 8 October 2019, p 56-57.
- 150 Minutes, Council Ordinary meeting – Commissioners, 28 March 2018.
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- 152 Manual, Department, Western Australian Local Government Accounting Manual, section 6 part 1: Financial reporting, 3 September 2012.
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## 2.3.4 Procurement and contracting

The purpose of this Chapter is to consider the procurement processes of the City of Perth (City) during the period covered by the Inquiry's Terms of Reference, 1 October 2015 to 1 March 2018.

With responsibility for the management of community infrastructure and assets worth more than \$1 billion, the City spends more than 40 per cent of its annual budget on procurement of goods and services.<sup>a</sup>

The types of goods and services vary from the small, such as minor maintenance or office supplies, to multi-million-dollar construction or maintenance contracts.

Once the market has been approached, these external goods and services are generally provided under contract, an agreement between the supplier and the City about what is to be provided and how much will be paid.

City employees have considerable authority vested in them, as public officers of a local government, to source suppliers, manage contracts and authorise payment for goods and services. They are responsible and accountable for the public money they commit and expend on behalf of the City. These officers range from the Chief Executive Officer (CEO) and senior officers to administrative staff in individual work units. For some activities, there are limits on an individual employee's authority to authorise expenditure of the City's funds.

The community expects that City employees will perform their duties with integrity and impartiality and will act in the community's interest, rather than their own. When funds belonging to the City are misappropriated or a "loss" is suffered by the City, for their own or a contractor's gain, there is significant cause for concern. Other than the financial loss, outcomes such as the loss in public confidence, reduced competition from suppliers, and the possibility that the goods and services may not meet the public's needs are equally damaging to a local government. Expressed succinctly:

*"When procurement is corrupted by private interests and not directed by the public good, trust in governments is eroded".<sup>2</sup>*

Local governments generally are exposed to high risks of fraud and corruption, because of the large volume of goods and services they procure and because of the high degree of devolved decision-making. It is important that the City, and local governments generally, understand these risks and actively manage them with appropriate controls.



**\$50m**

Spent per year on  
procurement, buying  
external goods  
and services.<sup>1</sup>

<sup>a</sup> Website, Department of Local Government, Sport and Cultural Industries, My Council; Percentage calculated using the categories of material and contracts; other expenses; utilities.

The “3 lines of defence” model raised in **Chapter 2.3.3 – Financial management and planning** provides a sound basis for the control of procurement and misconduct risks.

Allegations of misconduct or corruption associated with procurement at the City are a serious matter and must be investigated effectively. If corruption or misconduct is found, it should be dealt with appropriately and not just “*brushed under the carpet*”.

The case studies examined in this Chapter explore fundamental aspects of the City’s procurement culture and governance. Key matters arising from these case studies relate to the assessment of quotes or tenders, internal governance controls, ethical culture and leadership behaviours as well as investigation processes in responding to complaints by external parties.

### Procurement policies and procedures

The City has policies, rules and processes to ensure the procurement of good and services complies with the requirements of the *Local Government Act 1995* (LG Act) and its regulations, and to protect the integrity of the process.

There are rules and guidance in place that assist City employees when procuring goods and services. These are articulated in City of Perth Council (Council) Policy “CP9.7 – Purchasing”.

- For all goods and services over \$5,000.00, a written quote must be obtained. For those over \$150,000.00, unless there is a tender exemption, a formal “*Request for Tender*” process must be conducted. A tender process can also be used for purchases under \$150,000.00, if the City wishes.<sup>3</sup>
- For evaluating quotes and tenders, criteria are used. For tenders these must be written criteria. These are of two types, compliance criteria and selection criteria. The criteria for selecting a quote or tender are usually related to “*value for money*”, although this does not necessarily mean the cheapest.
- Quotes or tenders received are evaluated against the criteria, usually by an evaluation panel made up of City employees. The panel completes a recommendation report about which quote or tender best meets the criteria. This report goes to an officer with the relevant delegation for endorsement and then to the Council for approval.<sup>4</sup>
- In a situation where the service a supplier provides is unique, and there is only one supplier, a Sole Supplier Justification and Approval process is used<sup>5</sup> and the tender or quotation is not publicly advertised.

Evidence given to the Inquiry suggests that historically the procurement process was decentralised, and each directorate conducted its own procurement. Witnesses to the Inquiry have advised that this caused a number of problems for the City, including a failure to benefit from economies of scale. The Inquiry notes that the City is developing a centralised procurement process.

### External assistance for procurement by local governments

External assistance is available to local governments to assist them to procure goods and services more efficiently:

- *State Government Common Use Arrangements:* Common Use Agreements are a whole-of-government common buying arrangement awarded to suppliers for the provision of specific goods or services commonly used within government. It is administered by the State Government's Department of Finance and no fees are charged. Local governments can use the government rates from suppliers for certain agreements.
- *Western Australia Local Government Association (WALGA) Preferred Supplier Program:* WALGA delivers a range of products and services by using the collective buying arrangement of its local government members through commercial negotiations. WALGA is constituted under section 9.58 of the LG Act, but is not a government agency. Suppliers to the programme pay an administration fee and/or an appropriate contract management rebate to WALGA as part of a direct commercial arrangement with WALGA.<sup>6</sup> Local governments can use the Preferred Supplier Program instead of tendering.<sup>b</sup>

### City's procurement model

Mr Murray Jorgensen, CEO of the City, appeared before the inquiry and was asked about the City's procurement strategy. He explained that decentralisation of procurement was one of the weaknesses he had noted and the City was developing a centralised procurement system, but in the meantime:

*"... all key or major purchases or acquisitions will go through the WALGA Tendering Service, the independent WALGA Tendering Service. While we use their skills and services to minimise risk, we will also be building our internal capability and have skills and transfer of knowledge".<sup>7</sup>*

### Conflicts of interest

Procurement processes must be conducted fairly, so that all potential suppliers have an equal opportunity, without the interests of City employees who are evaluating tenders and quotes, and/or making decisions on them, affecting the result. Employees should avoid any conflicts between their own interests and the interests of the City and its community.

Personal or professional interests which might affect an official duty are known as "*conflicts of interest*". A conflict of interest could exist because a person evaluating a tender has a friendship or family relationship with a supplier, or they are both members of the same association or there is another connection. In the worst cases, a person evaluating a tender could own or have a financial interest in a tendering company, or there could be gifts or a bribe given, or another form of corruption involved.

<sup>b</sup> *Local Government (Functions and General) Regulations 1996*, reg 11(2) states that "a tender does not have to be invited if ... the supply of the goods or services is to be obtained through the WALGA Preferred Supplier Program".

A conflict of interest does not prevent a person from being involved in the procurement process, but it must be declared and managed. This is to ensure that the process is fair, and is seen to be fair. The City, like other levels of government in Western Australia, has policies and processes to deal with conflicts of interest. However, to work successfully they rely on individual employees and suppliers being honest about their interests and declaring them.

The City's procurement procedures contain a "*Declaration of confidentiality and interest form*", which is required to be completed by each panel member. The form combines two governance concepts that should be dealt with separately within the procurement process. This would allow for panel members to clearly articulate any interests relevant to the process.

### Code of Conduct

The City's Code of Conduct applies to council members and employees of the City.

The City revised its Code of Conduct in 2017. Both the earlier and later versions contained the following statement relating to conflicts of interest:

Council members and City employees "*must ensure there is no actual or perceived conflict of interest between their personal interests and the impartial fulfilment of their public duties and functions*".<sup>8</sup>

The Code of Conduct includes details of how this principle should be applied.

### Statement of Business Ethics

The City publishes a Statement of Business Ethics on its website. It "*provides guidance for all sectors of the community when conducting business with the City of Perth*".

The statement explains what suppliers should expect in dealing with City officers. In relation to conflicts of interest it states:

*"All City employees, Elected Members, Committee members, contractors and business partners must disclose any actual, perceived or potential conflicts of interest. The City extends this requirement to all sectors of the community undertaking business with the City".<sup>9</sup>*

## Investigation by the Inquiry

The Inquiry has investigated a number of specific procurement exercises undertaken by the City during the Inquiry's Terms of Reference period, between 1 October 2015 and 1 March 2018. Five of these are separately considered in this Chapter.

These relate to:

- A tender for irrigation services.
- A request for a quotation for culture and values training and the engagement of a company.
- A tender for the construction of the Railway Street and Market Street Shared Path Extension.
- The engagement of a company to provide leadership, coaching and other services.
- The refurbishment of the ground floor at Council House.

## Witnesses

In addition to these investigations, the following witnesses who are, or were, employees of the City gave evidence at Inquiry hearings about procurement processes generally:

- Mr Jorgensen, CEO since 27 November 2018.
- Mr Robert Mianich, Director Corporate Services from 7 November 2005 to 30 June 2019.
- Mr Daniel Richards, Finance Manager from 3 March 2015 to 13 February 2019.
- Mr Ramzi Ibrahim, Senior Contracts Officer with the Construction and Maintenance Directorate.



## Legislative background

The following legislative provisions are relevant to matters considered within this Chapter.

### **Local Government Act 1995**

- Section 3.57 states, “A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services”.
- Section 5.43 limits delegation by the Council to the CEO of the power to accept a tender which exceeds an amount determined by the local government.

### **Local Government (Functions and General) Regulations 1996**

- Regulation 11A requires a purchasing policy be implemented for contracts expected to be worth \$150,000.00 or less.
- Regulation 11 specifies that, with certain exceptions, tenders must be publicly invited for contracts worth more than \$150,000.00.
- Regulation 14(2a) requires that written criteria be determined before tenders are invited.
- Regulations 18(4) and 18(4a) state that complying tenders are:
 

*“... to be assessed by the local government by means of a written evaluation of the extent to which each tender satisfies the criteria for deciding which tender to accept and it is to decide which of them (if any) it thinks it would be most advantageous to the local government to accept.*

*To assist the local government in deciding which tender would be the most advantageous to it to accept, a tenderer may be requested to clarify the information provided in the tender”.*

### City procurement policy

During the period of the Inquiry's Terms of Reference, the City had a "decentralised" procurement model. This meant that some directorates were able to operate their own procurement processes with limited oversight by a central specialist team. Many aspects of procurement were undertaken by project officers in different directorates. Sometimes these people had limited relevant experience, training or skills in procurement, contract management or project management.

City employees purchasing goods and services were required to comply with the City's procurement policy and procedures.

### Purchasing Policy

The purchasing policy was set out in the *Council Policy Manual* at "CP9.7 – Purchasing".

Section 1 of the policy related to *Ethics and Integrity* and included the following statement:

*"All officers and employees of the City shall observe the highest standards of ethics and integrity in undertaking purchasing activities and act in an honest and professional manner that supports the standing of the City."*

*The following principles, standards and behaviours must be observed and enforced through all stages of the purchasing process to ensure the fair and equitable treatment of all parties:*

- *all purchasing practices shall comply with relevant legislation, regulations, and requirements consistent with the City's policies, procedures, Code of Conduct and Statement of Business Ethics;*
- *full accountability shall be taken for all purchasing decisions and the efficient, effective and proper expenditure of public monies based on achieving value for money;*
- *purchasing is to be undertaken on a competitive basis in which all potential suppliers are treated impartially, honestly and consistently;*
- *all processes, evaluations and decisions shall be transparent, free from bias and fully documented in accordance with applicable policies and to provide a clear audit trail;*
- *any actual or perceived conflicts of interest are to be identified, disclosed and appropriately managed; and*
- *information provided to the City by a supplier shall be treated as commercial-in-confidence and should not be released unless authorised by the supplier or relevant legislation".*

Section 4 of the policy related to “*Purchasing Limits*”. It set out the dollar limits for quotation and tender expenditure for the procurement of goods and services by different levels of officers (Table 2.16).

**Table 2.16: City quotation and tender thresholds for the procurement of goods and services<sup>10</sup>.**

<p><b>Up to \$5,000</b> Category A</p>	<p>Purchase directly from a supplier using a Purchasing or Corporate Credit Card issued by the City, or obtain at least one (1) verbal or written quotation from a suitable supplier, either from:</p> <ul style="list-style-type: none"> <li>• an existing panel of pre-qualified suppliers administered by the City; or</li> <li>• a pre-qualified supplier on the WALGA Preferred Supply Program or State Government Common Use Arrangement (CUA); or</li> <li>• from the open market.</li> </ul> <p>The continuous use of single suppliers is to be routinely tested to ensure that the City is receiving best value for money at a competitive market price and adequately distributing market share.</p>
<p><b>\$5,001 – \$50,000</b> Category B</p>	<p>Obtain a minimum of three written quotations from suppliers using a brief outlining the specific requirement, either from:</p> <ul style="list-style-type: none"> <li>• an existing panel of pre-qualified suppliers administered by the City; or</li> <li>• a pre-qualified supplier on the WALGA Preferred Supply Program or State Government CUA; or</li> <li>• from the open market.</li> </ul> <p>Notes:</p> <ol style="list-style-type: none"> <li>1. This category excludes quotations where the City is entering into a contract for services that are of an on-going nature and exceed one (1) year duration. Contracts with a duration of more than one (1) year are to be by Category C – Formal Quotation.</li> <li>2. Consultancy services must be by formal quotation unless at the discretion of the Finance Unit (Contracts Administrator) it is deemed services are of low risk and complexity.</li> </ol>

<p><b>\$50,001 – \$150,000</b> Category C</p>	<p>A formal quotation process is to be coordinated through the Finance Unit (Contracts Administrator) under the following guideline:</p> <p>Obtain at least three (3) written quotations from suppliers by formal invitation under a Request for Quotation, containing price and detailed specification of goods and services required. The procurement decision is to be based on pre-determined evaluation criteria that assess all value for money considerations in accordance with the definition stated within this Policy.</p> <p>Quotations within this threshold may be obtained from:</p> <ul style="list-style-type: none"> <li>• an existing panel of pre-qualified suppliers administered by the City; or</li> <li>• a pre-qualified supplier on the WALGA Preferred Supply Program or State Government CUA; or</li> <li>• from the open market.</li> </ul> <p>Requests for quotation from a pre-qualified panel of suppliers (whether administered by the City, through the WALGA preferred supply program or State Government CUA) are not required to be invited using a Request for Quotation form, however at least three written quotes are still required to be obtained.</p>
<p><b>\$150,001 and above</b> Category D</p>	<p>Where the purchasing requirement is not suitable to be met through a panel of pre-qualified suppliers, or any other tender-exempt arrangement as listed under section 4.9 of this Policy, conduct a public Request for Tender process in accordance with Part 4 of the <i>Local Government (Functions and General) Regulations 1996</i>, this policy and the City's tender procedures. The procurement decision is to be based on pre-determined evaluation criteria that assess all value for money considerations in accordance with the definition stated within this Policy.</p>

Section 4.10 of the Purchasing Policy states:

***“Sole Source of Supply***

*Where the purchasing requirement is over the value of \$5,000 and of a unique nature that can only be supplied from one supplier, the purchase is permitted without undertaking a tender or quotation process. This is only permitted in circumstances where the City is satisfied and can evidence that there is only one source of supply for those goods, services or works. The City must use its best endeavours to determine if the sole source of supply is genuine by exploring if there are any alternative sources of supply. Once determined, the justification must be endorsed by the Chief Executive Officer in accordance with the applicable Corporate Procedure, prior to a contract being entered into. From time to time, the City may publicly invite an expression of interest to effectively determine that one sole source of supply still genuinely exists”.*

Section 7 of the Purchasing Policy states:

***“Authorisation of expenditure***

*Acceptance of tenders and quotations and the authorisation of expenditure is to comply with the City’s purchasing requirements, associated policies and procedures and within the relevant delegation or limit of authority.*

...

*The confirmation of any purchase after the completion of a quotation/tender process must be authorised by an officer to whom authority to incur a liability has been delegated ensuring that sufficient funds have been provided for in the City’s annual budget”.*<sup>11</sup>

The delegated expenditure limits authorised by the Council<sup>12</sup> were as follows:

<b>Chief Executive Officer</b>	<ul style="list-style-type: none"> <li>• Unlimited dollar value.</li> <li>• Commitment period is specifically resolved by Council or in any other case, no greater than a 5-year period.</li> </ul>
<b>Director</b>	<ul style="list-style-type: none"> <li>• Value less than \$250,000 per year.</li> <li>• Commitment is no greater than 3-year period.</li> </ul>
<b>Manager</b>	<ul style="list-style-type: none"> <li>• Value less than \$100,000 per year.</li> <li>• Commitment is no greater than 3-year period.</li> </ul>

## Procurement risks

Procurement is a necessary activity, but it is also a high-risk activity because of the large sums of money which may be involved. The risk of fraud and thefts in procurement has been a common theme in reports by the Corruption and Crime Commission (CCC)<sup>13</sup> and other audit or investigative agencies within Western Australia and in other jurisdictions. These reports highlight the vulnerabilities within the governance systems, policy and practices of local governments which led to misconduct.<sup>14</sup>

According to the Auditor General for Western Australia:

*“Good procurement practices centred around the principles of probity, accountability and transparency are key to managing procurement risks and the delivery of good outcomes for ratepayers. When procurement processes are not followed, or local governments are seen not to be acting in the best interests of their communities, they face reputational damage and expose themselves to the risk of fraud and misconduct. Unfortunately, there are numerous recent reports from integrity agencies which highlight the very real consequences when procurement activities in the public sector are not managed effectively.”<sup>15</sup>*

Corruption or misconduct risks arise from a combination of factors. Shortcomings in governance processes together with individual behaviours condoned by the culture of an organisation can combine to create serious misconduct risks.

### Procurement corruption by City employees

The City, like other government organisations with significant funds and insufficient internal controls, has a history of corrupt conduct by employees. Two City officers have been sentenced to imprisonment for offences relating to procurement since 2014. The prosecutions arose from investigations by the CCC. Also arising from these investigations, several contractors to the City have been prosecuted and convicted.

In May 2014, a former Senior Project Officer at the City pleaded guilty to two counts of corruption. She had provided a plumbing contractor to the City with confidential information about a quote from a tender document prepared by another company. The plumber then submitted a lower quote and gained the contract. The officer also admitted allowing the same contractor to add \$5,000.00 to a quote for another job without an explanation. She was sentenced to 12 months imprisonment, suspended for 12 months.<sup>16</sup>

In June 2018, a former Facilities Manager for the City was found guilty of acting corruptly, seeking a bribe and providing false and misleading evidence to the CCC. The officer had used his position to give preferential treatment in awarding work worth almost \$350,000.00 to an electrical contractor. This was done by manipulating invoices to keep them under \$5,000.00 so that the officer could authorise them himself. In return he was paid by the contractor. The officer was sentenced to 22 months imprisonment and the contractor to 21 months, suspended for two years.<sup>17</sup>

As highlighted in this Chapter, procurement misconduct continues to be a significant risk for the City.

### Local government risk factors

Corruption risks vary with the procurement methods used and the different stages of the procurement process. Factors which may increase the risks in procurement by local governments when compared to other government organisations include:

- An increasing shift towards outsourcing, to private companies and individuals, of services provided by local governments. For example, the contract labour costs for the City increased from \$3.5 million to \$7.7 million between 2012 and 2018, an increase of 120 per cent.<sup>18</sup>
- Close relationships are often formed by local government employees with people in the private sector, through local community and business engagement activities.
- Often council members, and sometimes employees, have external private business interests.
- Close contact between employees and local businesses may mean that gifts, in the form of discounts, tickets, lunches or attendances at events may be offered and difficult to refuse.
- Smaller local governments may not have enough employees to ensure the separation of the functions of conducting tenders, organising contracts, and making payments.
- Local governments may not have sufficient resources themselves to properly investigate allegations and complaints made to them, especially if the allegation is against a senior officer.

### Investigations by the Inquiry

The Inquiry has investigated five separate procurement exercises by the City. These are described in detail in this Chapter. Some of the risks identified by the Inquiry arising from these investigations are as follows:

#### Investigation 1: Tender for irrigation services

A City employee from the Parks Unit was involved in a tender for irrigation services to the City. The Inquiry found:

- The City's procedure for evaluating tenders was not followed.
- The employee, who was the project officer for the tender and a member of the tender evaluation panel, had an undeclared actual conflict of interest in that he had several ties with the Managing Director of the successful tendering company.
- The qualifications required by the tender specification were not properly assessed, with the result that the successful tenderer should have been disqualified.
- The comparative price analysis of the tender submissions was manipulated by the employee. This inflated the prices in the tender submitted by a competing company.
- A complaint by an unsuccessful tenderer about the tender process, and a subsequent allegation referred by the CCC, were not properly dealt with by the City. The allegation referred was not investigated, most shortcomings in the tender were not identified and the City provided the CCC with a misleading response. As a result, steps were not taken to ensure that the issues with the tender process were identified and prevented from recurring.



### **Investigation 2: Request for a quotation for culture and values training and the engagement of a company**

- The City's CEO requested and accepted tickets to a sports event from the owner of a company who had approached the City about providing services, and who later successfully quoted for to provide services to the City.
- In doing this, the CEO contravened the City's Code of Conduct. He did not accurately declare the gift.
- Although there was a maximum budget limit for the services, the cost of the services to be provided and whether they represented value for money were not used as criteria for evaluating the quotes. This meant that other quotes, which may have represented better value for money, were not successful.

### **Investigation 3: Tender for the construction of the Railway Street and Market Street Shared Path Extension**

- The circumstances of the tender, and the handling of a complaint made about that tender, revealed systemic flaws in the City's processes.
- The tender evaluation process was susceptible to manipulation, because the City's procedures were not consistently followed and one panel member may have had a disproportionate level of influence over the other members of the panel.
- A lack of appropriate training created risks relating to confidentiality of information and conflicts of interest.
- The City's approach to a complaint by an unsuccessful tenderer was inadequate and inappropriate.
- After the matter was referred to the City by the CCC, an investigation found that there were grounds to suspect misconduct by two employees. Both were permitted to resign. The terms of the resignations agreed by the City were inappropriate.

### **Investigation 4: Engagement of a company to provide leadership, coaching and other services**

- Numerous City officers, from the CEO down, failed to follow proper procurement processes in relation to the engagement of the company.
- The procurement was poorly managed and allowed sole supplier exemptions to be used when they should not have been. The market was not tested to see whether there were other suitable suppliers.
- The scope of work expanded as the services were being provided, but there was a failure by the City to monitor costs or to stick to the limits agreed about what would be provided and what it would cost. City officers attempted to retrospectively justify the engagement of the company using flawed reasoning.
- The City's leadership failed to take responsibility for the poorly managed procurement.

### Investigation 5: Council House ground floor refurbishment

- The City undertook a project to refurbish the ground floor of Council House, a heritage listed building. The City failed to obtain development approval, heritage advice, or a building permit before starting work.
- The project was released to tender before it was adequately planned or scoped. It appears that the officers responsible for the project were under some pressure to complete it before the end of the financial year, so that costs were not carried forward.
- The officers were not appropriately qualified or trained for the role or supported by senior staff. There were failures of training, leadership and communication.

### Risks identified in Inquiry investigations

The Inquiry's investigations highlighted some key misconduct risks inherent in the City's procurement policies and procedures during the relevant period. Without understanding such risks, it is difficult to identify and assess the controls to mitigate or eliminate that risk. The risks were in the following areas:

#### Sourcing suppliers<sup>19</sup>

- Conflicts of interest may not be declared by panel members, other relevant employees, and tenderers. Sometimes panel members may not properly understand what should be declared, or they may intentionally choose not to declare conflicts of interests.
- The sole supplier process can be misused to avoid a fair and competitive quotation or tender process.

#### Internal controls

- If an evaluation panel has only one member with technical expertise, he or she are able to mislead the panel about technical aspects of the work required and the tenders received.
- There was a lack of information or training for panel members and other officers in the process about how to properly evaluate tenders.
- While the City had established procurement policies and procedures, they were not effective in preventing and detecting misconduct. The controls were ineffective.

#### Ethical culture and leadership

- Difficulties can arise when employees accept gifts.
- Procedures for panels to manage conflicts of interest were unclear.
- Difficulties can arise where there are prior personal or professional relationships between an employee and a supplier or potential supplier to the City.
- When senior officers and managers do not act in a way that shows their commitment to integrity in procurement, then procedures are not followed.

### Complaints and investigations

- Complaints by unsuccessful tenderers, and allegations referred from the CCC about tender processes, may not be properly and thoroughly investigated and addressed. This may be because:
  - internal investigations are inadequately conducted;
  - the instructions to an external investigator may exclude crucial issues or scope; and
  - the findings of an investigation are not properly conveyed to a complainant or the CCC.
- There was a lack of training and information for officers asked to manage and/or investigate misconduct complaints.

### Risks identified by the Corruption and Crime Commission

On 4 February 2015, the CCC published a *“Report on Misconduct Risk in Local Government Procurement”*. The types of risks in procurement identified by the CCC included *“situations in which:*

- *one person is able to be involved in various stages of organising contracts and authorising payments, that is, there is no separation of duties;*
- *supervisors do not check tender and payment processes, and work actually done on contracts, with a view to preventing misconduct;*
- *audits are not carried out, or are superficial or ineffective, in relation to use of purchasing cards and contract administration;*
- *inadequate training is provided and/or the policies and procedures on purchasing are not provided to employees or enforced;*
- *records are inadequate, particularly in relation to documenting decisions, and the reasons for those decisions, about tenders and contracts;*
- *conflicts of interest are not declared by employees or recorded, for example, when contracts are awarded to family members, friends or associates;*
- *employees do not declare secondary employment or private business interests;*
- *receipt of gifts is permitted or gift registers are not used;*
- *a clear code of conduct is not brought to the attention of employees on a regular basis;*
- *allegations about misconduct made to the local government are not dealt with appropriately; and*
- *local governments do not report possible misconduct to the Commission”.*<sup>20</sup>

### Auditor General's reports

The Auditor General has, in 2018 and 2019, published three reports which highlight weaknesses relevant to the City's procurement practices.

In October 2018, the Auditor General published *"Local Government Procurement"* in which the procurement practices of eight local governments were audited, it did not include the City. The Auditor General found:

- *"While all LGs [local governments] had procurement policies and procedures, they are not always effectively and consistently used.*
- *LGs need better procurement oversight and controls.*
- *Procurement decisions and conflict of interest considerations need to be better documented".*<sup>21</sup>

In March 2019, the Auditor General published *"Management of Supplier Master Files"* arising from the audit of 10 agencies, including the City. The report indicated that *"an independent review of master file updates was undertaken only on a 'spot check' basis and was limited to checking supplier bank details"*.

A finding was made that *"12 supplier records were created or amended by employees who were not authorised to do so".*<sup>22</sup> The City responded to the finding indicating *"that the amendments made to 12 supplier records by employees who were not authorised to do so, were minor administration changes to the supplier file and did not impact the core supplier details"*.<sup>23</sup>

In August 2019, the Auditor General published *"Fraud Prevention in Local Government"* arising from an audit of five local governments, not including the City. Although the report was primarily focused on fraud prevention, several recommendations it made are relevant to fraud prevention in procurement. It recommended that local governments should:

- *"assess fraud risks across their business*
- *ensure that all conflicts of interest are recorded, assessed and appropriate management plans are in place*
- *have policies and procedures in place to verify the identity and integrity of employees and suppliers*
- *document clear internal processes and systems to report any potential fraud".*<sup>24</sup>

## Improvements to the City's procurement process

### Deloitte report

Deloitte was commissioned by the City to undertake an independent “*Organisational Capability and Compliance Assessment*”. Its report is dated 6 June 2017 and was received by the Council on that date. The report assessed a wide range of governance related matters, including procurement. In its report Deloitte said that it conducted interviews with:

*“... staff involved in contracting and procurement from across the organisation. The existing procurement process was documented based on these interviews, along with pain points and issues. A gap analysis compared the existing process to leading practices as defined by Deloitte’s standard procurement process definition”.<sup>25</sup>*

Deloitte also analysed the City’s procurement data in the course of a “*spend opportunity assessment*”. It found that the following issues “*are constraining the value that the City is delivering through its procurement activities*”:

- *Process execution is inconsistent with insufficient governance and transparency to drive compliance*
- *There is limited evidence of category management, reducing the potential to achieve economies of scale*
- *There is no formal framework for procurement collaboration across business units, meaning similar procurements can be duplicated*
- *There is no consistent and rigorous market testing to ensure that purchases are achieving best value”.*

Deloitte concluded:

*“By optimising procurement spend through improved sourcing practices, consolidation of contracts and improved contract compliance, the City has the opportunity to reduce total operational spend by 2% – 6%. Such a saving would result in an approximate savings range of \$2 million – \$5 million per annum”.<sup>26</sup>*

### City procurement strategy

Following the Deloitte’s review, the City reviewed its procurement model and in late 2018 a procurement strategy report was prepared. The report stated:

*“The City currently operates a decentralised procurement system with many aspects of the procurement cycle undertaken by project officers with limited and varying procurement skills ...”.*

*“Under the current structure the City experiences:*

- Duplication of contracts and tasks and a lack of consultation between directorates for common procurement activities which are lost opportunities for the City.*
- Inability to leverage corporate spend resulting in diminishing the true capacity of cost savings for the City.*
- Money is wasted with commercial decisions being made in isolation from the City and only undertaken at officer or business unit level.*
- Existing processes and systems represents a barrier to realising the full potential that procurement can deliver the City and hinders compliance to strategy and governance processes.*
- A lack of alignment between procurement staff capabilities and processes resulting in poor coordination of information and best practice sharing.*
- Uneven and inconsistent supplier performance management across the City.*
- Contracts signed with suppliers address the needs of directorates and not necessarily the City as a whole, despite [being] actually entered with the City as a collective organisation”.<sup>27</sup>*

The report proposed that the City adopt a centralised procurement model. It said:

*“Centralised procurement will accommodate the purchasing requirements for the whole City enabling the organisation to leverage its total spend. This should allow the City to negotiate the best price and conditions from suppliers by offering them a commitment to buy in larger volumes rather than adhoc purchases.*

*...*

*A centralised team will drive standardisation and uniform processes to categories enabling the City to leverage spend for market competitive service and pricing in tactical purchases. This will reduce the time staff spend continually seeking quotations and enable them to purchase from an internally managed catalogue.*

*...*

*The proposed structure is centralised but enables tactical purchases to the individual business units. At the core of a proposed model is a centralised team of strategic policy makers, contract managers, and sourcing professionals who develop the framework for procurement activities. This team identifies the strategic categories that would benefit from a centralised approach leveraging the entire spend of the City. The specialists will own the sourcing and undertake procurement and negotiation of supplier contracts to ensure operational efficiency. The business owners and end users of the goods or services will be the procurement category specialist’s customers who provide critical input into the development of the specifications or scope of work. Project Managers across projects will still deliver the projects and project management activities however, supported by the procurement category specialists”.<sup>28</sup>*

### Evidence of Mr Murray Jorgensen

Mr Jorgensen became CEO of the City in November 2018. He provided the procurement strategy report to the Inquiry and gave evidence on 9 October 2019. He was asked about the decentralised model of procurement and gave the following evidence:

*“When you joined the City, is that reflective of what you saw?---Yes. It’s reflective of it and as well as that, from very early on in the piece I had grave concerns every time I was asked to sign-off a tender or a contract. I didn’t have the confidence in the process or, at times, the ability of the Evaluation Panels or process to actually give me the confidence when I was signing off on contracts that I hadn’t been involved in.*

*Are you able to amplify the reasons why you didn’t have that confidence?---an example would be inconsistent Selection Criteria on tender evaluations. On some tenders you might have a price criteria which only represented 10 per cent of the evaluation criteria, in other cases it might be 30 or 40 per cent, whereas I treat the City of Perth’s money like my money and I want value for money. So I see a great emphasis on price, provided you can ensure there is quality and reliability of service or contract delivery. So there were times where tenders had been assessed in accordance with the criteria of, say, 10 per cent price but there was such a marginal difference in the overall points on the assessment out of 100 per cent, but there was a significant price difference and I know in my case which one I would have bought.*

*Is it the lower priced one?---The lower priced one but the process didn’t lead you to the lowest priced one”.*

Mr Jorgensen confirmed that a centralised procurement system was being developed as recommended in the Procurement Strategy report.



I just think there’s significant opportunities for savings and better procurement and ultimately better delivery of services.



**Mr Murray Jorgensen**  
CEO



## Award of irrigation tender 031-17/18 to Western Irrigation Pty Ltd

### Introduction

1. The City of Perth (City) Parks Unit manages parklands, road reserves, street trees, public places, mall horticultural presentations, boutique gardens and landscape maintenance and construction.<sup>29</sup>
2. In 2017 and 2018, the City awarded a tender to Western Irrigation Pty Ltd (Western Irrigation) for a contract for the maintenance of irrigation bores, pumps and associated works (Irrigation Contract). It is the award of that tender, and the circumstance surrounding it, that is the subject of this matter.

### Timeline

2017	16 August	The City advertised Tender 031-17/18 for irrigation services.
	31 August	Tender process closed. Four tenders had been received.
	12 September	Mr Blake Humble, Co-ordinator, Parks Operations, and tender evaluation panel member, obtained approval to seek clarification from the tenderers about costs provided in their tenders.
	21 September	The evaluation panel made a recommendation to Mr Martin Mileham, the Chief Executive Officer, to award the contract to Western Irrigation Pty Ltd.
	13 October	The City awarded the contract to Western Irrigation.
	17 November	Solicitors for Hydroquip, an unsuccessful tenderer, wrote to Mr Mileham making a complaint about the tender.
	27 November	Mr Humble completed a “ <i>General Disclosure of Interest</i> ” form declaring he had been voted Vice Chairperson of Irrigation Australia (WA Region). Mr Andrew Ogden of Western Irrigation Pty Ltd was the General Secretary to the same body.
2018	10 January	The Corruption and Crime Commission (CCC) wrote to Mr Mileham referring an allegation for action. It alleged that Mr Humble “... <i>used his position for a benefit by favouring a contractor</i> ...” The City contracted Stantons International (Stantons) to conduct a probity review on the tender process.
	6 June	The City advised the CCC that it had conducted a “ <i>twofold investigation process</i> ” and “ <i>The findings of the investigation did not substantiate the allegation against Mr Humble. There was no supporting evidence to indicate that Mr Humble received a personal benefit</i> ...”.
	19 July	Stantons provided its final report to the City.
	20 August	Mr Mark Ridgwell, Manager, Governance wrote to Hydroquip in terms similar to the City’s letter to the CCC.

### Issues considered by the Inquiry

3. Consistent with A.1(i) and A.3(v) of its Terms of Reference, the Inquiry's investigations into the award of the tender to Western Irrigation raised a number of issues for consideration.
4. The request for Tender, RFT 031-17/18 (Tender), was awarded to Western Irrigation on the recommendation of an evaluation panel comprising Mr Blake Humble, Mr Simon Pascoe and Mr Myles Bovell. The contract was awarded on 13 October 2017.
5. The award of the Tender to Western Irrigation occurred in circumstances, which were investigated by the Inquiry. Central to that investigation was the role played by Mr Humble in the assessment of tender submissions and the ultimate award of the Tender to Western Irrigation.
6. The award resulted in complaints by an unsuccessful tenderer, Acemark Investments Pty Ltd as trustee for the McFadden Trust trading as Hydroquip Pumps (Hydroquip), which was made by letter to the City dated 17 November 2017 (Complaints).
7. Hydroquip also complained in similar terms to the Corruption and Crime Commission (CCC), resulting in a referral by the CCC to the City for action.
8. The referral by the CCC contained an allegation that Mr Humble had used his position for a benefit by favouring a contractor during the tender process.
9. A critical issue for the Inquiry was whether the City took the Complaints seriously, investigated them properly, and responded to Hydroquip and the CCC appropriately.

### Investigation by the Inquiry

10. The circumstances in which the Tender was awarded to Western Irrigation, and the circumstances in which the City responded to the CCC referral, are factually complex. Reflecting that complexity was the amount of material considered by the Inquiry and the amount of investigative work required.
11. The Inquiry interrogated thousands of pages of material for the purposes of reaching its views in respect of the Tender and the CCC referral. In addition to reviewing that material, the Inquiry also engaged an independent consultant to assist the Inquiry. The Inquiry also conducted examinations of 10 witnesses over several days, in both public and private hearings.

## Witnesses

12. The Inquiry interviewed, and held private and public hearings, involving a number of people in the course of investigating this matter. The positions given below for employees are the positions they held at the time of the events described in this Section. The Inquiry heard from each of the evaluation panel members for the Tender, including:
  - Mr Pascoe, Irrigation Supervisor at the City; and
  - Mr Bovell, Co-ordinator of Parks Projects at the City.
13. Mr Humble, Co-ordinator, Parks Operations at the City was also examined. Mr Humble was the project officer for the Tender. He was involved in the evaluation panel and gave evidence regarding his involvement in the tender processes for the Tender, his role with Irrigation Australia Limited, his relationship with Western Irrigation and its Managing Director, Mr Andrew Ogden, and his understanding of his obligations at the City.
14. Mr Humble did not present as a convincing witness, because, in the Inquiry's view:
  - his answers were often evasive and vacillating – Mr Humble's initially unequivocal responses would often change if presented with contrary material;
  - he attempted to determine the reason for the line of questioning<sup>30</sup> for the apparent purpose of tailoring his responses;
  - several times he claimed to be "*confused*", even when asked simple questions, if it seemed likely that his conduct was being, or was about to be, called into question; and
  - if faced with evidence from which adverse inferences could be drawn, and it seemed as though his explanations were not being accepted, Mr Humble would often change tack and either claim to be confused or say he did not or could not remember something, despite it being about something he had previously been able to remember.
15. The Inquiry heard twice from Mr Martin Copeman, Manager, Parks with the City. During Mr Copeman's private hearing he was careful, considered and measured when giving his evidence. That evidence was consistent with Mr Humble being afforded a large amount of trust and autonomy, particularly in relation to the tender evaluation process for the Tender. While Mr Copeman generally presented as a witness of truth, he was also combative and defensive when publicly examined on material that cast his conduct in an unfavourable light.<sup>c</sup> Aspects of his evidence are considered later in this Section. Mr Copeman was unable to persuasively explain why, during the evaluation period for the Tender, he wrote to Mr Humble to say, among other things, it would be "*a hard sell to get Western [Irrigation] on board*".<sup>31</sup>

c Mr Copeman's comments that counsel could "*make that assumption*": Transcript, M Copeman, public hearing, 15 August 2019, p 15, 17, 18.

16. Before joining the City, Mr Copeman and Mr Humble worked together at the City of Subiaco for approximately 10 years.<sup>32</sup> During that period, the City of Subiaco had engaged Elliotts Irrigation, to whom Western Irrigation subcontracted for irrigation works.
17. In view of these matters, Mr Copeman's evidence, particularly insofar as it touches on his engagement with Mr Humble, is treated with a degree of caution where it cannot be independently corroborated.
18. The Inquiry also heard on three occasions from Ms Barbara Moyser, Senior Employee Relations Adviser with the City. Ms Moyser facilitated the City's actions and response to the CCC referral. Ms Moyser had a poor recollection of events and often needed to refresh her memory by reference to documents. Any independent recollection that she did have would, at times, be inconsistent with the contemporaneous documentary evidence before the Inquiry. Ms Moyser was often unable to explain these inconsistencies or why she had taken certain steps. As a consequence of her poor recollection and the inconsistency between her recollection and the documents, Ms Moyser's evidence was often very confusing. Her evidence is not preferred in the absence of corroboration.
19. Mr Mark Ridgwell, Manager, Governance with the City, gave evidence about receiving the Complaints and the referral from the CCC. Mr Ridgwell's evidence was generally clear and cogent, although at times assisted by his contemporaneous notes.
20. Other witnesses were also examined, including Mr Andrew Ogden, the Managing Director of Western Irrigation.

### Evidence obtained by the Inquiry

#### Evaluation and award of the Tender

21. The Tender was advertised on 16 August 2017, with tenders to be submitted by 31 August 2017. It invited tenders for the maintenance of irrigation bores, pumps and associated works throughout the City for a period of one year, with options to extend for two further one-year periods.<sup>33</sup>
22. City of Perth Procedure "PR0660 – Evaluation Panels for Assessing Tenders, Expressions of Interest and Quotations" (PR0660) governed evaluation panels for assessing tenders, expressions of interest and quotations. However, as noted at paragraph 28-36:
  - parts of PR0660 were not followed during the tender process for the Tender, sometimes with material consequences; and
  - even if PR0660 had been followed, there was still scope for error and manipulation of the process.

23. The evaluation panel comprised Mr Humble, Mr Pascoe and Mr Bovell. Mr Humble had an actual conflict of interest, which was not disclosed to the other panel members. This is considered at paragraph 37-45.
24. Prior to recommending the award of the Tender, the evaluation panel failed to properly assess whether Western Irrigation met all of the qualifications required by the specifications. This is considered at paragraph 46-54. When this was raised by Hydroquip as an issue, the response by Mr Humble and the City was inadequate.
25. Mr Humble had carriage of the comparative price analysis of the tender submissions.
26. As described at paragraph 86, Mr Humble inflated Hydroquip's tendered fees and rates, without proper justification, when preparing the analysis. The analysis had a determinative effect on the award of the Tender, because it negatively affected the evaluation score Hydroquip would otherwise have received had the inflation not occurred. The Inquiry finds that Mr Humble's manipulation of the analysis may have been done to favour Western Irrigation in the tender process.
27. The award of the Tender to Western Irrigation on 13 October 2017 is an example of the City failing to provide good government, due to failings in its procurement and contracting processes and its failings in dealing properly with Complaints made about those processes.

**PR0660 was not followed and would, in any event, be ineffective in preventing error and manipulation**

28. There are a number of different versions of PR0660, which applied during the Inquiry's Terms of Reference. The version that was last edited on 9 February 2017 applied to the Tender. The most recent version of PR0660, which applied to a later tender, no longer provides guidance on a number of matters that were addressed by the earlier version.<sup>34</sup> It is unclear how those matters are to now be addressed.<sup>35</sup>
29. Despite an apparent awareness that there was a document governing the conduct of evaluation panels, none of the panel members were familiar with all aspects of the procedure to be followed.<sup>36</sup>
30. Contrary to the procedure set out in PR0660,<sup>37</sup> the evaluation panel did not meet to establish the selection criteria and recommend the weighting of each criteria.<sup>38</sup> Instead, the content of the Tender, including the selection criteria, was prepared by Mr Humble.
31. During the evaluation, the qualifications of a tenderer were evaluated as part of the selection criteria, even though the qualifications should have been assessed as part of the compliance criteria.<sup>39</sup> This resulted in a subjective assessment, which benefited Western Irrigation. Had the qualifications been treated as a compliance criterion, Western Irrigation's bid for the Tender, unless an amendment to the bid was permitted, would have been excluded from consideration.

32. The Inquiry finds that if panel members had greater input into the criteria against which a tender submission is evaluated, there is likely to be a clearer understanding by those members of how each criterion is to be assessed.
33. PR0660 required the evaluation panel members to meet to jointly deliberate on and arrive at a consensus decision. There is insufficient evidence before the Inquiry to allow it to make a finding about whether a meeting involving all the panel members took place, because:
- Mr Bovell did not recall attending meetings in relation to the Tender, but attributed his lack of recollection to the passage of time;<sup>d</sup>
  - Mr Pascoe did not recall meeting as a panel and was of the view that a meeting had not taken place;<sup>40</sup> and
  - Mr Humble recalled a meeting with all the panel members having taken place in accordance with a calendar appointment on his phone.<sup>41</sup>
34. If an evaluation panel does not meet to consider the tender submissions, it undermines the purpose of the evaluation panel and precludes a consensus decision from being reached, as required by PR0660. Furthermore, as a probity review of the Tender conducted by Stantons International (Stantons) observed, the use of “average” rather than “consensus” scoring, which becomes necessary in the absence of a meeting to agree a consensus score, can lead to the possibility of a manipulated result, with members giving unjustifiably high or low scores to influence the average.<sup>42</sup>
35. The probity review carried out by Stantons identified other inconsistencies between the process that should have been adopted by the evaluation panel and the process that was adopted by the panel.<sup>43</sup>
36. The probity review found that, even if it was followed, the process set out by PR0660 did not negate the risk of the evaluation process being the subject of error or manipulation. In relation to the Tender, it is apparent the process was the subject of at least error, if not manipulation. This is particularly so in the context of the comparative price analysis, which was a risk identified in Stantons’s final report, but apparently overlooked or ignored by the City in its response to Hydroquip and the CCC.<sup>44</sup>


d Transcript, M Bovell, private hearing, 15 May 2019, p 73, in relation to whether he attended a meeting to agree the selection criteria.

### Mr Humble had an undeclared conflict of interest

37. The project officer is ordinarily the person responsible for preparing the request for tender documentation.<sup>45</sup> Mr Humble was the project officer who was responsible for the preparation of the request for tender and the evaluation process for the Tender (Figure 2.33).<sup>46</sup>
38. At the time of the Tender process, from August to October 2017, Mr Humble and Mr Ogden had a number of connections, including:
  - since at least February 2016, Mr Humble and Mr Ogden had been involved with the Executive of Irrigation Australia WA Region<sup>47</sup> and Mr Humble later became the Vice Chairperson from 21 November 2017;<sup>48</sup>
  - Mr Ogden was the current National Chairman of Irrigation Australia and Secretary of Irrigation Australia WA Region, roles he held since at least 2016;<sup>49</sup>
  - Mr Ogden, in his capacity as the Managing Director of Western Irrigation, had dealt with Mr Humble at the City and, previously, at the City of Subiaco;<sup>50</sup>
  - in or about March 2016, Mr Ogden agreed to be a referee for Mr Humble, when Mr Humble applied for the role of Manager, Operations and Environment Services at the City of Subiaco;<sup>51</sup> and
  - Mr Ogden was again a referee for Mr Humble when Mr Humble applied for the role of Co-ordinator, Parks Operations with the City and, according to the City's notes of Mr Ogden's reference, was an enthusiastic supporter of Mr Humble.<sup>52</sup>
39. Mr Ogden told the Inquiry that he was not aware that Mr Humble had been the Vice Chairperson of Irrigation Australia WA Region.<sup>53</sup> Similarly, Mr Humble gave the impression that he had only limited dealings with Mr Ogden.<sup>54</sup> However, minutes of meetings of Irrigation Australia WA Region<sup>55</sup> and emails exchanged between Mr Humble and Mr Ogden throughout 2016 and 2017, in their capacities as members of Irrigation Australia WA Region,<sup>56</sup> indicate that Mr Ogden and Mr Humble were well known to, and corresponded with, each other over a number of years.
40. In these circumstances, the Inquiry finds that in giving evidence to the Inquiry Mr Ogden and Mr Humble sought to downplay their relationship with each other.




236880/16


City of Perth

## General Disclosure of Interest

**Part 5, Div. 6, Sub-Div. 1 Disclosure of financial interests in matters affecting local government decisions**  
**Local Government Act 1995**

It is the responsibility of each Employee to consider if a Conflict of Interest exists prior to participation in a decision making process. This includes providing advice or reports that may influence a decision. It is the individual's responsibility to make a declaration.

<b>Name:</b>	Blake Humble		
<b>Position Title:</b>	Coordinator Parks Operations		
<b>Matter Details</b> (i.e. Council Report, Tender)	Irrigation related works (Bore and Pump Maintenance, Irrigation Installations, Irrigation Central Control)		
<b>Nature of Interest:</b> You have an interest that must be declared if you or a closely associated person to you (refer overleaf for definition) has a direct or indirect financial interest or a proximity interest in the matter (s.5.60).			
<input type="checkbox"/> <b>Direct Financial Interest</b> (s.5.60A) <i>A financial interest exists if it is reasonable to expect that the matter, if dealt with by the local government or its employee, in a particular way, will result in a financial gain, loss, benefit or detriment for the person.</i>			
<input type="checkbox"/> <b>Indirect Financial Interest</b> (s.5.61 and s.5.63) <i>An indirect financial interest exists if you, or a person with whom you are closely associated, has a financial relationship with a person requiring a decision. There is no requirement to establish a financial gain, loss, benefit or detriment in this instance. The mere existence of the financial relationship and the requirement for a decision is sufficient for an indirect financial interest to exist.</i>			
<input type="checkbox"/> <b>Proximity Interest</b> (s.5.60B) <i>A proximity interest exists if a local government decision relates to:</i> <ul style="list-style-type: none"> <li>A development proposal or the development, management or maintenance of land or facilities on land that adjoins a person's property.</li> <li>Changes to a planning scheme or zoning or uses of land that adjoins a person's property.</li> </ul> <i>A person's property includes land owned by or in which the person has any estate or interest. It may have an adjoining boundary with or is directly across a thoroughfare from the land for which a decision is required.</i>			
<input checked="" type="checkbox"/> <b>Impartiality Interest</b> (Admin.Reg.34C, Rules of Conduct Reg.11 and Code of Conduct) <i>An impartiality interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person and includes an interest arising from kinship, friendship or membership.</i>			
<b>Detail the Nature of Interest:</b> <i>Clearly state to enable others to clearly understand what the nature of your interest is</i>		Vice Chairperson of Irrigation Australia (WA Region) Voted in 21/11/2017 (Voluntary Role)	
<b>Extent of Interest:</b> <i>The extent of interest includes the value and amount of the interest.</i>		Two City of Perth irrigation related contracts (Irrigation Central Control Management System, Irrigation Bore and Pump Maintenance Services) are currently out to tender. It is likely that the below mentioned contractors would submit tenders for the above-mentioned works.  The Secretary of Irrigation Australia (WA Region) is Andrew Ogden, a Director of Western Irrigation (current City of Perth contractor), Horizon West Landscape and Irrigation are Irrigation Australia members and City of Perth contractors, Total Eden General Manager, Bruce Scatterfield is a member of the Board of Directors for Irrigation Australia.	
<b>Officer Signature:</b>			<b>Dated:</b> 06/09/2018

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Figure 2.33: General disclosure of interest, Mr Blake Humble, irrigation-related works, 6 September 2018.

41. Mr Ogden and Mr Humble both accepted in their respective hearings that they had a professional relationship with each other.<sup>57</sup> However, Western Irrigation's tender submission did not disclose that relationship, despite the requirement to disclose any relationship, professional, commercial or personal, with City personnel involved in the request for tender process.<sup>58</sup>
42. Similarly, Mr Humble did not refer to, acknowledge or declare that relationship when he completed the declaration of confidentiality and interest form prior to engaging in the tender evaluation process for the Tender (Figure 2.34).<sup>59</sup>
43. Irrespective of whether these were oversights, which given the circumstances described above is unlikely, the fact that it was not identified is consistent with the casual approach to conflicts of interest within the City.
44. Mr Ogden and Mr Humble deny that there was any benefit provided to Mr Humble as a result of his relationship with Mr Ogden.<sup>60</sup>
45. However, as described below, the manner in which Mr Humble conducted the tender process for the Tender was to the benefit of Western Irrigation. Furthermore, as described at paragraph 160, it appears from the manner in which Mr Humble dealt with the contract extension form for the contract, that his decision-making in relation to matters impacting Western Irrigation was, at the very least, affected by bias.

#### Evaluation panel failed to properly assess the requirements of the Tender

46. Mr Humble prepared the request for the Tender by reviewing the specifications in the previous contract for the same works, which he used as a base.<sup>61</sup>
47. Clause 1.14 and Schedule B of this request concerned the compliance criteria. The qualitative selection criteria was described in clause 1.15 and was the subject of a Qualitative Selection Criteria form attached to the Form of Tender.<sup>62</sup>
48. The members of the evaluation panel were aware of the difference between the compliance criteria and the selection criteria.<sup>63</sup> The panel members understood that nonconforming submissions, which did not meet with the compliance criteria, were not to be further assessed by the panel.<sup>64, (e)</sup> In other words, a response which did not conform to the compliance criteria was ineligible for award.
49. Compliance with the Conditions of Contract was a matter to be assessed as part of the compliance criteria. Clause 3 provided that the contractor *"requires the following qualifications as a minimum to fulfil the requirements of this specification"*.<sup>65</sup>
50. Mr Bovell<sup>66</sup> and Mr Pascoe<sup>67</sup> gave evidence that the qualification in clause 3.2, which required the tenderer to hold a valid commercial diving licence, needed to be assessed as part of the compliance criteria. Mr Humble considered that the qualification in clause 3.2 needed to be assessed as part of the selection criteria.<sup>68</sup>

e This is consistent with Ms Boros's evidence, given in the context of a later tender, that tenderers who do not meet the compliance criteria will have their tender removed from consideration: Transcript, G Boros, private hearing, 13 May 2019, p 23.

**Evaluation Panel – Assessment of Tenders, Expressions of Interest and Formal Quotations**

**DECLARATION OF CONFIDENTIALITY AND INTEREST FORM**


*Please read and complete the following form*


**Tender Number: 152-16/17**

**Tender Title: Ozone Reserve Groundwater Filtration System**

I Blake Humble hereby declare that:

- a) I have no financial interest in any of the Tenderers that have submitted a bid for the above named Tender, and that should the situation change, I shall inform the City's Manager Contract Management immediately, in writing.
- b) I have no conflict of interest, real or potential, in this Tender evaluation. Should any of the Tenderers be personally known to me, I shall declare such knowledge to the other members of the Tender Evaluation Panel prior to the evaluation process.
- c) I agree to keep all information relating to the Tender evaluation process confidential and will not disclose details of any tender to any other tenderer.
- d) I shall keep the results of the Tender evaluation process confidential. No indication of the likely recommendation will be discussed, disclosed or allowed to be disclosed without the approval of the Chief Executive Officer.
- e) I understand that the my undertaking at c) and d) above does not apply to disclosing confidential information:
  - (i) if required under a binding order of a government agency or any procedure for discovery in any proceedings;
  - (ii) if required under any law or administrative guideline, directive, request or policy having the force of law; or
  - (iii) which is in the public domain.
- f) I will conduct my evaluation of all tender submissions free of bias and only on the basis of the material being presented.
- g) I shall return all Tenders and Tender documents to the Project Officer at the completion of the Tender evaluation process.

SIGNATURE:  DATE: 06/06/2017

WITNESS:  DATE: 06/06/2017

If you have any queries in relation to this document, please contact the Manager Contract Management prior to the Tender Evaluation Panel Meeting.

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Figure 2.34: Declaration of confidentiality and interest form, Mr Blake Humble, Ozone Reserve Groundwater Filtration System, 6 June 2017.

51. In any event, it appears as though the evaluation panel proceeded on the basis that the qualifications were to be assessed as part of the selection criteria (consistently with Mr Humble's construction of the clause), instead of the compliance criteria.
52. As a result, the non-compliant tenders were not excluded from consideration and the score sheets refer to the qualifications in the context of assessing the selection criteria.<sup>69</sup>
53. The Inquiry finds that the procedure for assessing compliance with tender requirements at the City was unclear, poorly communicated to evaluation panel members and not subject to appropriate checks and balances.
54. As a result of the erroneous approach adopted by the evaluation panel, tender submissions that should have been excluded from consideration, including Western Irrigation's submission, were evaluated.

**Western Irrigation did not hold a commercial diving licence as required by the specifications**

55. Clause 3 of the specifications for the Tender set out the qualifications required by the contractor, including holding a suitable driller's licence from the Australia Drilling Industry Association (clause 3.1) and holding a "*valid commercial diving licence*" for the purposes of works at some of the sites (clause 3.2).<sup>70</sup>
56. Commercial diving, also known as occupational diving, is a label given to certain occupationally oriented diving and is the subject of regulation in Western Australia by the *Occupational Safety and Health Regulations 1996* (OSH Regulations), which in turn requires compliance with AS/NZS 2299: Occupational diving operations – Standard operational practice.
57. Shorn of detail, AS/NZS 2299.1:2015, clause 2.2(a) and regulation 3.29(2)(a) of the OSH Regulations, require divers doing construction diving work to be certified as occupational divers, and at the time of the Tender, commercial divers.<sup>71</sup> As the terms suggest, those qualifications are different to, and more rigorous than, recreational open water diving qualifications.
58. In order to carry out some of the work contemplated by the Tender, a diver performing the work required would need to be qualified in accordance with the OSH Regulations and AS/NZS 2299 – namely, as a commercial (now occupational) diver.
59. Hydroquip's tender stated that Hydroquip had qualified commercial divers on staff.<sup>72</sup> It is clear that, according to their tender, Hydroquip's divers' qualifications complied with clause 3.2 (and the OSH Regulations).

60. Western Irrigation's tender stated that *"As per clause 3.2 Western Irrigation has a Drillers Licence and staff who hold a Diving Licence"* and that *"Certified divers are employed for relevant maintenance diving activities – these include Jason Williams, David Arnold and Bruce Porges"*.<sup>73</sup> The Inquiry finds that by this statement Western Irrigation intended the City to conclude that its divers were appropriately qualified, as required by clause 3.2 of the tender specification.
61. In April 2018, in the course of the Stantons's review, a Works Manager at Western Irrigation was asked by Mr Copeman whether the diving work carried out for the City by Western Irrigation was conducted by personnel with commercial (now occupational) dive level qualifications. The Works Manager admitted that it was not. He said *"it was completed by personnel with dive qualifications assessed under Western Australia's current OS&H Legislation and Regulations as appropriate to the maintenance task at hand"*.
62. Given the way in which the qualification as a commercial diver dovetails with the requirements of the OSH Regulations described above, it is difficult to understand the distinction made by the Works Manager.
63. In any event, as Mr Ogden and Mr Humble accepted in examinations before the Inquiry, Western Irrigation's qualifications did not comply with the requirement described in clause 3.2.<sup>74</sup> This was also the finding of the probity review conducted by Stantons.<sup>75</sup> It was also a fact borne out by the open water diving licences for Messrs Williams, Arnold and Porges, ultimately supplied to the City by Western Irrigation after the contract was awarded.<sup>76</sup>
64. During the tender evaluation for the Tender, Mr Pascoe asked Mr Humble whether Western Irrigation was providing commercial divers as part of their submission. Mr Humble satisfied him that Western Irrigation had the appropriate licence.<sup>77</sup> In relation to this issue:
- Mr Pascoe's memory of the conversation was unclear, in that he was not able to provide details of what exactly had been said in relation to the issue or how Mr Humble had proposed to resolve his question; and
  - Mr Humble denied saying anything to any of the evaluation panel members about a commercial diving licence.<sup>78</sup>
65. While the Inquiry finds that the conversation between Mr Pascoe and Mr Humble happened, there is insufficient evidence to find that Mr Humble deliberately misled Mr Pascoe as to Western Irrigation's qualifications.
66. Neither Mr Humble nor any of the other panel members sought copies of diving licences or otherwise sought to ensure the requirement in clause 3.2 was satisfied prior to the award of the tender.<sup>79, (f)</sup> This failure to verify the qualifications of tenderers allowed the tender to be awarded to a tenderer which did not meet the requirements for its award.

<sup>f</sup> Mr Bovell does not recall whether he considered if each tenderer satisfied the requirement: Transcript, M Bovell, private hearing, 15 May 2019, p 74; Mr Pascoe's evidence is that he was satisfied by Mr Humble that Western Irrigation held the correct type of licence: Transcript, S Pascoe, private hearing, 16 May 2019, p 19-20.



67. After the award of the Tender, the nature of Western Irrigation's diving qualifications was raised as an issue with Mr Humble by Mr Anthony McFadden from Hydroquip.<sup>80</sup> These communications with Hydroquip prompted a conversation between Mr Humble and Mr Ogden about Western Irrigation's diving licences.<sup>81</sup> However:
- before the Inquiry Mr Humble said that he did not ask Mr Ogden whether he had commercial divers, but when asked why not he said that he was confused and he could not recall;<sup>82</sup> and
  - Mr Humble advised Hydroquip that *"In terms of the diving component, the three highest rated tenderers fulfilled the tender requirements"*.<sup>83</sup>
68. Mr Humble's evidence on this issue was evasive. He conflated issues and his stated position was often unable to withstand scrutiny and changed as he became aware of other objective facts and documents before the Inquiry.<sup>84</sup>
69. The Inquiry finds that:
- Mr Humble was either reckless to whether Western Irrigation complied with the requirements of clause 3.2, or ignorant of the compliance requirements; and
  - after having made enquiries into the matter, which failed to confirm that Western Irrigation had the required type of diving licence, Mr Humble then reported to the City and Hydroquip that Western Irrigation had the required type of diving licence.
70. Western Irrigation's failure to comply with the qualifications required by clause 3 should have been assessed as part of the compliance criteria. Consequently, it should have been removed from consideration for the Tender.<sup>85</sup> As a result, Mr Humble's conduct had a material effect on the outcome of the tender process, and this was to the benefit of Western Irrigation.

#### Methodology used for the comparative price analysis

71. Schedule A to the Tender included several schedules of rates, which were to be populated by the tenderers. Relevantly:
- Clause 5.5 – *"Programmed Maintenance Work Service"* included sub-clause 5.5.1.1, which required the contractor to provide a lump sum service charge for each site/installation. Schedule A3-1 – *"Pump Servicing"*, which forms part of Schedule A3 – *"Programmed Maintenance Work Bore and Pump Servicing"*, is the schedule relating to this work.<sup>86</sup>
  - Clause 7 – *"Non-programmed Maintenance Work"* referred to the service charge for non-programmed maintenance work on an unlisted pump unit. Schedule A4 – *"Non-scheduled Bore and Pump Servicing (Ad-hoc Service)"* is the schedule relating to this work.<sup>87</sup>
  - The rates set out in Schedule A4 do not apply to the programmed maintenance work service (being the works contemplated in clause 5.5).<sup>88</sup>

72. In reviewing the schedules of rates submitted by each tenderer, a cross-section of typical works (or “scenarios”) was selected and a comparison of those costs was undertaken. The comparative price analysis, based on the scenario modelling, was attached to the Record of Delegated Authority Decision.<sup>89</sup>
73. The scenarios for the comparative price analysis were prepared by Mr Humble in consultation with Mr Pascoe.<sup>90</sup> The scenarios used were the items highlighted in green in the price analysis spreadsheet.<sup>91</sup> Although scenario modelling was commonly used at the City, there was no City procedure containing the methodology for the analysis.<sup>92</sup>
74. The “Pump Servicing” section of the comparative price analysis picked up the prices set out in Schedule A3-1, as submitted by All Pumps and Waterboring (All Pumps), Total Eden Pty Ltd (Total Eden) and Western Irrigation.<sup>93</sup> In this section, each line item for Hydroquip was \$680.00 more than what had been listed in the Schedule A3-1 submitted by Hydroquip as part of its tender.<sup>94</sup> Mr Humble’s explanation for this referred to the clarifications he had sought and is described below at paragraph 77-84.
75. Price was then factored into the evaluation by giving each tender a weighted score for price, where the cheapest tender received the highest score and the percentage difference in price was reflected in the percentage difference in the scores for price.<sup>95</sup>
76. There was no discretion exercised as to the scores given to tenderers for price, as the weighted price was automatically calculated by reference to the percentage difference as against the cheapest tender.<sup>96</sup>

#### Clarifications sought regarding the tendered fees and rates

77. On 12 September 2017, Mr Humble obtained approval from Mr Ramzi Ibrahim, Senior Contracts Officer, Construction and Maintenance, to seek clarification from the tenderers regarding the costs provided in their tenders for servicing of pumps and the development of bores.<sup>97</sup> Clarification was sought by Mr Humble from the tenderers in the terms approved by Mr Ibrahim.<sup>98</sup>
78. In response to the request for clarification, Mr McFadden (from Hydroquip) wrote:  
*“Yes I can confirm that the pricing includes all aspects or [sic] the tender specifications, our pricing has remained consistent and there was a small increase from 2012. If you require any further information feel free to call me on [redacted]”.*<sup>99</sup>
79. All Pumps confirmed its pricing on 29 September 2017, after the panel’s recommendation was made to Mr Martin Mileham on 21 September 2017 but before the contract was awarded on 13 October 2017.<sup>100</sup> Under examination, Mr Humble repeatedly stated that All Pumps did not respond to the request for clarification. Otherwise, he could not confirm whether this was followed up or explain, if it had not been followed up, only that it had not been.<sup>101</sup>



80. Total Eden confirmed that its tender pricing allowed *“for pump servicing and bore development as detailed in the tender specification”*.<sup>102</sup>
81. Western Irrigation provided a response that, in relation to one bullet point, was expressly predicated on an (immaterial for present purposes) assumption.<sup>103</sup> Mr Humble considered the assumption to be *“standard industry practice”*.<sup>104</sup>
82. Mr Humble sent a further email seeking clarification from Hydroquip.<sup>105</sup> Relevantly:
- Hydroquip was the only tenderer that was asked for further clarification.<sup>106</sup> Mr Humble was not able to cogently explain to the Inquiry what aspect of Hydroquip’s response needed further clarification;<sup>107</sup>
  - Mr Humble’s apparent inaction in relation to All Pumps’s non-responsiveness is even more inexplicable in light of the further clarification sought from Hydroquip; and
  - Mr Humble framed his question to Hydroquip using a line item from Schedule A3-1, which was not part of the scenario modelling, and made the request for clarification confusing.<sup>108</sup>
83. There is no written record of any input from Mr Ibrahim into the further request and Mr Humble did not recall seeking any such input.<sup>109</sup>
84. Mr Pascoe was not aware that clarification had been sought about the tendered fees and rates.<sup>110, (g)</sup> Mr Copeman was also unaware that further clarification was sought. When asked in examinations, neither Mr Pascoe nor Mr Copeman considered Hydroquip’s initial response to the request for clarification to be unclear.<sup>111</sup>

#### **Comparative price analysis improperly resulted in Hydroquip’s tender being less competitive**

85. The probity review by Stantons found that *“the price analysis was primarily conducted by Mr Humble who sought guidance from Mr Pascoe when developing the assumptions required to convert the pricing schedules into an [estimate of contract value] for each Tenderer”*.<sup>112</sup>
86. On receipt of the further clarification from Hydroquip, Mr Humble added the service charge specified in Schedule A4 (being \$680.00) to each of the lump sum figures provided by Hydroquip in Schedule A3-1.<sup>113</sup> He said he did so based on his interpretation of Hydroquip’s response. These additions had the effect of inflating each of those line items by \$680.00, which in turn significantly inflated the overall price for Hydroquip in Mr Humble’s price analysis.

g Mr Bovell could not recall whether clarification had been sought: Transcript, M Bovell, private hearing, 15 May 2019, p 79.

87. Mr Humble did not provide a clear or satisfactory explanation about why he had formed the view that the service charge from Schedule A4 in Hydroquip’s tender submission should be applied to the lump sum service fees nominated in Schedule A3-1.<sup>114</sup> Indeed, his explanations:

- contradicted his earlier evidence about the pricing schedules in the Tender, specifically his understanding that the rates in Schedule A4 did not apply to the programmed maintenance work service (being the works contemplated in clause 5.5 and Schedule A3-1);<sup>115</sup>
- were not supported by what was said by Hydroquip in its response to the request for further clarification; and
- were difficult to accept, especially as the service charge in All Pumps’s submission was not treated in the same way<sup>116, (h)</sup> and given that the absence of a service charge in Total Eden’s and Western Irrigation’s submissions were not questioned.<sup>117</sup>

88. Mr Pascoe was not aware that, and was not able to explain why, Hydroquip’s prices in the pricing analysis failed to match the prices that Hydroquip had submitted in Schedule A3-1 of its tender submission.<sup>118, (i)</sup>

89. Mr Copeman gave evidence that he did not review the price analysis in detail.<sup>119</sup>

90. However, the reliability of Mr Copeman’s evidence on this point is doubtful given an email exchange between Mr Copeman and Mr Humble on 19 September 2017, during the evaluation period for the Tender, where Mr Copeman asserted that on his reading of Mr Humble’s (draft) recommendation and Mr Humble’s qualitative price analysis of the tenders, “... by my reading Hydroquip come out in front of Westerns ...”.<sup>120</sup> In light of this contemporaneous evidence, the Inquiry finds that Mr Copeman was aware of the comparative price analysis conducted by Mr Humble and that he discussed that with Mr Humble on or just before 19 September 2017.

91. Later in this same email exchange with Mr Humble, Mr Copeman also observed:

*“The .1 difference between Western and Hydro and hydro being a cheaper outcome is going to be a hard sell to get Western on board. If Hydro challenge I can’t see the defence. Trust me I want to so let’s meet and discuss.”*<sup>121</sup>

92. When questioned about this observation, Mr Copeman’s demeanour as a witness changed significantly. His answers became noticeably defensive. At times he responded to questions with statements like “You can make that assumption if you want”<sup>122</sup> when the questions were being asked simply to have Mr Copeman explain, in his language and with the benefit of hindsight, his email.

h While his rationale was difficult to follow, Mr Humble’s position was that he did not inflate All Pumps’s fees by reference to its service charge, because All Pumps did not respond to his request for clarification.

i Mr Bovell had no meaningful recollection of the price analysis: Transcript, M Bovell, private hearing, 15 May 2019, p 81-82.

93. Mr Copeman's evidence as to whether the "*.1 difference between Western and Hydro*" was a reference to the .1 difference between the final evaluation scores given to those tenderers was perplexing. Mr Copeman initially said that it was "*quite possibly*" a reference to that, before saying "*Sorry, I can't say for sure*" followed by, when pressed, "*Yes, that's reasonable to assume*".<sup>123</sup> Mr Copeman's answers are difficult to accept. The reference to the "*.1 difference between Western and Hydro*" could only have been a reference to the difference in their scoring. It is not clear why Mr Copeman vacillated on this point.
94. While Mr Copeman accepted the language used in his email conveyed the impression that he wanted Western Irrigation "*on board*", he denied that was in fact his intention. When asked why he used the language he did in his email, Mr Copeman said he did not now know.<sup>124</sup>
95. The Inquiry finds that:
  - Mr Humble acted alone when he populated the prices in the comparative price analysis;
  - Hydroquip's response did not support the interpretation adopted by Mr Humble; and
  - there was no proper basis for Mr Humble's actions in inflating Hydroquip's tendered fees in Schedule A3-1.
96. While the Inquiry finds the emails sent by Mr Copeman to Mr Humble on 19 September 2017, and his responses to questions about those emails, suspect, there is at present insufficient evidence to support a finding to the appropriate standard that Mr Copeman was complicit in, or had knowledge of, any wrongdoing by Mr Humble.
97. However, and having regard to Mr Humble's unclear and unsatisfactory evidence on the matter, the Inquiry finds that for the purposes of the comparative price analysis conducted by him, Mr Humble manipulated the prices submitted by Hydroquip causing Hydroquip's tender to be less competitive and may have done so with the intention of giving an advantage to Western Irrigation.
98. The manipulation of the comparative price analysis, the failure to identify and rectify it, and the failure to disregard the Western Irrigation tender on the basis that it was non-compliant, resulted in Western Irrigation obtaining the award of the Tender when it clearly should not have done so.

### City failed to properly address the complaint by Hydroquip

99. On about 17 November 2017, Hydroquip’s solicitors sent a letter to Mr Mileham in his capacity as the Chief Executive Officer (CEO) of the City.<sup>125</sup> While addressed to Mr Mileham, the front page of the letter indicates that it was sent to Mr Ridgwell by email, who recollects receiving it.<sup>126</sup> Among other things, the letter explained that the author had, at the same time as complaining to the City, also complained to the CCC.
100. The City did not act, in a substantive way, on this letter. When asked why this was so, Mr Ridgwell explained he had undertaken training with, among other agencies, the CCC and that *“one of the findings out of that is to wait for instruction in respect to a CCC matter so that you don’t interfere with any investigation that they may take”*.<sup>127</sup>
101. Mr Ridgwell also explained that after receipt of the letter he called Hydroquip’s solicitors to explain that position to them. He could not, however, recall whether the solicitors responded positively, negatively or ambivalently to that explanation.
102. In the absence of competing evidence, the Inquiry accepts this evidence and the rationale behind it.
103. In any event, two months later, on about 10 January 2018, the CCC wrote to Mr Mileham with a referral for action in accordance with section 33(1)(c) of the *Corruption, Crime and Misconduct Act 2003*.<sup>128</sup> Attached to this CCC referral was a letter from Hydroquip’s solicitors to the CCC, which was in materially the same terms as the letter from Hydroquip’s solicitors to the City.
104. The CCC referral contained the following allegation:

*“It is alleged that Blake HUMBLE (Coordinator of Parks Operations, City of Perth) used his position for a benefit by favouring a contractor during the procurement process for City of Perth tender 031-17/18 – Maintenance of Irrigation Bores, Pumps and Associated Works”.*
105. Ms Moyser became involved because the CCC referral contained an allegation about an employee at the City,<sup>129</sup> and at the time the CCC referral was received Mr Ridgwell had a heavy workload and was about to go on leave.<sup>130</sup> Ms Moyser and Mr Ridgwell discussed the process the City would need to undertake to investigate the allegation.<sup>131</sup>
106. The City chose only to interrogate the allegation particularised in the CCC referral, rather than the broader Complaints. Ms Moyser explained she understood the City had to focus on the allegation in the CCC referral,<sup>132</sup> which was an understanding she said she got from Mr Ridgwell.<sup>133</sup> Mr Ridgwell confirmed that where an allegation was raised with the City by an agency like the CCC, it was the City’s practice to only consider that particularised allegation.<sup>134</sup> It was decided to engage Stantons to undertake that consideration.

### Probity review was an inappropriate way of addressing the Corruption and Crime Commission referral

107. The engagement of Stantons came about by Ms Moyser being instructed by Mr Ridgwell<sup>135</sup> to engage the firm and to arrange a probity audit of the tender evaluation process for the Tender.<sup>136</sup> While that much is apparent, what Stantons received by way of a brief, and how the firm's engagement was scoped, is not as clear as it could be.
108. On the one hand for instance, in an email from Mr Wade Dunstan of Stantons to Ms Moyser on 21 March 2018, Mr Dunstan expressly stated that the scope of the review to be conducted by Stantons *"does not include an investigation into [the claims that] Mr Humble gained some form of personal benefit as a result of Western Irrigation being awarded the contract"*.<sup>137</sup> As Ms Moyser accepted in her hearing, that is an omission of the matters central to the allegation in the CCC referral.
109. However, and on the other hand, in a quote with costings for the proposed work, emailed from Mr Dunstan to Ms Moyser on 23 January 2018, it was suggested that Stantons would *"Review and test/explore, where considered appropriate, the claims made in the complaint to the CCC"*. The description suggests, as Ms Moyser accepted at her hearing,<sup>138</sup> that matters central to the CCC referral, including the Complaints, would be considered and tested by Stantons. Similarly, the final report prepared by Stantons indicated that it was within its scope of works to draw a conclusion about *"the allegation of misconduct by the CCC"*.<sup>139</sup>
110. Ms Moyser told the Inquiry that the precise scope of what Stantons was engaged to do was not clearly defined at the outset.<sup>140</sup> This confusion appears to be borne out in an email from Mr Dunstan to Ms Moyser dated 4 July 2018, where Mr Dunstan notes in relation to the report that:

*"Overall, I think there are quite a few items where there is a misunderstanding about what probity entails and the level of scrutiny a probity audit applies to a tender process"*.<sup>141</sup>
111. The Inquiry finds that the engagement of Stantons by the City was not undertaken in a clear, precise or methodical way. This then resulted in confusion about what was or was not within its scope of work. As described below, that confusion may be a primary, and perhaps the sole, reason why draft versions of the report prepared by Stantons underwent quite radical and somewhat perplexing changes during the review process.
112. Nonetheless, while the precise scope of Stantons's engagement was and remains unclear, what is clear is that Stantons was briefed to consider whether the tender evaluation process had adhered to the relevant procedure.<sup>142</sup> Ms Moyser's view, maintained throughout her hearing, is that this was the primary focus of the exercise.

113. It is not possible to construe either the CCC referral or the Complaints as a general complaint about the procedure followed in the tender process. Ms Moyser could not clearly explain the decision to focus only on the tender process, rather than the allegation of serious misconduct by Mr Humble in the CCC referral. She was not able to say whether it was a conscious decision of the City to limit the review in that way.<sup>143</sup>
114. Mr Ridgwell explained that he was not involved in a hands-on way in the review conducted by Stantons. It was a matter, he said, left largely to Ms Moyser. He did, however, agree that it was an expectation of his, at the time of the City's receipt of the CCC referral, that the allegation in it would be investigated and a view reached on whether it could be substantiated. He also agreed that it was not an intention or expectation of his that the review would simply be a review of the City's tender processes for general probity reasons.<sup>144</sup>
115. The limitations of the probity review carried out and finally reported on by Stantons highlights the inappropriateness of the audit being used to investigate the allegations made against Mr Humble.
116. Stantons was not qualified to evaluate the ratings which had been provided as part of the tender process.<sup>145</sup> Accordingly, Mr David Watson who is involved with an organisation called Shenton Aquatics was engaged to assist.
117. Shenton Aquatics and Mr Watson were recommended to Ms Moyser by Stantons in February 2018.<sup>146</sup> It is not clear how or by whom they were engaged (that is, whether by the City or Stantons) as there was no letter of engagement. However, emails show Ms Moyser and Mr Watson began communicating about the Tender in March 2018,<sup>147</sup> with Mr Watson providing a draft report to Ms Moyser on 5 April 2018,<sup>148</sup> implying the engagement was by with the City. Publicly available information describes Mr Watson's employment as the "Commercial Pool Division Manager" with Shenton Aquatics, a role he appears to have held for 23 years.
118. The most precise articulation of what Shenton Aquatics was engaged to do is set out in the opening words to Mr Watson's report: "*I conducted a technical review of tender number 031-17/18 in response to a formal complaint lodged through the CCC*".<sup>149</sup> Stantons described Shenton Aquatics contribution in similar terms in its final report, observing that an "*independent technical review has been undertaken by an appropriately qualified independent expert, Shenton Aquatics, and the observations of Shenton Aquatics' review have been considered as part of this probity audit*".
119. The limitations of Mr Watson's report are described in paragraph 121.
120. Stantons's scope, as set out in its final report, did not include a detailed review of Hydroquip's claims. Stantons was not briefed to investigate Mr Humble's involvement in the matter or determine whether he had manipulated the tender process.<sup>150</sup> Stantons did not carry out full-ranging investigative interviews.

121. The reliance on the review by Shenton Aquatics is concerning, because:
- Mr David Watson, who prepared the report by Shenton Aquatics, noted he “*may have bias in [his] views*” due to his association with Total Eden;<sup>151</sup> and
  - there was no proper justification on why Mr Watson’s views and evaluation should be regarded as the gold standard for the tender (particularly given his disclosure about potential bias).<sup>152</sup>
122. Given these limitations, Stanton’s stated intention to “*draw a conclusion regarding the allegation of misconduct by the CCC*”<sup>153</sup> was limited to considering whether the tender process, as adopted by the evaluation panel, precluded the allegations from being true. This is consistent with Ms Moyser’s understanding of the purpose of seeking the probity audit from Stanton.<sup>154</sup>
123. In other words, Stanton was not engaged to investigate, and therefore did not report on, the allegation made in the CCC referral. The probity review may have discerned whether the allegations could have been made out, but would not determine whether the allegations were, in fact, made out. The usefulness of the probity review to the proper investigation of the allegations was at best tangential.
124. The Inquiry finds that the way in which the City engaged Stanton, and the method by which it was briefed, lacked rigour,<sup>155</sup> with the result that the allegation referred by the CCC was unlikely to be properly addressed.

#### Findings of the probity review and the City’s response to the findings

125. It is clear from the following findings by Stanton in its final report on its probity review that the tender process did not preclude the allegation against Mr Humble from being true:
- Mr Humble failed to identify the minimum competencies in clause 3 of the specifications for tender as compliance criteria, the minimum competencies were not assessed properly and the evaluation panel failed to identify that Western Irrigation did not provide adequate evidence regarding its diving qualifications, all of which was conclusively material to the overall outcome of the Tender;
  - the evaluation panel’s approach to scoring was not entirely supportable, which was possibly material to the overall outcome;
  - the evaluation panel averaged its scores to determine a weighted score, instead of reaching a consensus, which exposed the process to the possibility of manipulation, by which a small change to the scores could cause a different party to be the preferred contractor;
  - the audit could not conclusively determine that the conversion mechanisms and/or input assumptions for the pricing evaluation were not manipulated to contrive a particular outcome; and
  - only requiring one individual (the project officer, which in this case was Mr Humble) to validate the accuracy of the price assessment exposed the City to a risk of error or manipulation, which was potentially material and could not be dismissed as immaterial.



126. In its report, Stantons noted there was *“little evidence to support the notion that Mr Humble, or any individual, manipulated the process to contrive a particular outcome”*.<sup>156</sup> Nonetheless:
- the probity review identified there was scope for the process to have been manipulated to contrive a particular outcome;
  - it is not surprising that *“little evidence”* was found, when the issue of whether there was, in fact, such manipulation was not investigated by Stantons; and
  - the basis for, and the appropriateness of, this statement is unclear given the nature of the probity review and the report as a whole.
127. As noted, reversing Mr Humble’s changes to Hydroquip’s prices would have resulted in Hydroquip being the preferred contractor based on the scores.
128. Despite Stantons having identified that the tender process involved a risk that the price assessment might be the subject of error or manipulation:
- Stantons did not consider whether the evaluation panel, or Mr Humble, had manipulated or incorrectly carried out the price assessment;<sup>157</sup> and
  - the City did not take any further action to determine whether the outcome was, in fact, contrived or biased.<sup>158</sup>

#### City’s responses to the Corruption and Crime Commission and Hydroquip were misleading

129. The CCC referral requested that the City provide its report, advising of the outcome, to the CCC pursuant to section 40 of the *Corruption, Crime and Misconduct Act 2003*.
130. Although Stantons did not find that Mr Humble received a personal benefit, Stantons did not investigate whether Mr Humble gained some form of personal benefit as a result of Western Irrigation being awarded the contract. Nor did it conduct a detailed review of Hydroquip’s claims.<sup>159</sup>
131. Stantons did not conclusively find either that there was bias or that there was no bias.<sup>160</sup> That said, a key finding of Shenton Aquatics was that there was *“some evidence of human bias from tender evaluation panels notes; however, unlikely sufficient to derail the process”*.<sup>161</sup>
132. On 6 June 2018, the City wrote to the CCC (Figure 2.35) and advised the City had conducted a *“twofold investigation process”* and that:
- “The findings of the investigation did not substantiate the allegation against Mr Humble. There was no supporting evidence to indicate that Mr Humble received a personal benefit from being involved in the process nor was any bias established”*.<sup>162</sup>

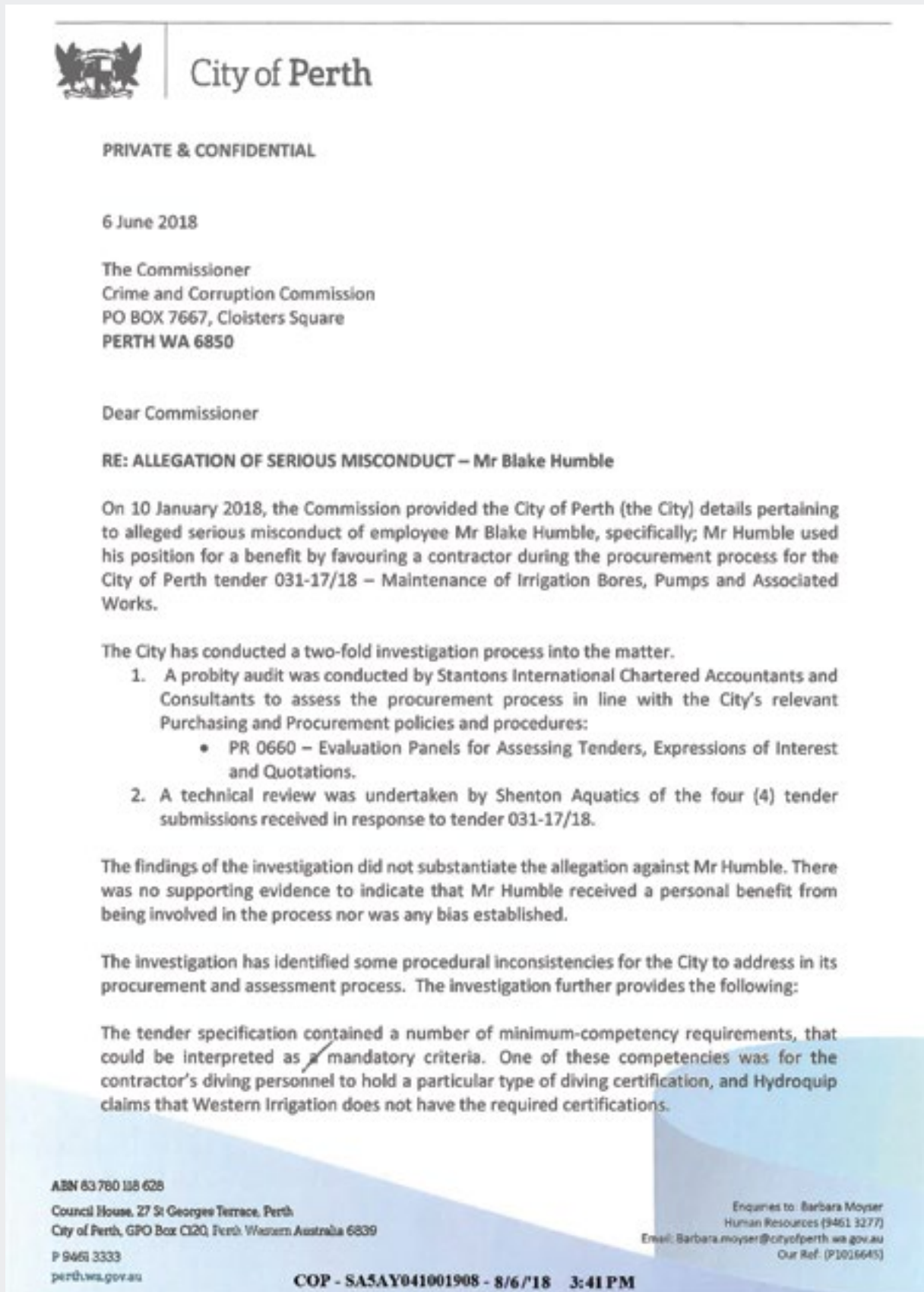


Figure 2.35: Letter from Mr Martin Mileham, Chief Executive Officer, City of Perth, to the Commissioner, Corruption and Crime Commission, 6 June 2018.

- 2 -

As part of the probity review, evidence of these competencies by Western Irrigation in their submission could not be located.

The technical review identified that whilst specific evidence was not provided, it was not unreasonable for the evaluation panel to rely on the information that was provided as being sufficient; "certificated divers arte employed for relevant maintenance diving activities".

The implication from the submission is that the divers are suitably qualified and hold suitable license classes. Whilst it would seem reasonable for the evaluation panel to request further clarification it was not unreasonable that they did not.

Please contact the undersigned should you have any further query.

Yours sincerely



Martin Mileham  
CHIEF EXECUTIVE OFFICER

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133. Ms Moyser, who was involved in the preparation of a draft of the letter, accepted that the letter to the CCC *“tells half the story”* and *“creates a wrong impression”*.<sup>163</sup>
134. Mr Ridgwell accepted, in view of the observations and findings in Stantons’s final report, the response was misleading, although not deliberately so. Mr Ridgwell’s explanation was that the disconnect between the Stantons’s final report and the City’s letter to the CCC was due to his workload at the time and because he did not give the matter his full attention. Mr Ridgwell also agreed on the basis of the City’s response to the CCC, the CCC would inevitably reach the (erroneous) view that the allegation it referred to the City for investigation had not been substantiated.<sup>164</sup>
135. Mr Ridgwell also wrote to Hydroquip on 20 August 2018 in terms similar to those in which the City wrote to the CCC. Mr Ridgwell accepted that, as with the response to the CCC, the letter to Hydroquip was misleading. He also accepted that Mr McFadden, the principal of Hydroquip, would probably be quite upset and annoyed to find out, during the course of the Inquiry, the misleading nature of that letter and the deficiencies in the City’s *“investigation”* of the CCC referral and the Complaints.
136. Given the nature of Stantons’s probity review and its conclusions, there was no basis for the City to have responded to the CCC, or Mr McFadden on behalf of Hydroquip, in the terms in which it did.

#### City’s changes to Stantons’s draft reports

137. The final report prepared by Stantons, on which the City’s response to the CCC was based, was not the only version of that document. Rather, as best the Inquiry can determine, at least eight draft versions of the document were prepared.
138. The first version received by the City is version 1.3, which was received by Ms Moyser from Mr Dunstan by email dated 6 April 2018. Mr Dunstan describes this version in his email as a *“preliminary draft”*.<sup>165</sup> It was shown to both Ms Moyser and Mr Ridgwell in the course of their examinations. Only Ms Moyser recalled seeing the document.
139. The preliminary draft is, in critical respects, strikingly different to the final report.
140. The most significant difference between version 1.3 and the final version of the report is the inclusion in version 1.3, missing from the final report, of a section of the document headed *“Observations Regarding the Misconduct Allegations”*.
141. As that heading suggests, this section contained Stantons’s observations on the misconduct allegations made against Mr Humble in the Complaints.
142. A number of the *“Observations”*, which were subsequently removed by Ms Moyser, are worth noting, including the following:

*“However, given the evidence suggesting the evaluation process was flawed and the outcome may be erroneous, the City may wish to consider referring the matter to the CCC to investigate the possibility of an undisclosed relationship/ arrangement between Mr Humble and Western Irrigation”.*

*“... it remains a possibility that Mr Humble has an additional relationship or arrangement with Western Irrigation that he chose not to disclose, for the specific purpose of perpetrating misconduct in order to gain a personal benefit. Based on our review, the greatest exposure to the possibility of misconduct would have been through Mr Humble’s control over the development of LSFE [Lump Sum Fee Estimate] for each tenderer”.*

*“... it is possible that after the conduct of the qualitative scoring, Mr Humble could have observed the weighted qualitative scores for each Tenderer, and subsequently contrived the fee estimates to ensure a particular outcome was derived. On this basis, the City may wish to consider referring the matter to the CCC to investigate the possibility of an undisclosed conflict of interest existing between Mr Humble and Western Irrigation. However, in our opinion, it is unlikely that such a situation has transpired”.*

Stantons provided observations to support this conclusion.

*“It is possible that bias was introduced into the evaluation process, however it is unclear whether any bias, if introduced, had a material effect on the outcome of the evaluation process”.*

*“In summary, we cannot conclusively dismiss the notion that individual bias played a role in the outcome of this tender process. However, if there was bias present, we are unable to determine whether it had a material effect on the process”.*

143. Both Mr Ridgwell and Ms Moyser were, in the course of their hearings, taken to these passages in the preliminary draft.

144. Mr Ridgwell said:

- he had not seen them before;
- that they were serious matters;
- that it was a considerably more concerning version of the report than the final report;
- that he was surprised and disappointed that these matters were not in the final report;
- that they were matters that he would send to the CCC;
- that he would not have written to the CCC or to Mr McFadden in the terms he did had he known of them; and
- regardless of whether or not they were matters within Stantons’s scope of works they were matters that should have remained in the final report.<sup>166</sup>

145. Ms Moyser also agreed that these matters were serious, that they were central to the allegation the subject of the CCC referral and that they were matters the City took seriously and would want investigated so the City could respond to the CCC in an informed and appropriate way.

146. Notwithstanding this, Ms Moyser gave evidence that she thought she removed the entire section headed “*Observations on the misconduct allegations*” from the draft report.
147. Ms Moyser said that she did not think she was instructed to delete the material by Mr Ridgwell or anyone else. She also agreed that it was unlikely that Stantons, the authors of the preliminary report, would suggest those deletions to her.
148. Ms Moyser said that the intention was to move the material to an appendix, or elsewhere in the report. She was unable to explain why she thought this material should be moved to an appendix.<sup>167</sup> Furthermore, Ms Moyser accepted that in both the marked-up version of the draft report, in which the observations were deleted, and in the final report, the observations were not in an appendix. She was unable to explain why this was the case if the observations were intended to form part of the report.
149. Ms Moyser did not think she questioned the absence of the observations from the final report and had no recollection of doing anything with the observations – for example, referring them to the CCC or for further investigation, following their removal from the draft report, notwithstanding their seriousness. When examined, Ms Moyser accepted she should have taken those steps.<sup>168</sup> Why she failed to do so at the time is both puzzling and concerning.
150. The changes made to the preliminary draft are perplexing, particularly as Stantons’s observations are central to the CCC referral. No cogent explanation for those changes, and the complete absence of the observations from the final version of the report, has been provided by any witness, including Ms Moyser.
151. Notwithstanding this, there is no evidence that Ms Moyser or anyone else set out deliberately to contrive the result of the review and report conducted and issued by Stantons. When that possibility was suggested to Ms Moyser in the course of her examination, it was denied.<sup>169</sup>
152. The most plausible explanation for the changes, consistent with the absence of misconduct, may be that Ms Moyser simply had little understanding of the process in which she was engaged. Without intending any disrespect, Ms Moyser was not the appropriate person for the task. She had not been trained in the process. It was not her usual role. She was quite reliant on others, including Stantons and Mr Ridgwell, for her understanding of what a probity review involved or what a proper interrogation of the CCC referral would require. As Mr Ridgwell accepted, a governance-led investigation, similar to that which occurred with the engagement of INVision in relation to the Railway Street and Market Street Shared Path Extension Tender, also considered in this Chapter, is the appropriate way to conduct an investigation of this type.<sup>170</sup>
153. The inappropriate resourcing of the matter, coupled with the failure of Mr Ridgwell as Manager, Governance to properly oversee and review the work conducted by Stantons and Ms Moyser, which failure arose at least in part due to Mr Ridgwell’s significant workload at the time,<sup>171</sup> resulted in a process that was dysfunctional and unsuited to its purpose.

154. The Inquiry finds, in relation to the review of the Tender, that the City was hampered by poor resourcing, a lack of proper oversight, and systemic failures of process, aptitude and governance.

#### Action taken by the City following the probity review into the Tender

155. For the reasons already described, the City's response to the CCC referral, by engaging Stantons to undertake a probity review, was inappropriate and resulted in a misleading response to the CCC. The only action which appears to be specifically attributable to the Complaints and the CCC referral is the City's decision to re-tender the Irrigation Contract, instead of exercising its option to extend it.<sup>172</sup> It may also be the case that the City's experience with this CCC referral led to what Mr Ridgwell described as a recent push towards centralising procurement practices within the City, a matter for which he had been agitating for some time.<sup>173</sup>
156. Otherwise, and broadly speaking, the City did not specifically address the issues that were raised by Hydroquip and the CCC referral and appears to have proceeded on an assumption that steps the City was already taking, or intending to take, would be sufficient to resolve the issues identified.<sup>174</sup> In particular, the City did not:
- provide further training to staff, despite the failings identified; and
  - take any action against Mr Humble (disciplinary or otherwise), although Mr Humble does appear to have been prompted to make a declaration of interest during the evaluation period for a later tender in respect of his relationship with Mr Ogden.
157. As a result, the City did not implement any safeguards to avoid the risk of error and manipulation that was of concern in this tender process, from affecting the process for a subsequent re-tender.

#### Decision to re-tender the Irrigation Contract

158. Mr Copeman was instructed by Mr Ridgwell to advise Western Irrigation that the City was not going to extend the existing contract, but that Western Irrigation was welcome to make a submission for the new tender.<sup>175</sup>
159. Mr Humble was not aware that a decision had been made not to extend the contract.
160. A contract extension form was prepared, by Mr Humble, with some administrative assistance, for the Irrigation Contract,<sup>176</sup> where:
- The form recommended the extension of the contract and included favourable comments regarding the performance of Western Irrigation.
  - The contract spend in less than one year was already more than half of the estimate over three years (which is not made clear on the form).<sup>j</sup> The form provides that *"requests to extend contracts that have significantly exceeded the original contract value should be reviewed carefully"*, Mr Humble was not clear on the process to be followed where there was significant overspend.

<sup>j</sup> Transcript, B Humble, private hearing, 17 May 2019, p 80-82; the estimated annual cost for the works in 2017/2018 was \$66,168.00 and the total whole of life cost for the three-year contract was circa \$200,000.00, however, the form was completed on the basis that the future demand for products is consistent with or related to the original scope of works (despite the significant overspend that would result).



- The form asserted that it is “*anticipated that due to the specialist nature of bore and pump works, an alternative contractor with a cheaper price would not be available with the Perth market*”. Mr Humble did not know what that comment was based on and conceded that it was inaccurate.
- Mr Humble was not able to provide a compelling reason as to why the contract was recommended for extension in the circumstances.<sup>177</sup>

161. As described in paragraph 37-45, Mr Humble had a conflict of interest in relation to the Irrigation Contract. The Inquiry infers, from the manner in which he dealt with the option to extend the Irrigation Contract, that Mr Humble’s decision-making in relation to Western Irrigation was affected by bias.

#### City did not provide further training to staff

162. The Inquiry heard evidence that City employees do not receive information or training with respect to evaluating tenders as part of an evaluation panel.<sup>178</sup>

163. Ms Moyser and Mr Ridgwell prepared a draft of the letter to the CCC, which included the following paragraph:

*“The information provided by the Probity Auditor has been referred to the City of Perth Procurement and Contract Management specialists to further review lessons learnt and provide further training to City of Perth staff.”*<sup>179</sup>

164. The final version of the letter to the CCC did not include this paragraph,<sup>180</sup> and as a matter of fact the evaluation panel members had not been, as at the date of their examinations before this Inquiry, provided with further training.<sup>181</sup>

#### No action was taken in relation to Mr Blake Humble

165. Mr Humble’s conduct was never properly investigated, notwithstanding the specificity of the allegations made against him. The employees at the City involved in actioning the CCC referral could not explain why this had not been done. When asked about this, Mr Ridgwell said he had no recollection of discussing the appropriateness of involving Mr Humble in the re-tender. However, when it was put to him that, if he had been asked, was it likely he would say “*He’s been cleared by the Stanton’s report so its okay*”, he agreed.<sup>182</sup>

166. No disciplinary action was taken against Mr Humble.<sup>183</sup> Presumably, this was because the City did not take steps directed towards determining, and was therefore unable to determine, whether Mr Humble had engaged in misconduct.

## Findings

### Finding 2.3.4 – 1

In respect of the Tender, the Inquiry makes the following findings:

- i. The City's procedure for evaluating tenders was not followed.
- ii. Mr Humble had an undeclared actual conflict of interest, in that he had several ties with the Managing Director of Western Irrigation, Mr Ogden.
- iii. The diving qualifications required by the tender specification were not properly assessed as part of the compliance criteria, or at all, with the result that the Tender was awarded to Western Irrigation, which should have been disqualified from consideration for not holding the required qualifications.
- iv. The comparative price analysis of the tender submissions was manipulated by Mr Humble, in circumstances where the analysis inflated a competing bid, contributing to the award of the tender to Western Irrigation.
- v. Even if the City's procedures had been followed, there were insufficient checks and balances to avoid risks associated with the tender process being subject to error or manipulation.

### Finding 2.3.4 – 2

In respect of the CCC referral of an allegation of serious misconduct the Inquiry makes the following findings:

- i. The probity review of the tender process, which was commissioned by the City in response to the CCC referral, was not an appropriate way to address it.
- ii. The City failed to investigate the specific allegation identified by the CCC.
- iii. Despite it having been attached to the CCC referral, the City did not consider or investigate the Complaints.
- iv. The City responded to the CCC before the probity auditors it had engaged had finally reported to the City.
- v. The City was involved in making significant changes to drafts of the report, which materially altered the content and tone of the report, in circumstances where no reasonable explanation for those changes has been proffered.
- vi. The City's response to the CCC was inaccurate and misleading.
- vii. As a result of the City's actions, and inaction, steps were not taken to ensure that the issues with the Tender process were identified and prevented from recurring.

**Finding 2.3.4 – 3**

Generally, the Inquiry makes the following findings:

- i. As at the date of the Tender, the City's procurement and contracting processes, and the way in which the City dealt with complaints and allegations against City employees, was inconsistent with good government.
- ii. The City's procurement and contracting processes resulted in the unjustified award of a tender to Western Irrigation.

## Request for quotation 057-17/18 and the engagement of Bartlett Workplace Training Pty Ltd

### Introduction

1. The Inquiry investigated a number of procurement and contracting matters, one of which was the engagement of Bartlett Workplace Training Pty Ltd (Bartlett Workplace).
2. Bartlett Workplace was a company engaged by the City of Perth (City) in 2017 to provide culture and values training, and related services, to the City. Its principal was, and still is, Mr Glen Bartlett who was, relevantly, and still is, also the Chairman of the Melbourne Football Club. In essence, Bartlett Workplace was engaged to improve relations between and among the members of the Executive Leadership Group and City of Perth Council (Council).

### Timeline

2016	7 July	Mr Bartlett of Bartlett Workplace emailed Mr Martin Mileham, Chief Executive Officer (CEO) about what services Bartlett Workplace could offer the City.
	25 July	Mr Bartlett and Mr Mileham met (on or around this date).
	September	Mr Bartlett contacted Mr Mileham with additional information.
2017	19 April	Bartlett Workplace sent Mr Mileham a proposal for a “ <i>Workplace 360 review</i> ”. Mr Mileham and Mr Bartlett met at the Crown Towers in Perth.
	20 April	Mr Mileham sent Mr Bartlett a text message stating: “ <i>Glen great to talk, many thx for your time. I am in Melbourne Sat to Tues so if there is an opportunity to see Richmond vs Melbourne at the ‘G’ that would be great also</i> ”.
	24 April	While in Melbourne on leave, Mr Mileham attended the Richmond versus Melbourne Australian Football League match with a family friend.
	28 April	Mr Mileham declared a gift from “ <i>Glen Bartlett (Bartlett Workplace)</i> ” of “ <i>Ticket to Richmond vs Melb @ MCG + 2 drinks</i> ”.
	4 May	Mr Mileham asked Mr Mark Ridgwell to get additional quotes based on the Bartlett Workplace Proposal.
	21 September	Mr Mileham approved a formal quotation request form for a Cultures and Values Framework.
	18 October	An evaluation panel comprising employees met to consider quotes from three companies, including Bartlett Workplace.
	6 November	Mr Bartlett was advised that his “ <i>submission to undertake the culture and values framework services was successful</i> ”.

## Issues considered by the Inquiry

3. Consistent with A.3(v) of its Terms of Reference, the Inquiry identified two issues for its consideration:

- whether Bartlett Workplace was engaged in November 2017 following a proper and transparent procurement process, or whether it was a favoured supplier and the assessment made of other suppliers was merely “*window dressing*”; and
- whether the Chief Executive Officer (CEO), Mr Mileham made a false declaration in respect of a gift he received from Mr Bartlett in April 2017, namely, tickets to a football match and associated hospitality.

## Investigation by the Inquiry

### Witnesses

4. The Inquiry interviewed, and held private hearings, involving a number of people in the course of investigating this matter. The positions given below for employees are the positions they held at the time of the events described in this Section. The Inquiry also considered a large number of relevant documents. The principal witnesses were Mr Mileham and Mr Bartlett.
5. Mr Mileham was examined on his relationship with Mr Bartlett and the gift declaration he made in April 2017. Mr Mileham’s recollection was generally poor. He could not recall how many times he met with Mr Bartlett before Bartlett Workplace was awarded the contract for the Services and his evidence about the circumstances of the gift, he received from Mr Bartlett changed in the telling. Mr Mileham’s evidence is treated with caution.
6. Mr Bartlett is a Director of Bartlett Workplace. He gave evidence from Victoria by video link. Mr Bartlett was somewhat guarded, but presented as a witness of truth.
7. The Inquiry also heard from people who were City employees at the relevant time, Mr Mark Ridgwell, Ms Barbara Moyser, Senior Employee Relations Adviser, and Ms Kelly Pember, Acting Manager, Human Resources. Aspects of their evidence are considered below.

## Evidence obtained by the Inquiry

### Mr Glen Bartlett contacts Mr Martin Mileham, they meet, and Bartlett Workplace pitches for work

8. There was no pre-existing personal or professional relationship between Mr Mileham and Mr Bartlett before Mr Bartlett contacted Mr Mileham in mid-2016 to, in effect, pitch for work with the City.<sup>184</sup>
9. However, they shared a connection to the East Perth Football Club (EPFC). Mr Mileham was and is a Director of EPFC's Board of Management and Mr Bartlett, who is a life member, was a former player and captain.
10. As best the Inquiry can determine, their dealings before Bartlett Workplace was awarded the contract for the Services were limited and appear to have been as follows:
  - In July 2016, Mr Bartlett learned of Mr Mileham's appointment as Acting CEO and made contact with him for business development reasons.<sup>185</sup> They met on about 25 July 2016.<sup>186</sup>
  - The meeting was, to Mr Bartlett's recollection, a "*standard*" introductory meeting. Mr Bartlett did not immediately recall the nature or subject of discussions, although he was later reminded that it led to some discussions with the Western Australian Local Government Association regarding the Association's preferred supplier scheme arrangements.<sup>187</sup>
  - In September 2016, after Mr Mileham was appointed substantively as CEO, Mr Bartlett again got in touch with him with information arising from their July discussions.<sup>188</sup> Mr Mileham circulated that information internally,<sup>189</sup> advising Ms Michelle Howells (Manager, Human Resources) and Mr Robert Mianich (Director, Corporate Services) that Mr Bartlett was an ex-member of the EPFC, and that Mr Mileham was on the Board. Mr Mileham said he did this so "*they are aware that I have a connection or potential connection or there may be a perception of a connection*", recognising that his connection was, or might have been seen to be, a conflict of interest.<sup>190</sup>
  - On 19 April 2017, Mr Mileham and Mr Bartlett met again, this time at the Crown Towers in Perth, possibly in the Crystal Club,<sup>191</sup> rather than at Council House. On the day of, and in the lead up to, their meeting, Bartlett Workplace sent a proposal for a "*Workplace 360 review*" to Mr Mileham<sup>192</sup> (Proposal).
  - Mr Bartlett was initially unable to recall what was discussed at that meeting or why it took place,<sup>k</sup> but accepted that something had prompted Bartlett Workplace to send the Proposal.<sup>193</sup> Mr Mileham said he might have discussed City business at the meeting, but that it was "*mainly about football*".<sup>194</sup>
  - In mid-April 2017, Mr Mileham was also gifted by or through Mr Bartlett, two tickets to a football game at the Melbourne Cricket Ground for the ANZAC Day eve game.<sup>195</sup> The receipt of those tickets, and Mr Mileham's declaration in respect of them, is dealt with in some detail below.

<sup>k</sup> Email, B Limmer to G Bartlett, M Mileham and A Sunderland, 10.38 am 13 April 2017; note: Mr Bartlett had no recollection of discussions about Mr Mileham's key performance indicators at these meetings: Transcript, G Bartlett, private hearing, 8 May 2019, p 15.

11. The Proposal was a lengthy document, but of note is that it was replete with references to a “*One Team*” approach and the four core scopes of work contained in it were priced, cumulatively, at \$40,000.00.<sup>196, (I)</sup>
12. Two days after the Proposal was provided, on Friday, 21 April 2017, Mr Mileham emailed Mr Bartlett to thank him (presumably for the Proposal) and indicated he would reply after ANZAC Day, once he had had a “*chat*” with the Lord Mayor.<sup>197</sup>

#### Mr Martin Mileham declares a gift

13. Mr Mileham spent the long weekend of 22-25 April 2017 in Melbourne, returning to the City on 26 April 2017. As 25 April 2017, ANZAC Day, was a Tuesday, Mr Mileham took annual leave from the City for Monday 24 April 2017. He booked the leave on 13 April 2017.<sup>198</sup>
14. While in Melbourne, among other things, Mr Mileham attended the ANZAC Day eve Australian Football League match between Richmond and Melbourne with a family friend. His tickets to the event were provided by Mr Bartlett. The match was, in Mr Mileham’s words, a big game, a “*marquee game*”, attended by 84,000 people.<sup>199</sup>
15. Mr Mileham said the tickets were offered to him. When pressed, he conceded that it was possible he may have requested the tickets, but that it was unlikely.<sup>200</sup> Mr Bartlett said the tickets were requested, and provided the Inquiry with a text message from Mr Mileham reflecting that request.
16. That text message was sent at 3.59 pm (presumably Victorian time) on 20 April 2017. It states:

Mr Mileham




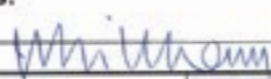
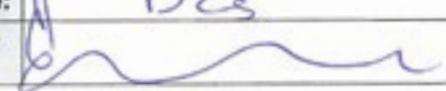
*“Glen great to talk, many thx for your time. I am in Melbourne Sat to Tues so if there is an opportunity to see Richmond vs Melbourne at the ‘G’ that would be great also. Regards Martin Mileham”.*<sup>201</sup>

17. Two tickets were provided, as requested. The tickets included pre-match dinner and drinks at a function room at the Melbourne Cricket Ground, during which speeches were made, and seats near to the function room from where Mr Mileham and his guest could watch the match.
18. Mr Bartlett informed the Inquiry that the value of the tickets was \$220.00 each, or \$440.00 in total.<sup>202</sup>
19. Section 5.82 of the *Local Government Act 1995* (LG Act) required Mr Mileham to disclose any gifts that he received valued over \$200.00, including a description of the gift and the estimated value of the gift at the time it was made. Furthermore, the City’s Code of Conduct prohibited Mr Mileham from accepting a gift valued at \$300.00 or more from a person who was seeking to undertake commercial dealings with the City.<sup>203</sup>

I Note: the fifth scope of works, online compliance training, was priced per employee.



20. Mr Mileham was examined on his understanding of the rules about the receipt and declaration of gifts. His evidence demonstrated that he understood those rules, including the prohibition against accepting certain gifts (which alone or in aggregate are valued at more than \$300.00) and the requirements for full and proper disclosure of any gifts received. He said that if he received two tickets to an event he would have declared both of them.<sup>204</sup>
21. However, despite having this understanding, Mr Mileham's declaration of the gift he received was deficient.
22. On 28 April 2017, Mr Mileham declared the gift. On the declaration form (Figure 2.36) he stated that the gift was from "*Glen Bartlett (Bartlett Workplace)*" and that the person who would benefit from the acceptance of the gift was "*Self*". He described the gift as "*Ticket to Richmond vs Melb @ MCG + 2 drinks*".<sup>205</sup> That description is misleading in two respects.
23. First, he received two tickets, not one as the description suggests. When pressed, Mr Mileham agreed that he should have declared two tickets.<sup>206</sup>
24. Secondly, the description does not accurately disclose the true nature of the gift he received, being tickets not only to the football game but also pre-game dinner (of multiple courses), drinks and entertainment (in the form of speeches) in a function room. Mr Mileham accepted he should have more clearly declared the nature of the gift received. Notwithstanding this concession, he was evasive and refused to accept that the description he gave suggested a general admission ticket to the football match plus two beers from the bar.<sup>207</sup>
25. In declaring the gift, Mr Mileham was also required to state its value. That could be the actual value or an estimated value. Mr Mileham chose to estimate the value, notwithstanding that he could have obtained the actual value from Mr Bartlett or the Melbourne Football Club. He accepted that had he sought the actual value he would have discovered it was a prohibited gift.<sup>208</sup>
26. The value he estimated was \$100.00. Mr Mileham conceded that value was estimated based on one ticket, not two. However, when pressed as to whether he stood by that estimate, or considered it reasonable for one ticket, Mr Mileham was again evasive and seemingly unwilling, for some time, to answer the question directly. Eventually, Mr Mileham said that he still considered \$100.00 to be a reasonable estimate for a single ticket, and accepted that on that premise he should have valued two tickets at "*a couple of hundred bucks*".<sup>209</sup>

CITY of PERTH		Gift Declaration			
Local Government Act 1995 Local Government (Administration) Regulations 1996 Reg 348/34F Council Policy 10.1 Code of Conduct		Governance Use Only Online <input type="checkbox"/> (Over \$200)		TRIM REF: 9099817	
<b>Definition of Gift</b>		<p>gift means any disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money's worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel.</p> <p>Offers of money, gift vouchers, shares and discounts on products are to be refused. Gifts are not to be accepted without prior approval.</p>			
<b>GIFT DETAILS</b>	<b>Gift Offered by:</b>	Name of entity:	GLEN BARTLETT (BARTLETT NORIKAWA)		
		Name of person: entity representative or individual	GLEN BARTLETT.		
		Contact Details:	03 9603 5000		
	Nature of relationship with the City:	NONE AS YET.			
	Are they likely to be subject of a future decision of the City?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			
	Date gift was offered:	20.4.17			
	Describe the Gift <small>Sufficient for verification of gift value. Attach invitation or agenda if hospitality or event.</small>	TICKET TO RICHMOND VS MELB @ MCG + 2 DRINKS			
	Gift Value:	\$ 100	Actual Value <input type="checkbox"/> OR Estimated Value <input checked="" type="checkbox"/>		
	Less than \$50 (refer to next page) \$50 to \$300 (notifiable) Greater than \$300 (prohibited)				
	Is this the first gift you have been offered by this person / entity:	YES <input type="checkbox"/> NO <input type="checkbox"/>			
Who will benefit from the acceptance of the gift?	SELF				
Submit Completed Declarations to the Governance Unit within 10-days of acceptance of the Gift.					
<b>DECLARATION</b>	Name:	Martin Mileham			
	Position Title:	CEO			
	<input checked="" type="checkbox"/> Propose to Accept Gift	I declare this information is accurate and that acceptance of the gift is not in conflict with the Code of Conduct or Local Government Act 1995 and will not create a future conflict of interest for me in fulfilling my position responsibilities.			
	<input type="checkbox"/> Relinquish to City	Reason/s:			
SIGNATURE:				Date:	28/4/17
<b>Verification (Governance)</b>	Value Accurate:	YES <input type="checkbox"/> NO <input type="checkbox"/>	Sufficient Description:	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
	Risks / Issues	Cat E - Gift of Influence - Hospitality			
	Position:	Gov Coordinator	Initials:	SM	Date:
Delegated Authority 1.3.3 DECISION on Proposed Acceptance of Gift					
<input checked="" type="checkbox"/> Approve Gift Acceptance	I have assessed the details of the declaration to be accurate and unlikely to cause a probity risk for the City of Perth or the officer making the declaration.				
<input type="checkbox"/> Refuse Gift Acceptance	Reason/s:				
<input type="checkbox"/> Transfer Gift to City	Reason/s:				
Position Title:	DCS				
SIGNATURE:				Date:	2-5-2017
CEO / Director					

Version 4 - 21 November 2016

Figure 2.36: City of Perth Gift declaration, Mr Martin Mileham, Bartlett Workplace, 28 April 2017.

27. Mr Mileham's evidence that he considered, at the date of his declaration, that a value of \$100.00 was a reasonable estimate of the value of the gift he received, is difficult to accept. He received two tickets, not one. He is on the board of the EPFC. He has attended other events where similar (though not the same) hospitality was offered and the value of the ticket to the event was \$250.00. He was aware of the requirement in the City's Code of Conduct to take into account, when considering the value of a gift, the cost of the hospitality provided. He knew that Mr Bartlett wanted to provide commercial services to the City and had provided a written proposal. As the CEO at the time he was aware of the need to lead by example.<sup>210</sup>
28. Having regard to these matters, and despite Mr Mileham's denial of the proposition, the Inquiry finds that as at the date of making the declaration Mr Mileham knew that the tickets were valued at more than \$100.00, knew that they were likely to be of such a value as to be a prohibited gift and inaccurately completed the gift declaration.
29. A final matter is the significance of the capacity in which the gift was received. In the course of his evidence Mr Mileham suggested that, before declaring the gift, he considered whether he needed to declare it in the first place. He suggested, at first, that he received the gift in his capacity as a member of the board of the EPFC and, for that reason, did not need to declare it. However, he later accepted (on two occasions) that he received the gift in his capacity as CEO of the City.<sup>211</sup>
30. Sometime after giving this evidence Mr Mileham sought to produce further documents in evidence on this question and to re-open the issue of whether he accepted the gift in his capacity as CEO of the City.<sup>212</sup> The Inquiry admitted the additional documents.<sup>213</sup>
31. The capacity in which Mr Mileham accepted the gift is irrelevant for three reasons:
  - First, it is the fact of the acceptance, in whatever capacity, that triggered his obligations under the LG Act. The LG Act required each gift received by a person to be declared.<sup>214</sup> There is no exception, as there is in respect of declaring contributions to travel,<sup>215</sup> which exempt gifts received by a person in the ordinary course of another occupation of the person which is not related to his or her duties as an employee of the City.
  - Secondly, under the City's Code of Conduct, Mr Mileham was prohibited from accepting the gift, whether that gift was offered to him in his capacity as CEO of the City or in some other capacity.
  - Thirdly, Mr Mileham took steps to declare the gift. Having made that decision, it was incumbent on him in the proper discharge of his duties as an employee and CEO to ensure the declaration was fulsome and accurate. The capacity in which he received the gift does not bear on that obligation.

### City seeks quotes for the Services

32. On 4 May 2017, slightly over a week after returning to the City, Mr Mileham asked Mr Ridgwell to get some additional quotes based on the Proposal.<sup>216</sup> Mr Mileham's email records indicate that he had given the Proposal to Mr Ridgwell and that they had discussed it including a "360 values" component because that was one of Mr Mileham's draft key performance indicators.
33. Mr Mileham did not tell Mr Ridgwell he had received a gift from Mr Bartlett.<sup>217</sup> Mr Ridgwell's evidence was that it was something he should have been told about and that it would not have been appropriate to use Bartlett Workplace, if Mr Mileham had accepted (or requested, as was the case) a prohibited gift from Mr Bartlett.
34. Mr Ridgwell explained why:
 

*"Because of the very nature of having to work so closely with the CEO in respect to this. It's a critical element. Your CEO is the lynchpin between the Elected Members and if he was excluded from the process of – if we were to use his firm, it just wouldn't be appropriate. So yes, this is a process that requires absolutely a CEO to be present but you can't exclude him from the process so it's actually the firm that needs to be excluded".*<sup>218</sup>
35. This is broadly consistent with the City's Code of Conduct, which required Mr Mileham to ensure there was "... no actual or perceived conflict of interest between [his] personal interests and the impartial fulfilment of [his] public duties and functions".<sup>219</sup>
36. In the event, a City of Perth Formal Quotation Request Form for a Cultures and Values Framework, Quotation No 057-17/18 (Form) was prepared, which was approved for market by Mr Mianich and Mr Mileham on 18 and 21 September 2017, respectively.<sup>220</sup>
37. The Form had been prepared by Ms Sarina Cuttone, Human Resources Advisor, presumably in the period between May and September 2017, and set out that the closing date would be 28 September 2017 (although this appears to have been extended to 10 October 2017). Mr Ridgwell explained that while Mr Mileham had asked him to obtain additional quotes, he deferred this matter to Ms Cuttone to manage the quotation process.<sup>221</sup>
38. As part of that process, on 30 August 2017, Ms Cuttone contacted Mr Bartlett advising that she was required to adopt the City's procurement process given the value of the work.<sup>222</sup> She said she hoped Mr Bartlett was still interested in being considered for the work. He replied that he was.<sup>223</sup>
39. An Addendum to the Form was issued on 29 September 2017.<sup>224</sup>

40. The Form, read with the Addendum:

- stated that the budget amount was for \$40,000.00 (which is the amount quoted by Mr Bartlett in the Proposal) and referred to a schedule of rates. Mr Ridgwell did not know how that sum was reached;<sup>225</sup>
- indicated that the evaluation panel would comprise Mr Ridgwell, Ms Francesca Pandolfino and Ms Moyser. Mr Ridgwell could not recall who asked him to be on the panel, though he thought it was most likely Ms Cuttone, and he did not know how the panel composition was determined;<sup>226</sup>
- was replete with references to “*One Team*”, which Mr Ridgwell accepted suggested the Form and Addendum were based on the Proposal from Mr Bartlett;<sup>227</sup> and
- set out the following qualitative criteria, with weightings:
  - company profile: 10 per cent;
  - resume, detailing qualifications and experience of the facilitators and persons performing the work: 50 per cent;
  - workplace consulting experience with Executive teams: 35 per cent; and
  - have nominated referees: five per cent.

41. The second and third criteria, totalling 85 per cent, both relate to qualifications and experience.

#### Quotes are assessed by the evaluation panel

42. By 10 October 2017, the City had received quotes from Maitland Consulting, Jackson McDonald and Bartlett Workplace. On about 18 October 2017, the evaluation panel met to consider the proposals.
43. Although only required to provide two referees, Jackson McDonald’s submission included a third, Ms Moyser.<sup>228</sup>
44. On 18 October 2017, Ms Moyser signed, as required of all members of the evaluation panel, the City’s Declaration of Confidentiality and Interest Form. She declared that she had no conflict of interest, real or potential, in the evaluation and that if any bidders were personally known to her, she would declare that to the other panel members before the evaluation process.<sup>229</sup>
45. Ms Moyser told the Inquiry she was familiar with Jackson McDonald and had used them for legal work.<sup>230</sup> That is unsurprising, as Jackson McDonald were one of the law firms used from time to time by the City (including, for example, by Mr Ridgwell in relation to Project Percy, as described elsewhere in this Report). That Ms Moyser was listed as a referee for Jackson McDonald was not, of itself, a conflict of interest. Furthermore, although it was not tested in the hearing, the Inquiry infers from its broad understanding of the relationship the City had with its various lawyers, that the panel members would have been aware that Ms Moyser (and Mr Ridgwell) was familiar with and had used Jackson McDonald as lawyers in the past.

46. Ms Moyser prepared an evaluation panel score sheet<sup>231</sup> which preferred Bartlett Workplace. She also produced notes to the Inquiry about her assessment of the quotation.<sup>232</sup> After the meeting her notes were provided to Mr Ridgwell, as the panel leader, for him to undertake the weighting process.<sup>233</sup> Mr Ridgwell could not recall doing this, but accepted he may have.<sup>234</sup>
47. Ms Moyser's notes record the members of the panel, the purpose of the workshop, the selection criteria and estimates of costs.

Those estimates are:

- Maitland Consulting – \$10,000.00;
- Jackson McDonald – \$30,000.00; and
- Bartlett Workplace – \$30,000.00.

It is unclear on what basis Ms Moyser had arrived at those figures, given the Bartlett Workplace submission totalled over \$35,000.00,<sup>235</sup> and Jackson McDonald was about \$33,000.00.<sup>236</sup>

48. Ms Moyser was not made aware, at the time of making this assessment, that Bartlett Workplace had previously sent the Proposal, although in evidence she said she did not think it would have made any difference to her role on the evaluation panel.<sup>237</sup> Her evidence was that cost was not a factor.<sup>238</sup>
49. On about 19 October 2017, each of the evaluation panel members signed a document titled *“Qualitative Selection Criteria Evaluation Matrix”* (Matrix).<sup>239</sup> This contained four qualitative selection criteria: Capacity, Qualifications, Experience and References which broadly resemble those included in the original Form.
50. However, for reasons no witness was able to explain, the weightings of each criteria had changed so that in the Matrix each was now 25 per cent:
- *“Capacity”*: 25 per cent – previously *“Company profile”*: 10 per cent;
  - *“Qualifications”*: 25 per cent – previously *“Resume, detailing qualifications and experience of the facilitators and persons performing the work”*: 50 per cent;
  - *“Experience”*: 25 per cent – previously, *“Workplace consulting experience with Executive teams”*: 35 per cent; and
  - *“References”*: 25 per cent – previously, *“Have nominated referees”*: five per cent.
51. The Matrix ranked each of the respondents based on their total score. Bartlett Workplace was ranked one, with a total score of “3”. Maitland Consulting was ranked two, with a score, also, of “3”. Jackson McDonald was ranked three, with a score of “2.6”.



52. Mr Ridgwell explained why Bartlett Workplace was ranked above Maitland Consulting in circumstances where they had both received scores of three:

*“The discussions that we had through the meeting was, when it’s shared score it’s what we still believe to be the most appropriate firm. So as an example, there’s pros and cons to each of these firms in actually being applicable. So I think there are notes that support, that say that Maitland weren’t as strong in the context of legal services”.*<sup>240</sup>

53. Having undertaken this process, and having ranked Bartlett Workplace as the preferred bidder, the City then sought additional information from Bartlett Workplace. It sought that information about two matters. First, additional costs for travel and accommodation, and secondly, *“who was facilitating the session and what personnel did key duties”*.<sup>241</sup>

54. Given the weight that was originally attributed to the *“qualifications and experience of the facilitators”* criterion (50 per cent), it seems odd to seek confirmation about who the facilitator(s) would be *after* Bartlett Workplace had been ranked first. Mr Ridgwell explained that while the evaluation panel was impressed with the qualifications of those presented in Bartlett Workplace’s quote, he *“wanted to be really sure that we were going to get people ... of high quality”*. In effect, he wanted to avoid any risk of a bait and switch.<sup>242</sup>

55. As to the cost of travel to Perth, the evaluation panel members were of the view that the pricing aspect of the quotes was not a matter that required assessment by them. It was not one of the qualitative criteria, although they did have some regard to it. Mr Ridgwell accepted price, as a component of value for money, was implicit in all bidding assessments.<sup>243</sup>

56. Ultimately, Bartlett Workplace’s bid, when the cost of attendance in Perth was added to their initial quote, came in at \$37,500.00 plus the Goods and Services Tax (GST). That is about 3.8 times more expensive than the bid from Maitland Consulting, the second-ranked bidder. When asked about this, Mr Ridgwell explained that the evaluation panel took the view that Maitland Consulting’s price reflected that Maitland Consulting did not really understand the true cost of the services that would need to be provided under the contract. No one appears to have contacted Maitland Consulting to confirm whether that was the case.<sup>244</sup>

57. Mr Ridgwell accepted that if *“value for money”* had been an express criteria for evaluation, it is possible that Maitland Consulting may have been awarded the contract.<sup>245</sup> Mr Ridgwell also accepted that by setting the budget for the scope of works at \$40,000.00, the City had effectively excluded from consideration any disadvantage to Bartlett Workplace as a result of being the highest priced bidder.<sup>246</sup>

58. In effect, setting the budget at that level meant that a quote that came in close, but under budget, was preferred to a quote that came in significantly over or significantly under. Furthermore, value for money considerations in this quotation process were diminished by the fact that the cost of the works was not an express evaluation criteria. That approach is, the Inquiry finds, somewhat at odds with the City’s then current purchasing policy, which provided that value for money was an overriding consideration in the assessment of all bids for work with the City.



**Was the procurement process set up to appoint Bartlett Workplace as a “*fait accompli*?”**

59. The work undertaken by Bartlett Workplace ultimately<sup>247</sup> totalled over \$77,000.00.<sup>248</sup>
60. In the examinations of Mr Ridgwell and Mr Mileham it was put to them that the Form and the Addendum were prepared in such a way as to make the appointment of Bartlett Workplace a “*fait accompli*”.
61. Mr Ridgwell explained that he thought what had happened with the preparation of the Form and the Addendum, was that Ms Cuttone had, consistent with Mr Mileham’s request to Mr Ridgwell on 4 May 2017, “*done up a scope of works and has copied what was in a quotation from a provider [the Proposal] and is using terminology that should really have been removed*”.<sup>249</sup>
62. Mr Ridgwell said that there were no inferences or expectations that the City was going to use any one of the providers. Mr Ridgwell confirmed that during his time on the evaluation panel no one expressed an expectation that any one provider would be used. Mr Ridgwell said he had no (relevant) engagement with Mr Mileham during that period.<sup>250</sup>
63. Mr Mileham said he had no involvement in the quotation process, other than signing off on the Form, and that while he hoped Bartlett Workplace would be considered for appointment given their capacity, he did not take steps or direct Mr Ridgwell to undertake a process that would result in Bartlett Workplace being appointed. He denied setting up the procurement system as a “*fait accompli*” for Bartlett Workplace.<sup>251</sup>
64. The Inquiry accepts the evidence of Mr Mileham and Mr Ridgwell.
65. While there are similarities between the Form and the Proposal, those similarities are likely to be explained as a result of a “*short cut*” taken by the author of the Form.<sup>252</sup> That a shortcut of that type may have been taken is not surprising given Mr Mileham’s request to Mr Ridgwell, on 4 May 2017, that additional quotes be sought on the basis of the Proposal.
66. Furthermore, there is no evidence to suggest that Mr Ridgwell, Ms Moyser, Ms Pandolfino or Ms Cuttone were instructed to set up, or were otherwise complicit in, a process by which Bartlett Workplace would inevitably be appointed. Indeed, Mr Ridgwell, who the Inquiry finds is an honest and reliable witness, denied that proposition.<sup>253</sup>
67. There is no evidence before the Inquiry that the approach adopted by the evaluation panel, not to use value for money as an express criterion, was informed by improper or corrupt motives. While it is, as the Inquiry finds above, somewhat inconsistent with the City’s purchasing policy, and should not be followed in the future, there is no evidence that the approach was directed by anyone within the City for the purpose of appointing Bartlett Workplace.

## Findings

### Finding 2.3.4 – 4

As observed throughout this Section, the Inquiry makes the following findings:

- i. The procurement process, while not without its deficiencies, was not mere “*window dressing*”.<sup>m</sup>
- ii. Mr Mileham contravened the City’s Code of Conduct when he requested and then accepted football tickets from Mr Bartlett.
- iii. Mr Mileham did not accurately declare the gift he received from Mr Bartlett.

<sup>m</sup> The Inquiry notes that, as a consequence of recent amendments to the *Local Government Act 1995*, a Chief Executive Officer of a local government is now prohibited from exercising a delegated power (which may include authorising expenditure of the local government’s funds) in relation to a matter that affects the financial interests of a person who has given the Chief Executive Officer a gift: *Local Government Act 1995*, s 5.60, s 5.62(1)(ec), s 5.71. However, as at April 2017, the provisions of the *Local Government Act 1995* did not prohibit Mr Mileham from being involved in the procurement process.

## Tender for the Railway Street and Market Street Shared Path Extension

### Introduction

1. This Section is about the request for tender process for civil construction works associated with the Railway Street and Market Street Shared Path Extension (RSMS Works), and the poor “*investigation*” conducted by the City of Perth (City) into allegations of, among other things, serious misconduct by City employees. The allegations were made by an unsuccessful tenderer.
2. By request for Tender 071-11/12, issued on 11 January 2016, the City established a panel of contractors to undertake civil works relating to street enhancement, drainage and other associated works. Only City panel contractors were invited to tender for the RSMS Works.
3. Platinum Plant and Equipment Hire Pty Ltd (Platinum) and BOS Surveying Pty Ltd trading as BOS Civil (BOS Civil) both submitted tenders in response to the request. BOS Civil’s tender was cheaper than Platinum’s.
4. On the purported basis that discrepancies between the bids meant that the City could not have confidence in them, the City did not award this tender. Rather, the City decided to recall and re-issue the request for tender, so that quantities for the schedule of items could be included. Platinum and BOS Civil both submitted revised tenders. Platinum’s revised tender was successful and it was awarded the contract for the RSMS Works on about 16 March 2016.<sup>254</sup>
5. Following the close of the tender, BOS Civil lodged a complaint with the City on 8 June 2016, expressing concerns about disclosure of confidential information and the consequences of an apparent relationship between entities associated with Platinum and City employees.
6. The City conducted an investigation of sorts and responded to BOS Civil to say, in effect, there was no substance to its complaint.
7. Dissatisfied with the City’s response, BOS Civil contacted the Corruption and Crime Commission (CCC), which referred the matter to the City for action. The City engaged consulting practice INVision Investigations and Consulting (INVision) to investigate the allegation contained in the CCC referral and the associated BOS Civil complaint.

8. INVision prepared a report into the City's request for tender process, as it related to the RSMS Works, which found reasonable grounds to suspect misconduct on the part of two City employees, Mr Sriranjana Theivanayagam (known as Mr Sri Ranjan), and Mr Shaun Kan,. Following this report, INVision prepared two further reports in relation to the allegations of misconduct. This in turn triggered the City's disciplinary processes in respect of those allegations which were found by INVision to be substantiated.
9. Ultimately, Mr Ranjan and Mr Kan were both allowed to resign under settlement deeds with mutual confidentiality and non-disparagement clauses. This was despite INVision's findings about misconduct and termination having been accepted by the City.

## Timeline

2016	11 January	Members of a contractor panel were invited to submit a tender for civil works. Platinum and BOS Civil submitted tenders, with BOS Civil being cheaper.
	16 February	A decision was made by the City to re-issue the request for tender with quantities of materials included.
	18 February	The invitation to tender was re-issued. Platinum and BOS Civil submitted tenders with Platinum being cheaper.
	4 March	The Tender evaluation panel met.
	16 March <sup>n</sup>	Platinum was awarded the contract.
	12 May	Civcon/Platinum emailed Mr Kan to say they were having difficulty obtaining pavers.
	8 June	BOS Civil lodged a complaint with the City about disclosure of confidential information; a relationship between Platinum and a City employee; and a City officer procuring material (pavers) for Platinum at a discounted rate.
	During June	An Internal investigation into BOS Civil's complaint was conducted by Mr Paul Crosetta, Director, Construction and Maintenance.
	2 August	Mr Martin Mileham, Chief Executive Officer wrote to BOS about their complaint, concluding that the tender process was " <i>open and fair</i> ", that there were no conflicts of interest and no unfair advantage provided by City officers procuring materials at discounted rates.
	8 August	BOS Civil wrote to the CCC alleging misconduct by City officers.
	17 August	The CCC wrote to Mr Mileham saying, " <i>It is alleged that an unknown officer at the City of Perth provided confidential tender information to other tenderers which has given them an improper advantage</i> ".
2017	31 October	INVision was appointed to investigate the allegations.
	23 February	INVision completed an investigation report into the allegations.
	4 May	INVision completed a report into allegations of misconduct against Mr Shaun Kan.
	12 May	INVision completed a report into allegations of misconduct against Mr Sri Ranjan. Mr Ranjan left the City on negotiated terms.
	26 May	Mr Kan left the City on negotiated terms.
	28 June	Mr Mileham wrote to the CCC advising the outcome of the investigation. " <i>the investigation has now concluded, which substantiated a number of allegations ...</i> ". He advised that two officers had resigned.

<sup>n</sup> Approximately

## Issues considered by the Inquiry

10. Consistent with A.3(v) of its Terms of Reference, a number of issues arose for the Inquiry's consideration in respect of the tender for the RSMS Works. Principally, those issues are:
  - whether the procurement process for the RSMS Works was conducted in accordance with City procedure;
  - whether the City conducted a proper investigation of the complaint lodged by BOS Civil before that company referred the matter to the CCC; and
  - whether the City's disciplinary processes, which were engaged in respect of this matter, were robust and appropriately applied.
11. In respect of these issues the Inquiry considers that:
  - The City's procurement processes were not followed.
  - The City failed to conduct anything like a proper investigation of the complaint lodged by BOS Civil on 8 June 2016.
  - The City's disciplinary processes were not robustly applied and should be reviewed and reformed.

## Investigation by the Inquiry

### Witnesses

12. The Inquiry held private hearings with 11 witnesses over several days. The positions given below for employees are the positions they held at the time of the events described in this matter. The Inquiry examined more than a thousand pages of material in respect of this matter.
13. The Inquiry heard from the evaluation panel members for the tender process for the RSMS Works, namely:
  - Ms Nicole Gallin, Principal Transport Planner with the City. Ms Gallin gave considered, reliable evidence regarding how she evaluated tenders and quotes for the City and of her involvement in relation to the RSMS Works.
  - Ms Marlena Pereira, Design Engineer with the City. Ms Pereira gave frank and honest evidence regarding the same topics as Ms Gallin. Ms Pereira often used the phrase "*I would say that ...*" to refer to what she did say, do or think at the time. Despite using that phrase, it was clear that Ms Pereira was giving evidence of her recollection, rather than a probable or possible reconstruction of events.<sup>255</sup>
  - Mr Kan, Project Manager and Senior Civil Engineer with the City. Mr Kan took over as project manager from Ms Gallin part of the way through the tender process for the RSMS Works. Mr Kan's evidence is described at paragraph 168.

14. Mr Paul Claxton, a former Director of Platinum and other related entities, gave evidence regarding Platinum's relationship with an associated company, Civcon Civil and Project Management Pty Ltd (Civcon), and the City's relationship with Platinum and Civcon. Despite wanting to provide information to the Inquiry, Mr Claxton was a reluctant witness who felt constrained by a settlement deed that he had entered into with his former business partners. The evidence that he did provide, while honest, was often speculative and of limited probative value.
15. Mr Khanh Nguyen, Director of Platinum and Civcon, gave evidence about his involvement in quoting for the RSMS Works, his relationships with City employees and the relationship between the City and Platinum and Civcon. Mr Nguyen presented as a shrewd witness.
16. Mr Lee McCabe, a former Director of Platinum and Civcon, gave evidence on the same topics as Mr Nguyen. Mr McCabe was guarded in the way he gave his evidence, before he became aware of the CCC's involvement in the matter, at which point he appeared to become more willing to assist the Inquiry.
17. The Inquiry heard evidence from Mr Kan regarding his involvement in the tender process for the RSMS Works, his role in managing the RSMS Works, his relationship with Platinum and Civcon, the INVision investigation as it related to him, the disciplinary process as it related to him and the circumstances in which he left the employ of the City.
18. In the absence of corroborating material, Mr Kan's evidence is not preferred, because:
  - in the Inquiry's view, Mr Kan lacked objectivity and insight when speaking about this matter;
  - Mr Kan's justifications for his conduct were sometimes fanciful or inconsistent<sup>256</sup> or based on assumptions<sup>257</sup> which had no reasonable basis; and
  - Mr Kan demonstrated a willingness to obfuscate to avoid adverse inferences from being drawn about his conduct.<sup>258</sup>
19. Mr Ranjan, Principal Engineer and Interim Manager, Construction (18 January 2016 to 21 October 2016) with the City, gave evidence to the Inquiry regarding his involvement in the RSMS Works, his relationships with Platinum, Civcon and Mr Nguyen, the INVision investigation as it related to him, the disciplinary process as it related to him and the circumstances in which he left the employ of the City. Mr Ranjan presented as an honest and truthful witness.
20. The Inquiry heard from Ms Barbara Moyser, Senior Employee Relations Adviser with the City. Ms Moyser gave evidence regarding the disciplinary process in relation to Mr Ranjan and Mr Kan. For the reasons described in an earlier Section of this Chapter, Ms Moyser's evidence is not preferred in the absence of corroboration.
21. The Inquiry also heard from Ms Jacqueline Scott, who commenced as the Manager, Construction with the City on 10 October 2016. She provided reliable evidence regarding her role in the response by the City to the CCC referral and the disciplinary processes in relation to Mr Ranjan and Mr Kan.

22. Mr Paul Crosetta, Director, Construction and Maintenance, told the Inquiry about his appointment to and conduct of the City's internal investigation of the complaints made by BOS Civil. Mr Crosetta presented as a candid witness, although some of his evidence suggests he was, at the time of conducting the investigation, naïve about the appropriateness of the steps he took.
23. Mr Martin Mileham, Chief Executive Officer (CEO), told the Inquiry about his involvement in the internal investigation, the external investigation and the decision to permit Messrs Ranjan and Kan to resign. At times Mr Mileham's evidence about his conduct in relation to this issue displayed a lack of the rigour one would ordinarily expect from a CEO.
24. Mr Mark Ridgwell was, at the time, the Manager, Governance. He told the Inquiry about the proper processes to be followed when the City receives a complaint of the type received from BOS Civil. He also expressed views on the appropriateness of the City's internal investigation, and on its initial response to BOS Civil. Mr Ridgwell presented as an honest and reliable witness.

## Evidence obtained by the Inquiry

### Tender for the Railway Street and Market Street Shared Path Extension Works

25. On 26 April 2012, the City issued a request for tender for admission to a panel of contractors for the provision of civil construction services.
26. The City of Perth Council (Council) endorsed the appointment of five companies to the contractor panel, including BOS Civil, Platinum and Broad Construction Services (WA) Pty Ltd.
27. On 11 January 2016, members of the contractor panel were invited to submit a tender for the RSMS Works (RFT1).<sup>259</sup> Materially:
  - RFT1 did not include a bill of quantities;<sup>260</sup> and
  - Platinum and BOS Civil both submitted tenders in response to RFT1, with BOS Civil's tender being the cheaper of the two.<sup>261</sup>
28. As described at paragraph 30-37, a decision was then made to recall and re-issue the request for tender. The Inquiry finds that:
  - the evaluation panel did not adequately consider alternative methods to clarify the competing bids of BOS Civil and Platinum and whether, in light of those alternative methods, it was proper to recall and re-issue RFT1;
  - the City lacked clear processes and procedures regarding whether, how, and in what circumstances non-panel members can be involved in making decisions affecting the tender process; and
  - Mr Kan may have influenced the evaluation panel, or the panel may have deferred to him, in deciding to recall and re-issue RFT1.



29. On 18 February 2016, the City re-issued the invitation to tender for the RSMS Works and included a schedule of items with quantities (RFT2).<sup>262</sup> Once again, Platinum and BOS Civil both submitted tenders. This time Platinum was the cheaper of the two.<sup>o</sup>

**Evaluation panel did not adequately consider whether Request for Tender 1 should be recalled and re-issued**

30. The evaluation panel members each said that the reason for recalling and reissuing RFT1 was to include quantities for the contractors to price against, due to a concern that the evaluation panel was otherwise unable to compare “*apples with apples*”.<sup>263</sup>
31. However, the decision to include a bill of quantities in the request for tender:
- was inconsistent with the RFT1 specifications;
  - may not have been truly necessary to enable the tenders to be compared; and
  - was made before seriously considering other options that were likely to result in a more expedient resolution of the (real or perceived) “*apples with apples*” issue.
32. The specification for RFT1 noted that a “*Schedule of items is provided in the Form of Quotation for the Bidder to fill-in their estimated quantities and rates*”.<sup>264</sup> In other words, the RFT1 specification contemplated evaluating the quantities submitted by the bidders as part of the qualitative assessment. The approach that was ultimately adopted, in reissuing the request for tender, arguably altered the selection criteria during the tender process.<sup>265</sup>
33. When examined, the evaluation panel members could not provide a clear reason why:
- the quantities submitted by the bidders were not evaluated as contemplated by the RFT1 specifications;<sup>266</sup>
  - the fact that bidders having provided different quantities would prevent the bids from being assessed, especially where reference could have been made to the City’s quantity surveyor’s “*correct*” quantities;<sup>p</sup> or
  - the focus was on the quantities, instead of the proposed cost.<sup>267</sup>
34. The Inquiry finds that, in the absence of a persuasive or cogent reason to the contrary, the evaluation panel members should have proceeded with the tender process in the manner contemplated by the RFT1 specification and awarded the tender on that basis.

<sup>o</sup> There was a large price difference between the tenders submitted by BOS Civil and Platinum in response to RFT1, with BOS Civil’s tender being cheaper by \$239,578.50.

<sup>p</sup> Transcript, N Gallin, private hearing, 1 May 2019, p 24; Transcript, S Kan, private hearing, 2 May 2019, p 38. The City engaged a quantity surveyor to provide the quantities to be incorporated into the re-issued request for tender. Despite being an evaluation panel member, Ms Pereira was not involved in the engagement of the quantity surveyor: Transcript, M Pereira, private hearing, 30 April 2019, p 19-20. Ms Pereira noted that, if she was managing the process, she would have trusted the contractor to provide quantities: Transcript, M Pereira, private hearing, 30 April 2019, p 15.

35. Given the time imperative associated with the RSMS Works,<sup>268</sup> it is unclear why options which were likely to have been more expedient and would not have required the re-issue of RFT1 were not pursued. For example:
- there was no discussion or consideration given to whether the rates provided in the tenders from Platinum and BOS Civil should, or could, be applied to the quantities calculated by the City's quantity surveyor;<sup>269, (q)</sup> and
  - significantly, and perhaps most obviously, the bidders were not asked to confirm or clarify the quantities in their tenders.<sup>r</sup>
36. The Inquiry finds that the evaluation panel did not consider various factors relevant to a decision to require contractors to provide quantities, including whether:
- doing so would impact on the proposed methodology of the contractor;<sup>270</sup>
  - the onus for getting the quantities right should be on the City or on the contractor;<sup>271</sup> and
  - it was a fixed lump sum contract as against a schedule of rates contract.<sup>272</sup>
37. This issue arose in circumstances where the evaluation panel members were not aware of any guidance as to what needed to be included in requests for tender.<sup>273</sup>

#### No clarity about the nature and extent of non-panel member involvement

38. The decision to re-issue RFT1 with a bill of quantities involved a meeting between Ms Gallin, Mr Ranjan and Mr Kan on about 16 February 2016,<sup>274, (s)</sup> which was followed by an email exchange with the City's Contracts Administrator, Mr Morris Stevens.<sup>275</sup>
39. Mr Ranjan became involved in the process, because the evaluation panel needed guidance and, as the Manager he was regarded as the obvious choice.<sup>276</sup> Mr Ranjan was not an evaluation panel member and had not signed a declaration of confidentiality and interest.<sup>t</sup>
40. There was contradictory evidence before the Inquiry about the nature of Mr Ranjan's input and the information provided to him. The Inquiry prefers the evidence of Mr Ranjan<sup>277</sup> (which is consistent with Ms Gallin's evidence)<sup>u</sup> over the evidence of Mr Kan,<sup>v</sup> to find that Ms Gallin and Mr Kan approached Mr Ranjan for advice in the abstract and he provided them with some options to consider.

q Mr Kan's evidence where he notes that evaluating against the City's analysis is fraught because *"that's not what each contractor or each proponent may be prepared to honour"*: Transcript, S Kan, private hearing, 2 May 2019, p 36.

r Mr Kan asserted that it would be too hard to seek clarification of the quantities that had been supplied by the bidders: Transcript, M Pereira, private hearing, 30 April 2019, p 22-23; Transcript, N Gallin, private hearing, 1 May 2019, p 25.

s Despite being an evaluation panel member, Ms Pereira was not involved in the meeting with Mr Ranjan or all the discussions between Ms Gallin and Mr Kan; Transcript, M Pereira, private hearing, 30 April 2019, p 12-13, 20.

t Confidentiality and conflicts of interest are described in more detail at paragraph 76-125.

u Mr Ranjan's evidence that the discussion was general and in the abstract is consistent with Ms Gallin's position regarding her confidentiality obligations: Transcript, N Gallin, private hearing, 1 May 2019, p 16.

v Transcript, S Kan, private hearing, 2 May 2019, p 15, 32, 39-40. Mr Kan gave three different accounts of when and how information was provided to Mr Ranjan.

41. Mr Stevens then provided his approval for the approach put to him, without any meaningful involvement in the decision to re-issue the request for tender. He had previously expressed a preference to go to open tender.<sup>278</sup>
42. The Inquiry finds that:
- City employees, at times, may consider that the Contract Administrator is simply there to “*rubber stamp*” a course of action already decided on;<sup>w</sup> and
  - a proper process, with meaningful involvement by the Contract Administrator, might have resulted in a better, or at least more considered, outcome.
43. The evaluation panel members had differing views as to whether, how, and to what extent, guidance and input could be sought from someone outside of the panel.<sup>279</sup>

**Mr Shaun Kan influenced the panel to recall and re-issue Request for Tender 1 to include a bill of quantities**

44. As to whether the request for tender should have been re-issued to include quantities, Ms Pereira said that she would have followed the advice of Mr Ranjan and Mr Kan.<sup>280</sup> Ms Gallin said that she was likely to have been influenced by Mr Ranjan and Mr Kan.<sup>281</sup>
45. Mr Ranjan gave unwavering evidence that he only raised options with Ms Gallin and Mr Kan and suggested that they speak to Mr Stevens. He indicated he did not advise them to recall the request for tender, because he did not want to be regarded as having made a decision that needed to be made by the evaluation panel.<sup>282</sup> Mr Kan could not recall who made the decision to recall and re-issue RFT1.<sup>283</sup>
46. The Inquiry finds that:
- the action plan to recall and re-issue RFT1 was proposed by Mr Kan;
  - Mr Kan discussed this action plan with Ms Gallin, Ms Pereira and Mr Ranjan;
  - Mr Ranjan validated the action plan as an option that could be pursued, but did not seek to direct or influence the evaluation panel to pursue it; and
  - Ms Gallin and Ms Pereira were influenced by or deferred to Mr Kan,<sup>284</sup> such that the panel adopted his proposed action plan without interrogating other possibilities or options that may have resulted in a better outcome for the City.
47. The motive underlying Mr Kan’s apparent preference for recalling and re-issuing RFT1 without having explored the other options is not easily determinable based on the evidence before the Inquiry.

w Albeit in the context of an irrigation tender: Transcript, K O’Brien, private hearing, 13 May 2019, p 51.

48. When asked why it was necessary to recall and re-issue the request for tender, Mr Kan said:
- “Because of the difference in quantities. They were just very large differences in quantities and we, the Panel, Evaluation Panel could not determine whose quantities were accurate to what the project requires”.<sup>285</sup>*
49. This explanation does not explain why the simpler course of clarifying the bids with the respondents was not taken.
50. Mr Kan said there was no discussion about taking that simpler course,<sup>286</sup> that they could have done that, that they took that course in respect of RFT2, but that to clarify the quantities in the bids for RFT1 *“never crossed the Panel’s mind”*.<sup>287</sup> The Inquiry is sceptical of this explanation from Mr Kan, who was at the time of the tender an otherwise experienced project manager in the Construction and Maintenance Directorate.
51. As described at paragraph 44-47, Mr Kan also influenced or was deferred to in relation to the evaluation carried out by the evaluation panel. In all the circumstances, the Inquiry finds that Mr Kan preferred Platinum’s submission

#### **Evaluation of the tenders received in relation to Request for Tender 2 for the Railway Street and Market Street Shared Path Extension Works**

52. The susceptibility of the tender process to manipulation is evident from:
- the failure of the evaluation panel to carry out the evaluation in accordance with City Procedure PR0660 – *Evaluation Panels for Assessing Tenders, Expressions of Interest and Quotations* (PR0660) (paragraph 54-58); and
  - the capacity for Mr Kan to influence the panel into adopting an objectively erroneous position and materially change the panel’s qualitative assessment of the submissions, and the deference shown by Ms Gallin and Ms Pereira to Mr Kan (paragraph 59-70).
53. As described at paragraph 71-75, the evidence does not support the proposition that Mr Ranjan intentionally sought to influence the tender process in relation to the RSMS Works. However, the Inquiry finds that Mr Kan demonstrated a preference towards Platinum and, while there is insufficient evidence to demonstrate that he intended to influence the panel, the panel was influenced by him, or deferential to him.

### Non-conformance with the procedure for evaluating tenders

54. The version of PR0660 last edited on 16 May 2007 was the approved version of the document which applied to the tenders received in response to the RFT1 and RFT2.<sup>288</sup> For the reasons addressed below, the Inquiry finds that PR0660 was not complied with in the following respects:
- when appointed to the evaluation panel, the panel members were not issued with PR0660 to assist in their deliberations (although copies were available);<sup>289</sup>
  - the evaluation panel did not meet to determine the selection criteria before the release of the tenders;<sup>290</sup>
  - evaluation panel members did not independently read each submission and assess them against the qualitative selection criteria;
  - notes providing details of the date, location, attendance, significant points raised during discussions, decisions made and action to be taken, were not taken at the evaluation panel meeting(s);<sup>291</sup> and
  - the evaluation panel did not limit themselves to only considering the content of the submissions.
55. As to the evaluation panel failing to limit itself to the content of the submissions when carrying out its evaluation, the Inquiry finds that:
- Mr Kan made assumptions, and read content into the submissions which was not there;<sup>292</sup>
  - Ms Gallin took into account Mr Kan's comment that BOS Civil did not do a project listed in their submission (without the panel clarifying this with BOS Civil);<sup>293</sup> and
  - Ms Pereira conflated Platinum's capabilities with Civcon's capabilities,<sup>294</sup> where Platinum's business was such that it could not have fulfilled its contractual obligations to carry out the RSMS Works without Civcon's involvement.<sup>295</sup>
56. The evaluation panel also did not adopt best practice when it sought clarification of Platinum's submission orally rather than in writing.<sup>296, (x)</sup>
57. The Inquiry finds that, had the requirements of PR0660 been followed, the City would have been better placed to better understand what occurred in relation to the RSMS Works tender process. The panel members each had differing recollections as to what meetings had taken place and the decisions that had been made in circumstances where no notes had been taken, as required by PR0660.<sup>297</sup> Had PR0660 been complied with, it would have been simpler for the City, and this Inquiry, to understand precisely what occurred.

x The revised version of PR0660 requires clarification to be sought in writing.

58. Unfortunately, even following the departure of Messrs Ranjan and Kan from the City, there was no discussion about the lessons to be learned, or how matters might have been able to have been dealt with differently.<sup>298</sup> Mr Ridgwell explained that recently the Commissioners of the City of Perth had adopted a centralised procurement model, which Mr Ridgwell hopes will remedy these and other procurement deficiencies. While the Inquiry considers that is a step in the right direction, it should not be seen as a silver bullet. Real steps will need to be taken to ensure that, regardless of whether the procurement model is centralised or not, procedures like PR0660 are followed.

#### Evaluation panel did not properly consider the submissions during its assessment

59. The evaluation panel made errors when assessing the submissions against the selection criteria, which can be seen in the way in which the panel dealt with the “*Timeframe/Program for undertaking the works*” and the “*Quantities*” criteria.
60. As to “*Timeframe/Program for undertaking the works*”, Platinum scored “3.5 out of 5”, and BOS Civil scored “3”.<sup>299</sup> The memorandum recommending the award of the tender to Platinum reasoned that Platinum proposed a 52-day programme to achieve completion by the end of May 2016, whereas BOS Civil proposed an 83-day programme bringing the end date to 30 June 2016 (both with a start date of 21 March 2016).<sup>300</sup>
61. However:
- BOS Civil’s second tender proposed a 10-week programme (providing a two-week buffer for unforeseen issues). Furthermore, the 83-day programme in the timeline included preliminaries; the actual construction programme was only 52 days, starting on 4 April 2016 and finishing on 9 June 2016;<sup>301</sup> and
  - Platinum’s timeline, which involved a 50-day programme, did not include preliminaries and proposed to start on 22 February 2016 and finish on 29 April 2016.<sup>302</sup> Since RFT2 was issued on 18 February 2016<sup>303</sup> and Platinum’s bid was submitted on 3 March 2016,<sup>304</sup> it is apparent that Platinum’s proposed programme was outdated and incapable of being achieved as set out in its submission (although it may be that the 50-day programme, in absolute terms, was appropriate).
62. On this issue, Ms Gallin and Ms Pereira both amended their score sheets during the evaluation panel meeting,<sup>305</sup> held on 4 March 2016, where:
- Ms Gallin noted that Platinum had a 50-day programme and BOS Civil had an 83-day programme (with “*no contingency for weather, unplanned events etc*”); and
  - Ms Pereira noted that Platinum had a 50-day programme that finished in May, whereas BOS Civil had a programme that runs into June.<sup>306</sup>

63. When asked about the basis for her comments, Ms Gallin asserted that, since it related to a construction programme, she is likely to have taken advice from the engineers in the room.<sup>307</sup> Ms Pereira said that she did not independently verify the timeline and accepted the advice of the other panel members in the room.<sup>308</sup>
64. Mr Kan admitted that he assumed a start date of 21 March 2016, despite the different dates that were stated in the bidders' timelines. Mr Kan could not explain the basis of his assumption, but confirmed that it was a factor when he scored the submissions and that he had communicated his views to the other panel members.<sup>309</sup>
65. As noted in other sections in this Chapter the composition of evaluation panels is such that it is common for the views of panel members who have expertise in particular areas to be given more weight in relation to matters arising out of those areas.<sup>310</sup>
66. The Inquiry finds that:
  - Mr Kan made objectively false and incorrect statements regarding the bidders' proposed timeframes and programmes, which were favourable to Platinum and disadvantageous to BOS Civil, during the evaluation panel meeting;
  - the scoring for the "*Timeframe/Program*" criteria was likely influenced by Mr Kan, in that Ms Gallin and Ms Pereira likely amended their scores for "*Timeframe/Program*" due to Mr Kan's erroneous statements or otherwise as a result of their deference to his views; and
  - the scores given by the evaluation panel for the "*Timeframe/Program*" criteria cannot be supported by reference to the submissions.
67. There is insufficient evidence for the Inquiry to make a finding as to whether Mr Kan erred in reviewing construction programmes and timelines (despite being a project manager in the Construction and Maintenance Directorate) or, alternatively, whether Mr Kan was intentionally seeking to influence the evaluation panel to award the tender to Platinum.
68. Either way, the Inquiry finds that:
  - during the evaluation panel meeting, Mr Kan displayed a preference towards awarding the contract to Platinum;<sup>311</sup>
  - Mr Kan, who made false statements about bidders' proposed timeframes and programmes during the evaluation panel meeting was, by those statements, able to influence the evaluation panel to adopt a position that was plainly erroneous and incapable of being supported by the submissions; and
  - the tendency of evaluation panel members to defer to panel members that are perceived to have experience or expertise in relation to an aspect of the tender, involves an abdication of responsibility and hinders robust consideration of the issue.



69. Furthermore, despite “*Quantities*” being part of the selection criteria, the evaluation panel did not seek to explore whether there was a way to fairly evaluate the submissions by reference to this criterion.<sup>312</sup> The Inquiry finds that the City should provide further training regarding how selection criteria are to be addressed by an evaluation panel.
70. Ultimately, the Inquiry finds that the process is susceptible to manipulation, although there is insufficient evidence for the Inquiry to conclude that Mr Kan was, in fact, seeking to manipulate the process.

#### **Allegation that Mr Sri Ranjan sought to influence the outcome of the assessment**

71. During his examination, Mr Kan made a serious allegation that Mr Ranjan wanted him “*to be biased*” and rate Platinum’s submission higher than its competitor’s submission, irrespective of the merits of Platinum’s submission. This allegation was based on Mr Ranjan telling Mr Kan that “*It is very important to pick the correct contractor*” and that “*Platinum are very easy to work with*”.<sup>313</sup>
72. Mr Ranjan admitted to having provided feedback regarding the strengths and weaknesses of the different contractors used by the City in the context of design team meetings and discussions about lessons learned. He also admitted to having conversations with Mr Kan regarding selecting the right contractor for the job. However, he denied ever seeking to influence a tender or quote process.<sup>314</sup>
73. The Inquiry finds that, without more, it was not reasonable for Mr Kan to infer a direction or request to manipulate the tender process from Mr Ranjan’s statements.
74. Mr Ranjan and Mr Kan did not have a positive working relationship.<sup>315</sup> However, there is insufficient evidence for the Inquiry to find that Mr Kan deliberately asserted that Mr Ranjan had engaged in misconduct due to their poor relationship.
75. That said, the Inquiry finds that, despite his protestations otherwise, Mr Kan may have influenced the other panel members to preference Platinum in a misguided attempt to obtain Mr Ranjan’s approval or to avoid perceived threats to his job security.<sup>316</sup>

#### **Confidential information and conflicts of interest are not appropriately managed**

76. The Inquiry finds that the City did not employ adequate measures to protect confidential and commercially sensitive information arising out of the tender process, particularly where:
  - evaluation panel members had differing views as to the significance of, and the obligations imposed by, the declaration of confidentiality and interest; and
  - despite procedures in place to protect confidential and commercially sensitive information disclosed in bids and submissions, a lack of strict adherence to those procedures, and ad hoc practices, created risks of disclosure.

77. Furthermore, the Inquiry finds that City employees were unaware or naïve with respect to the commercial value of information, with the result that commercially valuable information was disclosed without an appreciation of the significance and consequences of that disclosure.

#### **Declaration of confidentiality and interest**

78. Each of the evaluation panel members signed a declaration of confidentiality and interest in relation to the tender process. However, the panel members did not receive formal training about conflicts of interest and confidentiality, and each had a different understanding about their obligations under the declaration.<sup>317</sup>
79. None of the panel members took issue with the fact that Mr Ranjan, who was not a panel member, became involved in discussions regarding the process without first signing a declaration of confidentiality and interest.<sup>318</sup> This is especially concerning in light of the allegations of conflicts and misconduct made against Mr Ranjan.<sup>319</sup>
80. The Inquiry finds that the absence of appropriate training at the City created a risk of inadvertent disclosure of confidential information and that conflicts of interest (whether actual or perceived) were not appropriately managed.

#### **Management of confidential or commercially sensitive information**

81. There are procedures at the City that seek to protect the confidentiality of tender and quote submissions, including by limiting and restricting access to such submissions.<sup>320</sup>
82. However, the success of such procedures is dependent on evaluation panel members understanding and adhering to them. For example:
- panel members can print or copy submissions and there are no measures in place to stop copies from being circulated to non-panel members;<sup>321</sup> and
  - panel members can (and do) save submissions to the “I: drive”, which is a drive that is accessible by other City employees.<sup>322</sup>
83. The Inquiry finds that the City needs to prescribe the way evaluation panel members are to deal with submissions that are received, and mandate strict compliance with such procedures, to ensure the confidentiality of tender and quote submissions.

#### **Inadvertent disclosures of confidential or commercially sensitive and valuable information**

84. Mr Ranjan was the subject of an allegation that he had disclosed confidential and commercially sensitive information to Mr Nguyen with the effect of advantaging Platinum and/or Civcon in tender or quote processes. As noted at paragraph 19, Mr Ranjan presented as a witness of truth and denied the allegations made against him.<sup>323</sup>

85. The Inquiry heard that:
- Mr Ranjan had a relationship with someone at Platinum and Civcon;<sup>324, (y)</sup>
  - entities associated with Mr Nguyen did work for two organisations (the Ilankai Tamil Sangam of WA and the Perth Bala Murugan Temple) that Mr Ranjan was involved with in a personal capacity;<sup>325</sup> and
  - Civcon and Platinum may have benefited from the apparent relationship between Mr Ranjan and Mr Nguyen.<sup>326</sup>
86. Mr Ranjan and Mr Nguyen both gave evidence that the works for the Ilankai Tamil Sangam of Western Australia and the Perth Bala Murugan Temple were not costed or carried out other than in accordance with the contractor's usual commercial practices.<sup>327</sup> The evidence of Mr Claxton to the contrary was predicated on his suspicions that something dishonest was going on, but he did not know and could not be sure about whether those works were, in fact, charged at a rate that was below cost.<sup>328</sup>
87. There is insufficient evidence for the Inquiry to find that:
- Mr Ranjan obtained any form of benefit as a result of the works carried out for the Ilankai Tamil Sangam of Western Australia and the Perth Bala Murugan Temple; or
  - Mr Nguyen arranged for works to be carried out for Ilankai Tamil Sangam of Western Australia and Perth Bala Murugan Temple other than on a commercial basis.
88. However, there is evidence that City employees (including, but not limited to, Mr Ranjan) had a practice of asking contractors (including Mr Nguyen in his capacity as a Director of Civcon or Platinum) to provide a budget or indicative costs for proposed works.<sup>329</sup> These enquiries would be made for the purpose of gauging the "*market price*" for the proposed works prior to a tender being issued.<sup>330</sup>
89. The Inquiry finds that, in these discussions, commercially sensitive information (including information regarding what other contractors in the market were charging, or had previously charged, for particular work) was, or was at risk of, being disclosed.<sup>331</sup>
90. There is insufficient evidence to find that Mr Ranjan provided information to, or received information from, Mr Nguyen:
- with an appreciation of its commercial value (if any);
  - for the purpose of obtaining a personal advantage or benefit; or
  - for the purpose of conferring or facilitating an advantage or benefit to Mr Nguyen, Civcon or Platinum.

y Mr Kan described the relationship between Mr Ranjan and Mr Nguyen as being "just like any other professional relationship". Transcript, S Kan, private hearing, 2 May 2019, p 14.

91. The Inquiry finds that the City's practice of seeking a "*market price*" for works, by asking for a budget or indicative cost from one or more contractors, may, in circumstances where that process is not governed by any City policy or procedure, risk the inadvertent:
  - disclosure of commercially sensitive information; and
  - conferral of an advantage on certain contractors during the tender process for the works, due to their rate influencing the City's perception of the market rate.
92. However, there is insufficient evidence for the Inquiry to find that Mr Ranjan intentionally disclosed commercially sensitive information to Mr Nguyen for the purpose of gaining an advantage for himself or Mr Nguyen.

#### Procurement of UrbanStone pavers by Mr Shaun Kan

93. Platinum's bid for RFT2 included an amount of \$109,852.35 for the supply and laying of a "*standard footpath*" comprised of "*City Grey Paver 400x400*".<sup>332</sup>
94. The "*City Grey Paver*" is a product provided by an outfit called UrbanStone, with which the City has an agreement for the supply of the paver at a discount of about half on UrbanStone's commercial rate.
95. Generally, a contractor carrying out work for the City cannot avail itself of the City's contracting arrangements with suppliers. Rather, the usual approach is for the contractor to independently obtain quotes for the relevant product from suppliers, add a margin, and then price that into their bid.
96. That is what Platinum did.
97. However, on 12 May 2016, after the award of the tender to Platinum, Mr Nguyen emailed Mr Kan to say that Platinum (then Civcon) was having difficulty obtaining the pavers in a timely way, and that if they were to wait then it would put the 30 June 2016 completion date for the RSMS Works at risk. Mr Nguyen noted waiting was an option, but also suggested as Platinum's preferred mitigation that the City supply pavers at Platinum's cost from the City's inventory.<sup>333</sup>
98. Mr Kan forwarded Mr Nguyen's email to Mr Ranjan, copied to Ms Gallin, recommending the City adopt Mr Nguyen's suggestion, and seeking approval to change Platinum's scope of works from "*supply and install*" pavers to "*install*" pavers.<sup>334</sup>
99. The approval was given.<sup>335</sup> Mr Kan arranged for UrbanStone to make pavers available to Platinum pursuant to the City's contract,<sup>336</sup> and a "*negative variation*" of \$48,872.70 was issued reducing Platinum's line item of \$109,852.35 to \$60,302.35.
100. This exercise was problematic for a number of reasons.
101. First, the quantum of the negative variation reflected the GST exclusive cost to the City of the purchase of the pavers. GST was not passed on to Platinum, meaning that the City bore that cost, which was \$4,887.27.<sup>337</sup>

102. Secondly, because Mr Kan leveraged the City's contract with UrbanStone to purchase the pavers at the City's discounted rate, the revenue that would have ordinarily flowed to UrbanStone had the pavers been bought by Platinum was reduced by about \$38,649.00, in effect a commercial loss.<sup>338</sup>
103. Thirdly, Platinum's quote for the supply of pavers from UrbanStone obtained when Platinum first bid for the works, was \$99,729.00 (inclusive of GST and delivery). As noted above, Platinum's bid priced the supply and laying of the pavers at \$109,852.35 (inclusive of GST), implying that the price of laying was \$10,123.35 (inclusive of GST). As the City purchased the pavers, the price of laying is all it should have paid to Platinum. Instead, it paid \$60,302.35 giving, it appears, a financial windfall to Platinum (at a financial cost to the City) of around \$50,000.00.<sup>339</sup>
104. The procurement of the UrbanStone pavers by the City with the involvement of Mr Ranjan and Mr Kan was, as the next parts of this Section describe, a subject of complaint by BOS Civil and eventual investigation by the City.

### Complaint by BOS Civil and the City's response to the complaint

105. On 8 June 2016, Mr Bernard O'Sullivan, a Director of BOS Civil, wrote to Mr Mileham with concerns regarding the process by which the tender for the RSMS Works was managed and awarded (BOS Civil complaint).<sup>340</sup> These concerns related to:
- the recall and re-issue of RFT1;
  - whether there was disclosure of confidential tender information;
  - the appearance of a relationship between Platinum/Civcon and Mr Ranjan, resulting in the possibility of an unfair advantage being provided to Platinum/Civcon; and
  - City representatives procuring material for Platinum at a discounted rate (where the City representative referred to was Mr Kan).
106. Mr Mileham asked Mr Crosetta to address the complaint.<sup>341</sup> Mr Mileham said he asked Mr Crosetta to address the complaint, because "*in the first instance [his] perception of the allegations were they were likely to be unfounded*". With respect to Mr Mileham, his response is baffling and displays a concerning lack of regard for complaints lodged with the City. Mr Mileham could not cogently explain how or why he had that perception in circumstances where the complaint had yet to be investigated and Mr Mileham accepted that the complaints, if proved, would constitute serious misconduct.<sup>342</sup>
107. Despite thinking that the request from Mr Mileham was odd, having had no experience or training in conducting investigations of this type, and having been at the City for less than a year, Mr Crosetta complied with the request.<sup>343</sup>
108. He described the scope of what he was instructed to do as follows:
- "To meet with the parties involved, the party, Sri, and obtain his view on the accusations made, and then feed that back to the CEO in order for response to go back to Mr O'Sullivan".*<sup>344</sup>

109. Perhaps unsurprisingly, given that the task requested of him was not within Mr Crosetta's skill set,<sup>345</sup> that description is not one of a process appropriate to investigate allegations of misconduct. Mr Mileham could not recall speaking to Mr Crosetta about the matter or instructing Mr Crosetta to speak to Mr Ranjan in connection with it, and denied that instructing Mr Crosetta to speak to Mr Ranjan was something that he likely would have done.<sup>346</sup>
110. As Mr Ridgwell observed, and as Mr Crosetta accepted with hindsight following questioning at a private hearing,<sup>z</sup> an investigation into misconduct should not involve the person against whom the allegations are made, and copies of the complaint should not be made available to that person.<sup>347</sup>
111. Nonetheless, despite the BOS Civil complaint having named Mr Ranjan as potentially being involved in alleged misconduct,<sup>348</sup> Mr Crosetta provided Mr Ranjan with a copy of the complaint and sought his assistance in responding to the complaint.<sup>349</sup>
112. In this regard, Mr Ranjan:
  - was involved in discussions with Mr Kan (who was also referred to in the complaint, although not by name<sup>350</sup>) regarding the issues and problems that were being raised in relation to the process;<sup>351</sup>
  - facilitated the preparation of a file note<sup>352</sup> by Mr Kan about the process that was undertaken by the evaluation panel;<sup>353</sup>
  - was involved in the preparation of Mr Crosetta's proposed response to BOS Civil, including by discussing the response and incorporating his comments into it;<sup>354</sup> and
  - remained involved in briefing Mr Crosetta regarding the issues that were the subject of the BOS Civil complaint.<sup>355</sup>
113. Despite allegations having been made against City employees, neither the Manager, Human Resources nor Ms Moyser were made aware of the complaint or the consequent internal investigation at this stage.<sup>356</sup> Neither was Mr Ridgwell, until much later after BOS Civil complained to the CCC.<sup>357</sup>
114. The Inquiry finds that the "*internal investigation*" conducted in June 2016 by Mr Crosetta was limited to asking Mr Ranjan, a subject of the complaint, to investigate and assist in preparing the response.<sup>358</sup>
115. Following the "*internal investigation*", Mr Crosetta provided a draft letter to Mr Mileham,<sup>359</sup> who made some amendments before sending it to Mr O'Sullivan of BOS Civil.<sup>360</sup> The response to BOS Civil on 2 August 2016 from Mr Mileham referred to the City having "*undertaken an investigation into the serious allegations*" in the complaint, before concluding that the tender process was "*open and fair*", that there were no conflicts of interest (including with respect to Mr Ranjan) and no unfair advantage was provided by City representatives procuring materials at discounted rates.

z Transcript, P Crosetta, private hearing, 26 July 2019 p 66-67; although Mr Crosetta also said he did not find anything odd about involving Mr Ranjan in the "*investigation*" at the time: Transcript, P Crosetta, private hearing, 26 July 2019, p 61-62.

116. As Mr Mileham accepted, the City's response to BOS Civil did not specifically deal with or answer any of the questions identified in Mr O'Sullivan's complaint. Mr Mileham accepted those questions were understandable and capable of a response by the City. Mr Mileham accepted that the letter was a deficient response on this basis alone.<sup>361</sup>
117. Mr Mileham also accepted that the statement in the letter that Mr Ranjan "*was not part of the tender assessment team, nor did he become involved in any tender assessment or provide a recommendation for selection of the tender*" was not true.<sup>362</sup>
118. Mr Mileham also accepted that he took no steps to satisfy himself that the statement in the letter, namely, that an investigation had been carried out, was true. He said he relied on others. He agreed that the steps taken by Mr Crosetta, including the involvement of Mr Ranjan, was a deficient investigation.<sup>363</sup>
119. Mr Mileham also accepted that he knew that at the time he requested Mr Crosetta to conduct this "*investigation*", that Mr Crosetta had been at the City for only eight months and that he was not aware of any training Mr Crosetta had in undertaking tasks of this nature. He accepted that he should have delegated the task to Mr Ridgwell.<sup>364</sup>
120. The Inquiry finds that Mr Mileham failed to give the complaint from BOS Civil the seriousness it deserved, failed to appoint a properly qualified person to investigate the complaint, failed to oversee or gain an understanding of the investigation, and failed to take any steps to satisfy himself (beyond relying on Mr Crosetta to have prepared an accurate draft) that correspondence he was issuing on behalf of the City as its CEO was accurate.
121. Following receipt of the City's letter, Mr O'Sullivan complained to the CCC in terms which suggest that he was concerned about the nature and extent of the steps taken by the City to investigate his complaint.<sup>aa</sup>
122. The Inquiry finds that the internal investigation which was carried out in relation to the BOS Civil complaint was inadequate, inappropriate and undeserving of the label "*investigation*" and the City's response to the complaint was inaccurate and misleading, in circumstances where:
- the people against whom the complaint was made were involved in facilitating and undertaking the investigation or response;
  - Mr Crosetta accepted Mr Ranjan's explanations as to the matters raised by the complaint without independently verifying the facts; and
  - a more thorough investigation would have identified that Platinum was advantaged by Mr Kan making the City's rates for pavers available to it.
123. Mr Ridgwell, a governance specialist, was invited by the Inquiry to comment on the steps taken by the City as part of the "*internal investigation*". He agreed that the steps taken were "*not appropriate*" and that they did not amount to an acceptable investigation.<sup>365</sup>

aa Email, B O'Sullivan to the Corruption and Crime Commission, 12.09 pm 8 August 2016: in particular, that the City did not want to talk to him or others who may have had relevant information.



124. Had the City carried out a robust investigation into the BOS Civil complaint and communicated its actions and findings in a more open, accurate and transparent manner, BOS Civil may have been satisfied by the steps taken and the matter may not have been escalated to the CCC.
125. The Inquiry finds that the City lacked procedures or processes which provided guidance as to whether and how internal investigations should be conducted, such that action taken by the City was proportionate to the seriousness and credibility of the complaint or allegations made.

### Referral to the Corruption and Crime Commission and the City's response to the Corruption and Crime Commission referral

126. On 8 August 2016, BOS Civil wrote to the CCC for the purpose of reporting misconduct of some officers at the City.<sup>366</sup> The correspondence, which attached the BOS Civil complaint, named Mr Ranjan, Mr Kan and Mr Nguyen.
127. The CCC identified the following allegation: *"It is alleged that an unknown officer at the City of Perth provided confidential tender information to other tenderers which has given them an improper advantage"* and referred the matter to the City for action (CCC referral).<sup>367</sup>
128. The City's response to the CCC referral was managed by Mr Ridgwell, who engaged INVision and liaised with its investigator, Mr Tony Langmair. Mr Crosetta recalls speaking to Mr Langmair, but not in respect of his conduct of the internal investigation.<sup>368</sup>
129. Ms Moyser only became involved in the process after INVision had carried out its preliminary investigation. Ms Moyser's involvement was limited to the disciplinary process that was to be carried out with respect to the impacted employees.<sup>369</sup>

### City relied on the findings by INVision Investigations and Consulting

130. INVision prepared an investigation report into allegations of impropriety and irregularities within the City's tender evaluation process dated 23 February 2017.<sup>370</sup> This report found that there were reasonable grounds to suspect that:
  - the tender process was biased towards Platinum's bid;
  - BOS Civil's bid had been shared with Mr Nguyen;
  - there was an undeclared conflict of interest by Mr Ranjan; and
  - Mr Ranjan and Mr Kan improperly used their position to Mr Nguyen's advantage by facilitating the supply of pavers at the City's contracted price.<sup>371</sup>
131. The INVision report into tender irregularities was followed by two further investigation reports into allegations of misconduct against Mr Kan dated 4 May 2017 and allegations of misconduct against Mr Ranjan dated 12 May 2017. The misconduct allegations against Mr Ranjan and Mr Kan related to serious misconduct and were mostly substantiated by INVision.<sup>372, (ab)</sup>

ab The only allegation that was not substantiated was the allegation that Mr Kan had shared BOS Civil's bid with Platinum.

132. INVision's findings were deemed to be credible and were relied on by the City to act against the employees involved. Despite the serious ramifications of INVision's findings for the two employees involved (being Mr Ranjan and Mr Kan), it appears that no one (other than Mr Ranjan and Mr Kan, including through their representatives as part of the disciplinary process ultimately engaged in by the City) questioned the basis or reliability of INVision's findings.<sup>ac</sup>

#### Disciplinary proceedings in relation to Mr Sri Ranjan and Mr Shaun Kan

133. Notwithstanding the guidance provided by City Procedure "*PR0439 – Disciplinary Guidance Notes*",<sup>373</sup> the evidence before the Inquiry suggests that the employees involved in the disciplinary processes relating to Mr Ranjan and Mr Kan all had differing views and understandings as to their role and the role of others in the process. For example:
- Ms Moyser saw her role as being limited to advising Mr Crosetta and Ms Scott (who would be making the decisions, with certain decisions escalated to Mr Mileham<sup>374</sup>) on the available options, without making any decisions herself;
  - Ms Scott saw her role as being pastoral and to pass on any decisions that were taken by the City, with decisions being made by Mr Crosetta, Ms Moyser (who was leading the process) and possibly Mr Ridgwell – Ms Scott considered the decisions made by her as being ones that she was "*required to take*",<sup>375</sup>
  - Mr Crosetta accepted that he was involved in the disciplinary process, and that his involvement involved an element of employee relations, but he could not recall whether he was involved in any decisionmaking;<sup>376</sup> and
  - Mr Mileham could not recall much of his role, or why he considered resignation was appropriate at the time. He said he would have relied on advice, but had no independent recollection of whether he received advice that resignation rather than termination was appropriate.<sup>377</sup>
134. The Inquiry finds that the City should clarify its procedure regarding disciplinary action, including in relation to the role of the various stakeholders.

#### Terms on which Mr Sri Ranjan and Mr Shaun Kan departed from the City

135. Mr Ranjan departed the City on 12 May 2017. Mr Ranjan, through his representatives, negotiated terms on which he resigned from his employment at the City.<sup>378</sup> These negotiations occurred while INVision was still investigating misconduct allegations against him, but after INVision's first report into the tender irregularities found that there was evidence to support those allegations.

ac For example, Ms Moyser did not seek to verify the accuracy of the information that INVision relied on to prepare their report and make findings: Transcript, B Moyser, private hearing, 9 May 2019, p 13-14. There are grounds for doubting the accuracy of the INVision reports – for example, INVision found that Mr Ranjan had a conflict of interest; however, the basis on which this finding was made may have been inconsistent with the way in which the City ordinarily proceeded in relation to what constitutes a conflict: Transcript, J Scott, private hearing, 7 May 2019, p 10.

136. Mr Kan departed the City on 26 May 2017. Mr Kan’s representatives negotiated the terms of his resignation after INVision had released its report into the allegations of misconduct by him, and after there was a recommendation made to Mr Mileham that his employment be terminated.<sup>ad</sup>
137. The City proceeded on the basis that the INVision reports were reliable. In short, despite accepting that Mr Ranjan and Mr Kan had engaged in serious misconduct,<sup>ae</sup> the City was willing to:
  - allow Mr Ranjan and Mr Kan to resign, resulting in a financial cost to the City associated with paying out their notice periods (where the City could have summarily terminated their employment for serious misconduct);<sup>379</sup>
  - facilitate the transfer of Mr Ranjan’s long service leave component to another local government;
  - cease the investigation into Mr Ranjan on the basis that he had resigned,<sup>380</sup> although there were grounds for suspecting that he had engaged in serious misconduct which may have caused detriment to the City; and
  - agree to mutual non-disparagement clauses (with the intent of maintaining confidentiality over the circumstances of their departures from the City)<sup>381</sup>, such that they could maintain the appearance of an unblemished record as a former City employee in a new role at a different local government.
138. As part of her role during the disciplinary process, Ms Moyser provided the decision-makers<sup>af</sup> with options that were available to them, including the advantages and disadvantages of each option. However, she did not consider the risk or likelihood of the advantages and disadvantages of each option occurring.<sup>382</sup>
139. In relation to Mr Kan, Ms Moyser prepared a recommendation for the purpose of Mr Mileham making a decision as to whether his employment should be terminated.<sup>383</sup> Ms Moyser said that the options were prepared with the input of Mr Crosetta and Ms Scott. Ms Scott, however, does not recall the options in the recommendation as being the options that she had been considering.<sup>384</sup>
140. Despite Ms Moyser’s evidence that a “*balancing act*” is carried out to formulate the appropriate recommendation,<sup>385</sup> the Inquiry finds that, once again, consideration was not given to the likelihood and weight to be attributed to each factor in the exercise, which significantly detracts from the value of the exercise.
141. In any event, the Inquiry finds that an employee with multiple allegations of serious misconduct substantiated against him should not be allowed to resign – with his notice period paid and a confidentiality clause preventing the City from disclosing the circumstances of his resignation – to avoid the risk that the employee would bring legal claims against the City.<sup>386</sup>

ad The recommendation for termination is at Human Resources Recommendation, City of Perth, 17 May 2017.

ae Putting aside whether the City ought to have accepted INVision’s findings in the manner and circumstances in which it did.

af As noted, there was a lack of clarity around who was, in fact, making the decisions.

142. The Inquiry finds that the:

- City's failure to consider the actual risk and likelihood of the consequences of the options available to it impeded selection of the most appropriate option; and
- outcomes of the City's disciplinary process were not necessarily commensurate with the conduct being disciplined.

### City responds to the Corruption and Crime Commission

143. On 28 June 2017, some 10 months after BOS Civil complained to the CCC, and following the conclusion of the INVision investigation and the departure of Messrs Ranjan and Kan's from the City, Mr Mileham wrote to the CCC to advise of the outcome of the investigation.
144. Mr Mileham wrote that *"the investigation has now concluded, which substantiated a number of allegations of both Mr Sri Ranjan, Principal Engineer and Mr Shaun Kan, Senior Civil Engineer"*. He attached reports received from INVision (Figure 2.37).
145. Mr Mileham also wrote that the *"City instigated the disciplinary process with both employees and both Mr Ranjan and Mr Kan decided to resign throughout the process"* and that *"City is not taking any further action at this stage"*.<sup>387</sup>
146. The statement that Messrs Ranjan and Kan decided to resign is not completely accurate. In truth, as described above, the City permitted Messrs Ranjan and Kan to resign, rather than taking steps to terminate their employment.
147. The statement that the City was not taking any further action at this stage also suggests that the City, at that time, was focussed on the particular outcome of the process adopted in respect of Messrs Ranjan and Kan. What is missing from the City's response is an appreciation of the broader systemic issues, described earlier in this Section, that allowed the procurement processes to go *"off the rails"* to the extent they did. It is those broader issues that needed addressing.

### Conclusion

148. The circumstances of the tender for the RSMS Works, and the handling of the complaint made about that tender, revealed systemic flaws in the City's processes. Those flaws are properly regarded as systemic as they began with the tender process, continued through the initial *"investigation"* conducted by Mr Crosetta (with Mr Ranjan) at Mr Mileham's request, and arguably infected the disciplinary process which followed.
149. Procurement remains, as recent events in Western Australia show, an area of significant risk for government. It is essential if that risk is to be minimised and managed that the processes are well-honed, well-guarded, and properly applied. Those things did not happen here. It is the hope of the Inquiry that the City, armed with the Inquiry's findings and recommendations, will now take those steps that need to be taken, to ensure the events described in this Section are not repeated.

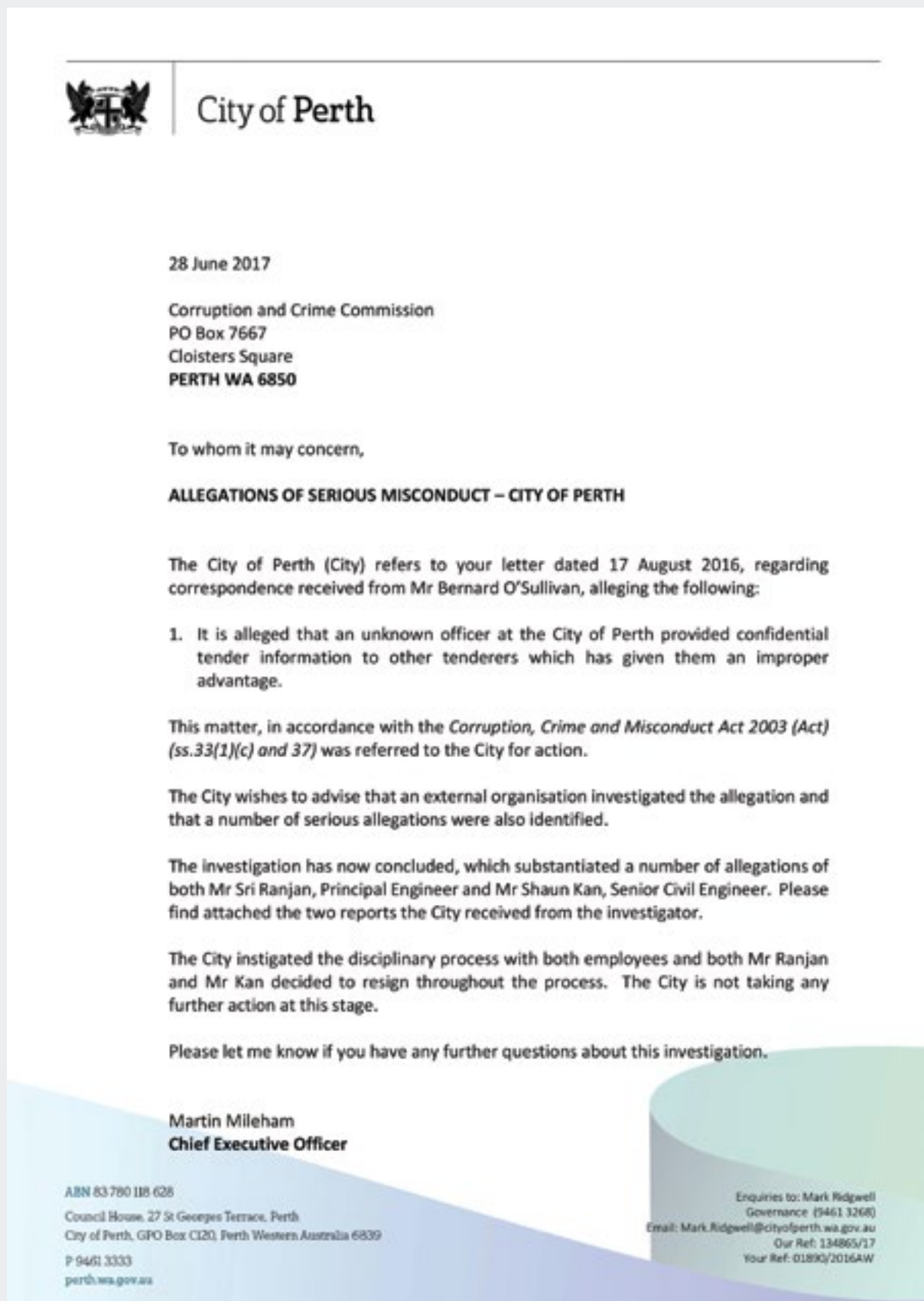


Figure 2.37: Letter from Mr Martin Mileham, Chief Executive Officer, City of Perth, to the Corruption and Crime Commission, 28 June 2017.

## Findings

### Finding 2.3.4 – 5

The Inquiry makes the following findings:

- i. Before a decision was made to recall and re-issue the RFT1, the City should have considered alternative options for clarifying the bids and submissions.
- ii. The evaluation process at the City was susceptible to manipulation, because the City's procedures were not consistently complied with and the practice of evaluation panels (as a result of their composition) was such that one panel member could have a disproportionate level of influence over the panel.
- iii. The absence of appropriate training at the City created risks that confidential information could be inadvertently disclosed and that conflicts of interest (whether actual or perceived) were not appropriately managed both at the commencement of, and during, the tender evaluation processes.
- iv. The City's approach and "*internal investigation*" into the BOS Civil complaint was inadequate and inappropriate, and not deserving of the label "*investigation*";
- v. Mr Crosetta, who had conduct of the "*investigation*", was ill-equipped and not trained to carry out that task.
- vi. The City dealt with the BOS Civil complaint by improperly involving the person who was the subject of the complaint in facilitating and preparing the response.
- vii. Mr Mileham should have referred the complaint to Mr Ridgwell as Manager, Governance, not to Mr Crosetta, as he was not experienced nor trained to deal with it.<sup>ag</sup>
- viii. BOS Civil's complaint should have been the subject of a full investigation when it was received, as it was once the City received the CCC referral.
- ix. The terms of the resignations that were agreed by the City were inappropriate in light of the City's acceptance that Mr Kan had engaged in serious misconduct and that there was material available to the City to suggest that Mr Ranjan too may have engaged in serious misconduct.

ag Mr Mileham accepted that in hindsight this is what should have occurred: Transcript, M Mileham, Private hearing, 30 July 2019, p 65.

**Finding 2.3.4 – 5 (contd)**

- x. The balancing exercise that was carried out by the City when determining how to proceed in relation to an employee who was the subject of a disciplinary process did not consider the likelihood and weight to be attributed to each factor and possible consequence. For example, on the one hand the need to properly sanction misconduct and the need to ensure the market was aware of the misconduct so as to prevent its possible recurrence, and on the other hand the need to be fair to the employee and limit the City's exposure to costly, protracted litigation, which would limit the utility of the exercise.
- xi. As a result, the outcomes of the City's disciplinary processes were not necessarily commensurate with the conduct being subjected to the discipline.
- xii. Notwithstanding the findings above:
  - there is no evidence to suggest Ms Brandon was motivated to sign the Foundation CP Agreement by any improper motive or for any improper purpose; and
  - the Foundation CP Agreement was (other than in respect of the payment of a service fee to the Foundation) uncontroversial and would have been executed by Ms Battista had she been asked to do so.



## Engagement of Marple Bridge

### Introduction

1. As part of its investigative work, the Inquiry considered a number of procurement and contracting matters. The City of Perth's (City) engagement of Marple Bridge Pty Ltd (Marple Bridge) was one them.
2. Marple Bridge was a consultancy firm engaged by the City to provide leadership and coaching services. Its director and the service provider was Mr Doug Aberle, a person known to the Chief Executive Officer (CEO) Mr Martin Mileham. Marple Bridge provided those services to the City between September 2016 and February 2018.

### Timeline

2016	During July	The City and Marple Bridge exchanged proposals for leadership and coaching services.
	7 and 28 September	Mr Aberle of Marple Bridge provided coaching services to Mr Mileham.
	3 Oct 2016 – 12 Jan	Marple Bridge invoiced the City for services supplied totalling \$25,520.00.
2017	12 January	Mr Mileham approved a sole supplier justification procedure exemption for the engagement of Mr Aberle. This covered services already provided.
	16 May	Mr Mileham's personal assistant advised Ms Kelly Pember, Acting Manager, Human Resources, that \$49,720.00 had been spent against the \$50,000.00 approved for Mr Aberle.
	2 June	Marple Bridge issued an invoice for a workshop (on or around this date).
	29 June	Marple Bridge issued an invoice for a team building workshop.
	29 June	Ms Pember raised with other officers that the scope of work for which Marple Bridge was engaged had expanded beyond what was originally tasked.
	3 July	Ms Pember was told by a Human Resources Advisor that Mr Mileham had asked another officer to "summarise and close out" the Marple Bridge contract.
	28 August	Mr Aberle had a session with the Executive Leadership Group. Ms Pember emailed Mr Mileham expressing concern about the use of Mr Aberle's services "... on the basis of no accountability and lack of positive outcomes for the 10 to 12 months of services provided to ELG [Executive Leadership Group]". Mr Mileham replied that afternoon saying a "close out" session was held that day and that he required Ms Pember's assistance to "address this and resolve the procurement issues".
	29 August	Mr Mileham's personal assistant emailed Ms Pember saying Mr Mileham wanted to arrange additional regular sessions with Mr Aberle for the next four months.

2018	16 January	Mr Aberle held a stakeholder mapping workshop for a Directorate.
	29 January	Ms Samantha Yan, a Senior Financial Management Officer raised the need for a renewed sole supplier justification form for the engagement of Marple Bridge.
	2 February	Ms Alison Egan, Manager, Human Resources, raised with Mr Mileham that the form had expired, but no steps had been taken to cease using Mr Aberle's services.
	21 February	Ms Yan raised the issue again. Then again on 26 and 27 February 2018 and 7 and 8 March 2018.
	27 February	A new sole supplier justification procedure form was completed seeking approval for a further \$25,000.00. This application does not appear to have been granted or became operative.
	During April	Marple Bridge's final invoices were approved for payment.

## Issues considered by the Inquiry

- The key issue in this matter is whether the procurement process for the engagement of Marple Bridge was poorly managed and, if so, why. That is a matter of governance to which the Inquiry was required to give due consideration in accordance with A.3(v) of its Terms of Reference.

## Investigation by the Inquiry

### Witnesses

- The Inquiry held private hearings involving a number of people in the course of investigating this matter. The positions given below for employees are the positions they held at the time of the events described in this Section. The Inquiry also reviewed a range of documentary material.
- Ms Michelle Howells was the Manager, Human Resources between 21 July 2014 and 3 February 2017. Ms Howells appeared to want to assist the Inquiry but did not have a clear recollection of the circumstances surrounding the engagement of Marple Bridge or the completion of the procurement documentation.
- Mr Ramzi Ibrahim was the Senior Contracts Officer in the Construction and Maintenance Directorate. Mr Ibrahim provided an overview of the procurement and contracting process in the City. Mr Ibrahim commenced working at the City on 20 June 2016 and resigned on 2 May 2018. Mr Ibrahim was a witness of truth.
- Mr Robert Munro was a witness of truth who was employed by the City from 12 August 2002 to 21 September 2018. From March 2016, he was Senior Finance Management Officer for the Planning and Development Directorate. He reported to Ms Erica Barrenger, Director, Planning and Development.

8. Mr Michael (Dale) Quinlivan was the Manager, Executive Support and had little recollection of relevant events. Mr Quinlivan was employed by the City from 1998 to 7 July 2017. He has a PhD on accountability in local government. He generally reported directly to the CEO and was responsible for the staff of the Lord Mayor and the staff of the CEO. He was also involved in procurement for his area. Notwithstanding his role, Mr Quinlivan was unaware of the initial engagement of Marple Bridge. He could not recall whether, at the time he became aware of Marple Bridge's engagement, it was on the basis of a sole supplier justification.
9. Mr Daniel Richards was a witness of truth. Mr Richards was the Finance Manager with the City. He joined the City in March 2015 in what was his first local government role. Prior to January 2017, Mr Richards pressed for a centralised procurement system, because of a concern that those with knowledge of relevant legislation had very little influence on how tendering was done.<sup>388</sup> A centralised procurement system was rejected by the Executive Leadership Group (ELG).
10. Ms Susan Weary commenced work with the City on 15 March 2017 and was a Stakeholder Engagement Officer, in the Marketing, Communications and Engagement Unit. She resigned in August 2018. Ms Weary was a witness whose evidence is treated with caution. While it is accepted that her evidence may be affected by the passing of time, she explained that she had completed the necessary paperwork before the engagement of Marple Bridge, but when later was presented with the documents, which revealed that the forms were completed after the work had been undertaken, she was unable to explain why that was the case.
11. Ms Samantha Yan was a Senior Finance Management Officer, in the Construction and Maintenance Directorate, and a witness of truth, who was open and clearly wished to assist the Inquiry. She commenced at the City on 3 June 2010 and was a "*directorship accountant*" in the Construction and Maintenance Directorate.
12. Ms Kelly Pember was the Acting Manager, Human Resources from 10 February 2017 to 11 November 2017. Ms Pember gave evidence that she was concerned at the significant cost of Mr Aberle's services and that she did not have oversight over Mr Aberle's work. Ms Pember was also concerned that the City had not gone through an appropriate process to engage Mr Aberle.
13. The Inquiry also heard from Mr Aberle, who was a truthful witness.
14. Both Mr Mileham, CEO, and Mr Robert Mianich, Director, Corporate Services, were also examined. As described later in this Section, they were unwilling to take much if any responsibility for the failures in procurement that bedevilled the engagement of Marple Bridge.

### City of Perth's purchasing and sole supplier policies

15. The City has, and had at the time of the engagement of Marple Bridge, a purchasing policy. Its legislative basis was the *Local Government Act 1995* (LG Act) and the *Local Government (Functions and General) Regulations 1996*, which it broadly reflects.
16. In 2016 to 2018, the relevant purchasing policy was contained in Council Policy Manual “CP9.7 – Purchasing” (CP9.7).<sup>389</sup> Usually, for purchases over \$5,000.00, the relevant procuring officer had, depending on the value of the procurement exercise, to seek quotes or go to public tender.
17. However, where the procurement was of a good or service which could genuinely only be obtained from one supplier, the City could seek and obtain a sole supplier justification exemption. The procedure for such an exemption is set out in a document called the “*City of Perth Sole Supplier Justification, Application and Approval procedure*” (SSJ procedure).<sup>390</sup>
18. The SSJ procedure provides, in effect, that where a market is “*highly specialised*” and limited to a “*few suppliers*”, or if there are “*special circumstances*”, there may be sound reasons for investigating whether there is only one supplier. However, any exemption granted pursuant to the SSJ procedure must be “*clearly and thoroughly justified*”. The procedure could not be used to avoid sound purchasing practices under CP9.7.
19. An SSJ procedure application requires certain details to be provided, including the purchase amount, period of supply, recommended supplier, description of requested items or services and their purpose, the reasons for requesting the sole supplier, an explanation of why the recommended supplier of the item or service is the only one that can supply to the City and why alternatives are unacceptable.

## Evidence and analysis

### July 2016: City of Perth and Marple Bridge exchange scope of work proposals

20. The City's first involvement with Marple Bridge happened in July 2016, when the City (through Ms Howells) and Mr Aberle exchanged proposals for a schedule of services to be supplied. In this respect, the Inquiry holds two proposal documents. The first is the City's original proposal to Mr Aberle. The second is Mr Aberle's counter-proposal. Both are dated July 2016.<sup>391</sup>
21. It is apparent from the scope of work documents that it was initially (that is, around July 2016) contemplated that Marple Bridge would provide the following sorts of services: orientation workshop, executive one-on-one sessions (not limited to Mr Mileham), an interactive workshop, attendance at “*observation*” meetings by Mr Aberle, further one-on-one sessions and a final interactive workshop. There was no substantive difference in the work that was proposed between the City's proposal and Mr Aberle's counter-proposal, but the value of the work changed. Mr Aberle's proposal suggested costs of about \$25,000.00. From the outset, the focus was on working with the ELG to improve their performance as a group.<sup>392</sup>

22. Despite the exchange of proposals, the City did not engage Marple Bridge at this time.

#### **September to October 2016: Marple Bridge starts providing services**

23. Despite this, Mr Aberle commenced providing coaching and other services to the City in September 2016.<sup>393</sup> The first services supplied by Marple Bridge were coaching services for Mr Mileham on 7 and 28 September 2016.<sup>394</sup>
24. Prior to Mr Aberle providing services to the City, he had provided other (personal) services to Mr Mileham in about 2012, although not through Marple Bridge, but in his personal capacity. Those services were different to the services Mr Aberle provided to the City through Marple Bridge.<sup>395</sup>
25. Ms Howells told the Inquiry that the initial contact with Mr Aberle was made by her on the direction of Mr Mileham.<sup>396</sup> Mr Mileham's evidence is consistent with Ms Howells's evidence.<sup>397</sup> Mr Aberle then came into the City and presented to Ms Howells and Mr Mileham about what he could offer.<sup>398</sup> Mr Aberle said that when he went to the meeting he did a "*double take*" when he saw Mr Mileham and had not anticipated him being there at the first meeting.<sup>399</sup>
26. An invoice dated 3 October 2016 is the earliest document recording the engagement of Marple Bridge.<sup>400</sup> It captures the coaching services supplied to Mr Mileham in September 2016. As best as the Inquiry can determine, beyond this invoice, there are no formal engagement documents from this date or earlier recording Marple Bridge's engagement. As the value of the works provided was under \$5,000.00, an SSJ procedure exemption was not required. Notwithstanding this, the engagement should have been documented, as required by CP9.7 and as a matter of best practice.<sup>401</sup> That it does not appear to be is a concern.
27. Mr Mileham's evidence was that if there was a failure to document Marple Bridge's initial engagement, it was likely the result of a "*stuff up*",<sup>402</sup> by which the Inquiry infers Mr Mileham is referring to human error. The Inquiry accepts this is likely the case, and that there was no calculated effort to avoid properly documenting Marple Bridge's initial engagement. However, this apparent failure is reflective of, and in hindsight perhaps heralded, the general mismanagement of the procurement of Marple Bridge's services, the further details of which are canvassed below.

#### **October 2016 to January 2017: Marple Bridge continues servicing the City of Perth**

28. The services supplied by Marple Bridge did not begin and end with the two coaching sessions for Mr Mileham. The engagement of Marple Bridge was, consistently with the proposal documents from July 2016, considerably more extensive.
29. It should have been apparent from the proposal documents that the value of the engagement of Marple Bridge would exceed the \$5,000.00 threshold in CP9.7, and would therefore require quotations, tendering or an SSJ exemption. In the event, none of the work was quoted nor tendered and the procurement was undertaken pursuant to two late-completed SSJ procedure forms. The City's approach to those SSJ procedure forms is the crux of the Inquiry's focus in this Section.

30. While Mr Richards was not involved in the decision to expand the scope of Marple Bridge's engagement to include ELG workshops, he described the second scope of work as coaching for the ELG.<sup>403</sup>
31. The invoice for the first of the ELG workshops totalled \$8,360.00 and so, consistent with CP9.7, required director approval. As best the Inquiry can tell, that approval was either not sought or obtained, or was not documented. Either way, proper compliance with the City's procurement practices demanded more.
32. Between 3 October 2016 and 12 January 2017, Marple Bridge invoiced for services supplied totalling \$25,520.00, some \$20,520.00 beyond the \$5,000.00 threshold contained in CP9.7. There is no material before the Inquiry, and no evidence received at hearings, to indicate that a proper procurement process had taken place for this work by this time.
33. One practical consequence of that failure to undertake a procurement process was that it led to an issue about how Marple Bridge would be paid.<sup>404</sup> Had proper procurement been undertaken, that issue might have been avoided.

#### 12 January 2017: Sole supplier justification procedure exemption is approved by Mr Martin Mileham

34. On 12 January 2017, Mr Mileham approved an SSJ procedure exemption for the engagement of Mr Aberle (not Marple Bridge), marking the first time a formal procurement exercise was conducted for the services supplied by Mr Aberle through Marple Bridge.
35. The SSJ procedure form for Marple Bridge was initially completed by Ms Howells, who sought an SSJ procedure exemption for an amount of \$50,000.00 for the period 1 November 2016 to 31 October 2017 (in effect, backdating the approval to cover all services already provided by Mr Aberle). This was almost double the value of the work contemplated by the July 2016 proposals.
36. Ms Howells was unable to explain why the quantum of the SSJ exemption sought was almost twice what was contemplated in July 2016.<sup>405</sup> She accepted it was inflated, but was of the view there would have been a justification.<sup>406</sup> Mr Mileham could not recall how the figure was arrived at<sup>407</sup> and he accepted that if the only pricing information available to the City at the time of the completion of the SSJ procedure form was the July 2016 proposals, then the amount on the SSJ procedure form should have been around \$25,000.00.<sup>408</sup>
37. The SSJ procedure form describes the work to be undertaken as the:  
*"Development and delivery of Leadership program for CEO and Executive Leadership Group resulting in the establishment of an effective leadership team and a clear direction and plan to guide the City's administration to ensure delivery against the City's objectives".*<sup>409</sup>

38. None of the standard form reasons for a SSJ procedure exemption are selected, but a document is attached which sets out the reasons for seeking it, including:<sup>410</sup>
- Mr Mileham was a client of Mr Aberle several years ago and found his coaching and guidance extremely beneficial in the development of his career and personal abilities. Ms Howells told the Inquiry that this was included on the basis of information provided by Mr Mileham.<sup>411</sup>
  - As part of the coaching sessions, Mr Mileham and Mr Aberle had identified the need to align the ELG to ensure a cohesive and effective team. After questioning about the inconsistencies in the dates and events, Ms Howells's evidence was that the "*coaching*" services being referred to were not the coaching sessions that commenced at the City in September 2016, but Mr Mileham's previous sessions.<sup>412</sup>
  - Mr Aberle was the only qualified and knowledgeable facilitator to run a programme aligned with Mr Mileham's vision.
39. Ms Howells was of the view that this was the only SSJ procedure form she completed. She also said she would have reported to heads of department and was assisted by Mr Mianich, but to the best of her recollection only as to process (that is, matters like the level of detail that should be put in the SSJ procedure form), not content.<sup>413</sup> Mr Mianich could not recall assisting her<sup>414</sup> and otherwise gave evidence that he was not involved at all in the engagement of Marple Bridge.<sup>415</sup>
40. Ms Howells accepted that if the professional (rather than personal) coaching of Mr Mileham only started in September 2016, and not back in 2012 as she might have believed, the foundation for the statements in the SSJ procedure form (particularly those described at paragraph 38 were flawed.<sup>416</sup>
41. In examination, Mr Mileham accepted that although he did not write the justification document attached to the SSJ procedure form, he would have discussed the matter with Ms Howells. He also agreed that some of the information in that document could only have come from him.<sup>417</sup>
42. Mr Mileham also agreed that the services supplied by Mr Aberle were of a type that could have been supplied by other consultants in Western Australia and Australia. Mr Mileham agreed that on the face of the SSJ procedure form, the market was not tested to see whether Mr Aberle was genuinely the only supplier for the services, nor on the face of it, were best endeavours undertaken to obtain quotes from other suppliers.<sup>418</sup> Mr Mileham agreed these were requirements of the SSJ procedure and agreed, on reflection, that the content of the SSJ procedure form he signed on 12 January 2017 did not satisfy the SSJ procedure threshold of clear and thorough justification. Mr Mileham could not provide a convincing explanation of why, in light of these issues, the document was signed in January 2017. He indicated only that "*To the best of my knowledge at that time, I believe it met the criteria*".<sup>419</sup>



43. In view of this evidence, the Inquiry finds that the SSJ procedure form for Mr Aberle (Marple Bridge) should not have been progressed or approved without further steps being taken pursuant to the SSJ procedure and CP9.7. The justification expressed in the document did not satisfy the requirements of the SSJ procedure, nor the requirements of CP9.7. The desire to align the workshops provided to the ELG with Mr Mileham's vision, which was a desire expressed in the SSJ procedure form, is an understandable one. However, that does not, without more, elevate the services supplied by Mr Aberle to the City to something that could only be supplied under a sole supplier arrangement. At the very least, the market should have been tested before that conclusion was drawn.
44. Furthermore, while there is nothing to suggest Mr Mileham had an actual conflict of interest, it would have been prudent for him to distance himself from the authorisation of the SSJ procedure form in circumstances where:
  - there were deficiencies in the SSJ procedure form, noted above, that call into question its validity under the SSJ procedure and CP9.7;
  - Mr Mileham had a pre-existing relationship with Mr Aberle; and
  - Mr Mileham was, it seems from the SSJ procedure form, eager to engage Mr Aberle to align his vision with the ELG.
45. Had a disinterested Director with a rigorous understanding of procurement reviewed the SSJ procedure form, it may be that the issues with the proposed justification, described above, would have been identified and resolved and the procurement process halted or an appropriate process adopted. Such an approach may also have allayed any concerns (although none was expressed to the Inquiry by witnesses) that Mr Mileham could be perceived to have a conflict of interest in the engagement of Mr Aberle.

#### 14 January to 16 May 2017

46. Following the authorisation of the SSJ procedure form on 12 January 2017, Mr Aberle (Marple Bridge) continued to supply coaching, leadership and strategic management services to the City. Most of the sessions conducted by Mr Aberle were directed towards coaching for the CEO, and ELG workshops. This, on its face, appears consistent with the description of works given in the SSJ procedure form.
47. However, some of the services were different and were described as "*strategic planning*" including, for example in May 2017, the holding of six hours of directorate specific workshops described in Marple Bridge's invoice for that month as "*strategic planning input, DCC, DEDA and DPD*".<sup>420</sup>
48. Mr Aberle could not recall specifically what that was for, but said it was part of an overall strategic plan, and cascading that plan down through the business.<sup>421</sup> In the absence of evidence as to the distinction, if any, between the strategic planning work and other work conducted by Mr Aberle, the Inquiry makes no finding as to whether this work was within the ambit of the SSJ procedure form. However, it notes that this ambiguity is another example of the City's failure to properly manage the procurement of the services of Marple Bridge. The City should not be left in a position where ambiguity exists about whether services supplied are within the ambit of a procurement.

49. On 16 May 2017, Ms Alison Sunderland (Personal Assistant to Mr Mileham) advised Ms Pember about the SSJ procedure form for \$50,000.00 for Mr Aberle, and indicated that \$49,720.00 had been spent against it.<sup>422</sup> In examination, Mr Mileham was asked whether he was aware of this and said he was aware of “*difficulties with the administration of the contract*” and “*anomalies*” which he asked to be resolved.<sup>423</sup>
50. However, it does not appear that any steps were actually taken, at least at this stage, to resolve those difficulties or anomalies.

#### May to June 2017: Construction and Maintenance Directorate workshop

51. In the meantime, the scope of work undertaken by Mr Aberle continued to expand.
52. On about 2 June 2017, Marple Bridge issued an invoice in the amount of \$2,640.00 for “*KRA/KPI<sup>ah</sup> CMD [Construction and Maintenance Directorate] Directorate Workshop (incl pre and post work) 1 May*”.<sup>424</sup>
53. On 29 June 2017, Marple Bridge issued a further invoice in the amount of \$4,400.00<sup>425</sup>, which was for the Construction and Maintenance Directorate team building workshop.<sup>426</sup>
54. Mr Aberle considered that to be an extension of the initial engagement, helping him to cascade down the strategic planning he was offering to the ELG to some of the lower levels within the City.<sup>427</sup> However, those services are not within the July 2016 scoping documents, nor are they within the description of services approved under the SSJ procedure form signed by Mr Mileham on 12 January 2017.
55. There is nothing improper about the type of services supplied by Marple Bridge, and neither Mr Aberle nor Marple Bridge acted improperly in providing them. The rationale for the services was clear, and the internal processes of the City were not Mr Aberle’s concern. However, it is evident that by this stage there had been scope creep in the services being supplied, for which the City had responsibility. The root cause for this scope creep was the City’s failure to have clear, accurate and robust procurement processes in place, with adequate independent and centralised oversight and management of Marple Bridge’s engagement. Procurement, particularly procurement involving the expenditure of public money, should be carefully considered and properly supervised and controlled. This was not.

#### July to August 2017: Problems with the procurement are raised

56. On 29 June 2017, Ms Pember raised with Mr Quinlivan (copied to Ms Sarina Cuttone) that the scope of work for which Marple Bridge was engaged had expanded far beyond what was originally tasked. Ms Pember asked Mr Quinlivan to “*kindly send through ANY information*”.<sup>428</sup>
57. In response, on 3 July 2017, Ms Pember was told by Ms Cuttone that Mr Mileham had asked Mr Quinlivan to “*summarise and close out*” the Marple Bridge contract.<sup>429</sup> It is likely this is what Mr Mileham was referring to when he gave evidence that he had asked for the “*difficulties*” and “*anomalies*” with the contract to be resolved.

ah Which mean, respectively, “*key result area*” and “*key performance indicator*”: Transcript, D Aberle, private hearing, 29 April 2019, p 16; KRA might also be referred to as SRA, “*strategic result area*”: Transcript, D Aberle, private hearing, 29 April 2019, p 16.

58. However, while Mr Quinlivan may have taken steps, nothing appears to have been done to “*summarise and close out*” the contract (possibly because Mr Quinlivan took severance on 7 July 2017). There were no sessions in July. There was a session with Mr Aberle and the ELG on 28 August 2017.

59. At 1.45 pm on the same day, Ms Pember wrote directly to Mr Mileham, in an email sent with high importance and with the subject heading “*URGENT: Marple Bridge – Mr Aberle services*”.<sup>430</sup>

60. In that email, Ms Pember referred to an attached document which set out, in quite some detail, the problems with the procurement of Marple Bridge, before going on to say:

*“The attached document provides a summary of the services to date with two recommendations as detailed below:*

*1. The ongoing requirement to utilise this Supplier’s services is reviewed on the basis of no accountability and lack of positive outcomes for the 10 to 12 months of services provided to ELG; particularly in the light of the OCCA report finding concerning the ongoing dysfunction within ELG.*

*2. Review/audit to ascertain whether the Procurement process has been followed.*

*I understand that these services are continuing to be used by yourself and members of ELG, for varying purposes?*

*Martin, are you able to please advise that your prior direction remains unchanged and I will take steps to address this matter urgently and action, as per the two (2) recommendations made above.*

*[Mr Quinlivan] departed the business in June 2017; so to my knowledge, no action has been taken to address this outstanding matter. I would like to move this forward, with your support?”*<sup>431</sup>

61. Mr Mileham responded to Ms Pember at 4.57 pm that afternoon to say a “close out” session was held that day and that he required Ms Pember’s assistance to “*address this and resolve the procurement issues*”.<sup>432</sup>

62. However, despite this apparent commitment from Mr Mileham to bring the sessions with Mr Aberle to an end and to resolve the procurement issues, the following day Ms Pember received an email at 2.37 pm from Ms Terri Obern, Acting Personal Assistant to Mr Mileham, in which Ms Obern wrote:<sup>433</sup>

*“Hi Kelly*

*Thank you for providing me with the information on the Mr Aberle contract. Martin wants to check if yesterday’s session falls within the bounds of the contract, if not, extend the current contract or enter into a new one.*

*Following yesterday’s session, I’ve been asked to arrange the following:*

*4 September – Mr Aberle to meet with Rebecca and Byron*

*w/c 18 September – one on one with Mr Aberle and Martin for 90 minutes and then every 3 weeks thereafter until Christmas”.*

63. Ms Pember was examined about her reaction to receiving this email within 24 hours of receiving the earlier email from Mr Mileham.
64. In this respect, and not surprisingly, Ms Pember gave evidence she was very frustrated that Mr Mileham appeared to be disregarding the advice provided to him *“for no reason whatsoever other than he wanted to continue using [Mr Aberle’s] services”* and she wondered what was the point of preparing the report.<sup>434</sup>
65. In responding to Mr Mileham,<sup>435</sup> Ms Pember said she felt there was nothing more she could do to resolve the issues associated with the engagement of Marple Bridge and had almost given up. Ms Pember forwarded her response to Mr Mianich, as Director, Corporate Services, to keep him across the matter in the expectation that he would counsel Mr Mileham on how to move forward.<sup>436</sup> Mr Mianich does not recall doing so.<sup>437</sup>
66. Mr Mileham was taken to this correspondence in examination and was unimpressive, non-responsive and evasive in respect of it, as the following exchanges demonstrate:
- “Do you understand from Ms Pember’s point of view how it could be a confusing and frustrating experience to receive an email effectively from you, asking her to do these things?---It’s not effectively from – well, she may have taken it as being effectively from me but it isn’t.*
- I appreciate it’s not directly from you in the sense that it’s from your PA?---*
- That’s right.*
- And your PA acts on your instructions?---Not always.*
- ...
- Do you accept that it would have been confusing and frustrating for Ms Pember, who’s prepared that document we looked at, sent it to you the day before and then had this request from your office?---If she was confused and she’s told you that, that’s her view. In my view---*
- I’m asking you whether you accept it?---No, I don’t, not based on my frequent interactions with staff who are asked for things to be done or the PA asks for things to be done. They are 50 metres away down the corridor; if they have an issue, they come to me and they say, ‘Martin, I’m confused about this, do you really mean’, or ‘I don’t want to get an email from your PA’ and that has happened on hundreds of occasions, ‘They have told me you want this’ and I’ve said, ‘Well actually, no, what I meant was’ ...”.<sup>438</sup>*
67. It is not clear why Mr Mileham was unwilling to accept that Ms Obern’s email to Ms Pember was in effect an email from him, nor why he was unwilling to accept the self-evident proposition that the inconsistent emails of 28 and 29 August 2017 would have been confusing and frustrating for Ms Pember. The Inquiry infers Mr Mileham, in answering this way, was seeking to evade responsibility for the inconsistent positions he had adopted.

68. There is, on a copy of Ms Pember's email to Mr Mileham (forwarded to Mr Mianich) available to the Inquiry, a handwritten annotation that reads:
- "1) FINISH + FINAL PAYMENT*  
*2) ALL FUTURE BID & ACCEPT BASIS*  
*Terri, is this closed out?"*
69. There is then a signature and the notation "9/10".<sup>439</sup>
70. Mr Mileham explained that this notation and the signature was his, and that the "9/10" was a reference to 9 October.<sup>440</sup> Mr Mileham could not recall whether he spoke to Mr Mianich or Mr Richards about the matters contained in the email. He said he asked Ms Obern to close the matter out.
71. When asked whether he should have done more than simply ask his Personal Assistant to deal with it, given he approved the SSJ procedure form on 12 January 2017 and had a pre-existing relationship with Mr Aberle, Mr Mileham said, no.<sup>441</sup>
72. As it transpired, despite Ms Pember's emails and the document she prepared, *"Review of Services Provided by Marple Bridge"*, the problems were not resolved and Mr Aberle through Marple Bridge continued to supply services to the City without proper procurement processes being followed. Significantly, these services included a number of coaching sessions for Mr Mileham in September, October, November and December 2017. It must have been evident to Mr Mileham that the engagement of Marple Bridge for coaching and leadership services had not, by this stage, been *"closed out"*.

**Mid-January 2018: Marple Bridge's services expand further into *"stakeholder mapping"***

73. By mid-January 2018, the City had still failed to put in place a proper procurement framework for the services being supplied by Mr Aberle. Furthermore, the 12 January 2017 SSJ procedure form, which was valid for one year, had expired, apparently unnoticed, in October 2017.
74. Furthermore, and despite the SSJ procedure form's expiration, by 9 January 2018, the total amount expended by the City on Marple Bridge's services had reached approximately \$74,000.00 – some \$24,000.00 above the now-expired SSJ procedure form amount.
75. Undaunted, or perhaps unaware, on 16 January 2018, a stakeholder mapping workshop was held for the Planning and Development Directorate.<sup>442</sup> Again, this work was not within the July 2016 proposals or the works described in the 12 January 2017 SSJ procedure form. A separate procurement exercise was purportedly undertaken for this work. However, that process was also flawed.

76. In any event, at this stage it became apparent to officers with the City that the City had far exceeded even the (expired) SSJ procedure form for Marple Bridge's services. There was again tension between groups within the City about who would be liable for these costs reflecting, again, the failure to properly follow procurement processes.

#### January 2018: Steps are taken to close out and regularise the procurement

77. On 29 January 2018, Ms Yan, a Senior Financial Management Officer in the Construction and Maintenance Directorate, brought to the attention of Ms Alison Egan, Manager, Human Resources, and Mr Paul Crosetta, Director, Construction and Maintenance, the urgent need for a renewed SSJ procedure form for the further engagement of Marple Bridge.<sup>443</sup> She heard nothing.
78. On 2 February 2018, Ms Egan brought to Mr Mileham's attention that the SSJ procedure form had expired, but that no steps had been taken to cease using the services.<sup>444</sup>
79. On 21 February 2018, having heard nothing, Ms Yan raised the issue again.<sup>445</sup> Then again on 26 February 2018<sup>446</sup> and 27 February 2018,<sup>447</sup> to which she then got a reply that Ms Egan would send her a "*Sole Supplier doc*" in the "*next 30 minutes*".<sup>448</sup>
80. The second SSJ procedure exemption and approval form,<sup>449</sup> dated 27 February 2018, was completed and signed by Ms Egan. It sought approval for a further \$25,000.00 on the basis that Mr Aberle had a working knowledge of the City's unique set of challenges. It is not clear from the document whether the market was tested to confirm that conclusion. In any event, the Inquiry has not sighted a copy approved by a Director or the CEO and so, as best the Inquiry can determine, this second SSJ procedure exemption application was never granted or became operative.
81. As with the initial SSJ procedure form approved on 12 January 2017, this second SSJ procedure application was also back-dated, purporting to cover the period 1 November 2017 through to 31 October 2018. It is apparent that the commencement date was chosen to capture and cover the period immediately following the expiration of the first SSJ procedure form, during which period Marple Bridge provided, and invoiced for, services.
82. The Inquiry finds that this was not a proper procurement process. Rather, it was an attempt to gap-fill a period during which there was no formal process followed for the continued use of Marple Bridge's services from the expiry of the initial SSJ procedure form. It reflects, and arises from, again, the mismanagement of the procurement exercises conducted for the engagement of Marple Bridge. It was reactive to issues raised, rather than being proactive in advance of procurement.

### Purported procurement for stakeholder mapping

83. On 2 March 2018, Ms Weary completed a document entitled “*Cover Sheet for Requisitions, Verbal and Written Only*” (Cover Sheet).<sup>450</sup> On the face of it, the form suggested that three quotes for the stakeholder mapping session conducted by Marple Bridge in January 2018 were obtained.
84. However, the Cover Sheet raised two issues:
- first, whether proper process was followed and whether the quotes were obtained “*before*” Marple Bridge was engaged; and
  - secondly, and relatedly, whether Ms Weary completed the Cover Sheet “*after*” the event in order to justify the engagement, or to counter the failure to follow proper procurement process.
85. Ms Weary gave evidence to the following effect, although she was uncertain:
- Marple Bridge and another organisation provided quotes, although she could not recall how they were received.<sup>451</sup>
  - She had completed the Cover Sheet before the work was undertaken by Marple Bridge, although when taken to the document during her examination her evidence changed.
  - In the ordinary course she would have only completed the Cover Sheet after she received the quotes and while she did not recall whether she did that in this instance she has no reason to believe she would not have done so.<sup>452</sup>
86. Ms Weary was unable to explain how or why the Cover Sheet was completed in March 2018 when the work was undertaken and invoiced by Mr Aberle in January and February.<sup>453</sup>
87. Ms Weary was also asked about the disparity between a competitor’s quote for \$35,000.00 and Mr Aberle’s quote for \$4,000.00, and whether she simply included the competitor’s quote as a way of trying to justify Mr Aberle having been engaged without proper process.<sup>454</sup> That was denied, although Ms Weary accepted that on the face of the Cover Sheet, that is how it looked.<sup>455</sup>
88. In contrast, Mr Munro’s evidence included evidence to the following effect:
- Following the stakeholder mapping workshop in January 2018, Ms Weary sent him an email saying the invoice for it needed to be paid, but there was no purchase order that had been raised and she expected him to raise a purchase order. He said that he went back to her and asked her what quotes she had obtained and was told there were not any quotes, it was being done as a sole supplier.<sup>456</sup>
  - While his recollection had been that Ms Weary had told him she had obtained no quotes, when shown an email which referred to strategy and partnership having obtained two quotes, he said he may have been wrong. He did not recall having seen the quotes.<sup>457</sup>



89. While it may be suggested by these examinations that Ms Weary knew that the quotes had not been obtained at the necessary time, and that these steps were taken after the fact to justify the failure by the City to have followed proper procurement processes, there is insufficient evidence to make a finding of that gravamen. However, the Inquiry does find that the confusion in relation to this aspect of the expanding engagement of Marple Bridge reflects, again, the dysfunctional mismanagement by the City of the procurement exercises conducted to retain Marple Bridge.
90. Meanwhile, on 7 and 8 March 2018, Ms Yan continued to follow up about resolving the payments to Marple Bridge<sup>458</sup> which prompted Mr Richards to raise the issue with Ms Egan and the risk of a breach of the LG Act.<sup>459</sup>
91. By April 2018, Mr Aberle's invoice from February was still not paid, and there was discussion about how the City was going to satisfy the invoice. Around this time there was also discussion that Marple Bridge was to do no further work until an appropriate procurement process was undertaken.<sup>460</sup> Ultimately, seemingly as a matter of pragmatism consistent with the view held by Mr Munro that Marple Bridge was not responsible for internal failures by the City, Marple Bridge's invoices were approved for payment.
92. From this point on the matter was, to use Mr Mileham's language from August 2017, "*closed out*" and to the Inquiry's knowledge there was no further procurement of, or services provided to the City by, Mr Aberle or Marple Bridge.

## Conclusion

93. The story of the engagement of Marple Bridge is a story of deficient and mismanaged procurement processes. There is nothing in the material before the Inquiry to suggest corruption or cronyism. Rather, it seems that at the heart of this dysfunction is a combination of incompetence in the application of procurement processes, or ignorance of those processes, coupled with enthusiasm by Mr Mileham (and later, others) to get and keep Mr Aberle on board.
94. The initial engagement of Marple Bridge was not properly documented. That problem was compounded when the 12 January 2017 SSJ procedure form was approved by Mr Mileham on grounds that, even then, did not support its approval. While the desire to have Mr Aberle engaged because of his past work with Mr Mileham was understandable, that was not, as described earlier in this Section, sufficient reason to depart from proper procurement policy and processes.
95. The lack of transparency in that engagement, the poor scoping of the works which were being procured and the tenuous reasoning used to support the engagement quickly led to other problems within the City. Officers outside of the ELG had little idea what was going on, from a procurement point of view. The siloed nature of the City reared its head as skirmishes were had over who would foot Marple Bridge's bills.

96. Responsibility for the supervision of the procurement seems to have been abdicated by Mr Mileham and, though to a lesser degree, Mr Mianich. As described above, Mr Mileham authorised the original SSJ procedure form for Marple Bridge in circumstances where it ought not to have been authorised, and thought it suitable to leave the resolution of procurement issues to his Personal Assistant. Mr Mianich in examination could offer no comfort that he took any steps to correct the issues when they were raised with him first by Ms Pember in August 2017, and then again by Ms Yan on 21 February 2018.
97. Mr Mianich's failure to respond to Ms Yan is explicable on the basis that the email was directed primarily to Mr Richards, and Mr Mianich's attention was, understandably, focussed on other matters between 21 and 26 February 2018 (refer to **Part 2.4 – Final Days**). However, it is difficult to understand how Ms Pember's email to him in August 2017, forwarding her correspondence with Mr Mileham, could go apparently unheeded.
98. However, the engagement of Marple Bridge can be a point of reflection for the City. It can and should use this experience as an opportunity to improve its processes. Some of those improvements – for example, the centralisation of procurement at the City – are underway. Whatever system is adopted by the City it must be a robust one. Strong leadership, effective supervision and proper governance are all critical factors to the success of any procurement framework. Without them, the tale of Marple Bridge will simply repeat itself in some other context.

## Findings

### Finding 2.3.4 – 6

The Inquiry did not find any wrongdoing on the part of Marple Bridge or Mr Aberle.

### Finding 2.3.4 – 7

The Inquiry finds the following:

- i. Numerous City officers from the CEO down failed to follow proper procurement processes in the initial and ongoing engagement of Marple Bridge.
- ii. The procurement of Marple Bridge was poorly managed, and inadequately supervised, which allowed SSJ procedure exemptions to be used in circumstances where they should not have been.
- iii. There were efforts within the City to retrospectively justify the engagement of Marple Bridge, in circumstances where flawed reasoning was relied on.
- iv. There was a failure in the City's leadership to take responsibility for the poorly managed procurement of Marple Bridge, which poor management was only resolved by the initiative and diligence of officer-level employees more than 12 months after Marple Bridge was initially engaged.

## Refurbishment of Council House

### Introduction

1. This matter is about the refurbishment of the ground and lower ground floors of Council House (Council House Project). It is a tale of poor planning, poor programming, poor communication, and poor leadership, and the attendant delays and dysfunction that resulted.
2. Council House, located at 27-29 St Georges Terrace in Perth, is the primary premises from which the Administration of the City of Perth (City) and the Perth City Council (Council) operate. It is, and has been since 8 December 2006, a heritage listed building.
3. On 19 December 2017, Council approved the re-allocation of \$300,000.00 from the customer experience centre and customer relations management capital works budget (CW2195) to the refurbishment of the ground floor of Council House.<sup>461</sup>
4. A Request for Tender (RFT) for the refurbishment works was advertised in “*The West Australian*” newspaper on 17 February 2018. It had a closing date of 8 March 2018.<sup>462</sup>
5. The RFT described the scope of works generally as:
 

*“Design and construct the refurbishment of the Ground floor and security upgrades to the Lower Ground floor of Council House as per the City requirements. Details for each floor are below. The available project budget is \$300,000.00. Practical completion must be achieved by 6 June 2018”.*
6. The works relating to the ground floor were further detailed as follows:
 

*“Ground Floor*

*Required changes include:*

  1. *Disassembly, removal and disposal of the Concierge Counter (Figure 1.1 refer to RFT 113-17/18 document).*
  2. *Disassembly, removal and disposal of the Customer Services Counter and all partitions (attachment1 refer to RFT 113-17/18).*
  3. *Make good any damage occurred as a result of the removals in the areas of the current Concierge Counter and Customer Services Counter, including floor refurbishment, electrical and mechanical services, paint, etc. according to the agreed design.*
  4. *Supply and install a new Concierge and Customer Services Counter as show [sic] in the concept design. As a minimum; the required material should be top quality timber and marble. The final design and shop drawings shall be provided by the contractor and subject to the City’s approval.*
  5. *Provide options/solutions for the new security barriers/gates system as per concept design.*
  6. *Supply and installation of security barriers/gates system”.*

7. The works relating to the lower ground floor were also detailed as follows:
- “Lower Ground*
- Required changes include:*
- 1. Provide options/solutions for the new security barriers/gates system as per concept design (Figure 2 refer to RFT 113-17/18 document).*
  - 2. Supply and install the agreed security barriers/gates system (attachment 2 refer to RFT 113-17/18 document).*
  - 3. Make good any damage occurred as a result of the works”.*
8. In general terms, it is fair to describe the scope of works as a fit out, a description adopted by some witnesses before the Inquiry.<sup>463</sup>
9. The RFT also sets out a project timeline to which the City expected a successful proponent to work. That timeline provided:<sup>464</sup>
- “PROJECT TIMELINE*
- Tender Close 08 March 2018*
- Appointment of Contractor 15 March 2018*
- Program I Lead time 22 March 2018*
- Schematic Design report due 29 March 2018*
- Design Development- final design due 05 April 2018*
- Final design approved by the City(\*) 11 April 2018*
- Construction 11 April 2018*
- Practical Completion 06 June 2018*
- (\*) For the final design, make sure to provide all relevant Certifications and Building Permit”.*
10. As it transpired, despite the tender documentation suggesting a contractor would be appointed on 15 March 2018, and despite it indicating a date for practical completion of 6 June 2018, in fact a contractor was not appointed until 13 April 2018 and the works were not certified as complete until 20 December 2018.

## Timeline

2017	19 December	Council approved the re-allocation of \$300,000.00 to the refurbishment of the ground floor of Council House.
2018	17 February	The City advertised the tender for the refurbishment works with a timeline including “ <i>Tender Close 08 March 2018</i> ”; “ <i>Final design approved by the City 11 April 2018</i> ”; “ <i>Construction 11 April 2018</i> ”; and “ <i>Practical Completion 06 June 2018</i> ”.
	13 April	The City entered into a contract with MG Group for the tender.
	13 April	The City’s Principal Statutory Planner advised the Project Officer for the project that all works to Council House required planning approval and the building was heritage listed.
	18 June	The City Architect advised the Project Officer (on or around this date) that the project should be stopped until development approval was in place, because the proposed materials for the reception desk were unacceptable from a heritage perspective.
	27 June	An incomplete application for development approval was submitted to the Development Approvals Unit.
	21 August	A development approval application was sent to the Western Australian Planning Commission (WAPC).
	20 September	The WAPC granted development approval subject to conditions.
	25 September	The State Heritage Office endorsed the drawings and plans for the Council House Project.
	26 September	The City obtained the approvals and permit to undertake the Council House Project.
	20 December	The works were certified as complete.

## Issues considered by the Inquiry

11. The process leading to the refurbishment of Council House, and the delay to the commencement and completion of that project, raise a number of issues within the Inquiry’s Terms of Reference, particularly within paragraphs A.1(i), A.3(iii) and A.3(v).
12. Broadly, those issues are:

- why the officers responsible for the Council House Project failed to obtain development approval, heritage advice, and a building permit for the refurbishment, before commencing the project;
- whether appropriate pre-tender steps were taken to properly scope and programme the project to ensure it was deliverable within the 2017/2018 financial year;
- whether the officers responsible for the Council House Project were appropriately qualified and trained for the role and supported by senior staff within the City; and
- whether there were adequate, or any, policies and procedures in place to facilitate the timely completion of capital works projects.

## Investigation by the Inquiry

### Legislative framework for development approval

13. Before detailing what occurred during the project, it is useful to understand the planning framework within which the refurbishment of Council House should have, and eventually did, take place.
14. Council House is located within the City.
15. The City is subject to two planning schemes.
16. The first planning scheme, administered by the City, is a local planning scheme called City Planning Scheme No. 2 (CPS2). CPS2, as its name suggests, covers the City. The second planning scheme, administered by the Western Australian Planning Commission (WAPC), is the Metropolitan Region Scheme (MRS).
17. Generally, a proponent of a development in the City is required to obtain development approval under both schemes, consistently with the provisions of the *Planning and Development Act 2005*.<sup>465</sup>
18. A “development” for the purposes of the *Planning and Development Act 2005* includes “the development or use of any land including any demolition, erection, construction, alteration of or addition to any building or structure on the land”.<sup>466</sup>
19. That phrase would capture aspects of the refurbishment of Council House as outlined in paragraph 5-7, including particularly the installation of security gates.
20. The requirement to obtain development approval under the CPS2 and the MRS is removed when the proponent is the City itself and the development is a “public work”, as defined in the *Public Works Act 1902*.<sup>ai</sup>
21. However, while approval is not required in those circumstances, the City must nonetheless undertake, construct or provide the relevant public work having regard to the:
  - purpose and intent of the CPS2 and the MRS; and
  - the orderly and proper planning, and the preservation of the amenity, of the City.<sup>467</sup>
22. In this respect, the Inquiry received evidence from Ms Margaret Smith, Manager, Development Approvals, that the City had adopted an approach of requiring the City to apply for development approval even in circumstances where it is, strictly, exempt from doing so.<sup>468</sup>
23. However, to the Inquiry’s knowledge, informed by the evidence of witnesses, that approach was not, at the time of the Council House Project, codified in a formal policy or procedure.<sup>469</sup> It was later promulgated verbally, and in the form of a memorandum, among members of the Planning and Development and Construction and Maintenance directorates in June and July 2018, after issues with the Council House Project were identified.

ai The list of what constitutes a public work is lengthy and broad and is set out in s 2 of the *Public Works Act 1902* – it includes buildings for public office (s 2(e)) and works incidental to buildings for public office (s 2(zb)); *Planning and Development Act 2005* s 6(1).



24. It is possible, given the extensive definition of “*public work*” in the *Public Works Act 1902*, that some or all of the refurbishment development within Council House would, or might, be a public work within the meaning of that term, exempting the City from the requirements of the *Planning and Development Act 2005*.
25. However, it does not appear that at any time anyone within the City took advice on whether, as a matter of fact and law, that was so. Moreover, as was discovered during the course of examinations, witnesses in fact had little understanding of the concept of public works for the purposes of the *Public Works Act 1902*.
26. Therefore, in the absence of an exemption being considered and applied, development approval for the works the subject of the refurbishment was required under the *Planning and Development Act 2005*. As described later in this Section, that approval was not obtained until well after the works had commenced.

#### Legislative framework for heritage advice

27. Council House is listed on the State Register of Heritage Places kept by the Heritage Council of Western Australia under the provisions of the *Heritage Act 2018*. It is also on the CPS2 Heritage Register kept by the City. Before the commencement of the *Heritage Act 2018*, a similar regime was in place in respect of Council House under the provisions of the *Heritage Act of Western Australia 1990*. It applied at the time of the Council House Project.
28. Without descending into the detail of the provisions of those statutes, which is considerable, the general effect of those provisions, both then and now, is that before developments that might affect property listed on the register are progressed by a decision-making authority (relevantly, the WAPC), they must be referred to the Heritage Council for its advice.<sup>470</sup> This is so regardless of whether the works to be carried out are “*public works*” or not.
29. As with the delay in lodging an application for development approval, the referral of the Council House Project to the Heritage Council for advice was also not done until well after the works had been commenced.

#### Legislative framework for building permits

30. In addition to development approval and heritage advice, where a proponent of a development wishes to undertake “*building work*”, that proponent is also required to obtain a building permit under the *Building Act 2011*.
31. By section 9 of that Act, a person must not do building work unless a building permit is in effect for the building work. The phrase “*building work*” is defined in section 3 and includes the renovation, alteration, extension, improvement or repair of a building or an incidental structure.

32. That definition would incorporate most aspects of the Council House Project. Accordingly, works the subject of that refurbishment could not lawfully take place without a building permit being applied for and granted.
33. By section 14 of the *Building Act 2011*, a person may apply for a building permit. The formal requirements of an application of that type are set out in section 16, supplemented by the matters prescribed in regulation 16 of the *Building Regulations 2012*.
34. By section 20(1), a “*permit authority*” – which in the case of Council House is the City – must grant a building permit if it is satisfied that, among other things, the applicant for the permit has obtained each approval for the work required (if any) under the *Planning and Development Act 2005*.<sup>471</sup> Retrospective granting of a building permit can – as eventually happened here – occur, although it is fair to say that is not best practice, nor strictly in keeping with the intention of the *Building Act 2011*.
35. However, even though a retrospective grant can be made, before an applicant can be granted a building permit for building work constituting a “*development*”, the applicant must have first obtained development approval under the provisions of the *Planning and Development Act 2005*.

### Witnesses

36. The Inquiry interviewed, and held private and public hearings, involving 14 witnesses over several days in the course of investigating this matter. The positions given below for employees are the positions they held at the time of the events described in this Section:
37. The Inquiry heard from the following members of the Executive Leadership Group (ELG):
  - Mr Paul Crosetta, Director, Construction and Maintenance. As Director, Mr Crosetta was ultimately responsible for capital works projects in the City, which included the Council House Project. Mr Crosetta gave helpful evidence regarding processes and procedures governing capital works projects and was critical of some aspects of the processes that were followed at the time of the refurbishment. However, he claimed to know little about the details of the Council House Project and was unwilling to take responsibility for any of the issues that arose. In his view, the failures of the project were failures of those at an officer level. His evidence regarding budget carry-forwards, described below, was inconsistent with City employees who worked beneath him, but nevertheless credible from his perspective as a member of the ELG.
  - Mr Martin Mileham, Chief Executive Officer (CEO). Mr Mileham’s evidence was brief and confined to the ordinary process for undertaking capital works projects and the effect of carry-forwards. Mr Mileham suggested that he viewed carry-forwards as more of a project management issue. He believed projects need not be completed within a particular financial year, but that they did need to be adequately programmed and scoped.<sup>472</sup> As described later, this evidence is not consistent with the experience of those at officer level, and may indicate a breakdown in communications, or a failure to clearly articulate expectations.

- Ms Rebecca Moore, Director, Community and Commercial Services. Ms Moore was a candid and forthright witness on this issue, although her evidence on the topic was of marginal utility given her limited role in the matter. Ms Moore did, however, confirm her view – which she understood to be shared by those within her directorate – that budget carry-forwards should be avoided.
- Ms Erica Barrenger, Director, Planning and Development. Ms Barrenger was a reliable witness although, like Ms Moore, she had limited direct involvement in the Council House Project. She did however give useful evidence as to the tension that existed between her directorate (Planning and Development) and the Construction and Maintenance Directorate, the relative lack of cohesion between those units, and her directorate’s frustration (mirrored by the evidence of Ms Smith) with what she saw as the ongoing failure of the Construction and Maintenance Directorate to engage with Planning and Development in respect of capital works projects.

38. In addition to the ELG, the Inquiry also heard from Mr Daniel Richards, Finance Manager, who gave evidence as to the City’s general view, promulgated from an executive level down, that carry-forwards should be avoided. While Mr Richards’s evidence was limited to this issue, he was a sophisticated and reliable witness whose evidence is accepted.

39. The Inquiry also heard from employees at the City involved in the Council House Project, namely:

- Ms Alyce Higgins, Manager, Customer Service from 2016 to the present. Ms Higgins was a very good witness of truth who had detailed knowledge of the broader context within which the Council House Project took place. Prior to and during the project, Ms Higgins represented the “*client*” – that is, the business unit in the City (Customer Service) on whose behalf the Construction and Maintenance Directorate were carrying out the refurbishment. Her recall was impressive, particularly given the passage of time. Ms Higgins gave evidence about working alongside Mr Kirk Linares, during the pre-tender phase of the project, and her later involvement with certain design decisions made during the project. The Inquiry accepts her evidence.
- Ms Paola Mograve Duran, the Project Officer within the Properties Unit, who was tasked with managing the Council House Project. Ms Mograve had trained as an architect in South America and was employed by the City, although not in that capacity, on a temporary contract. Ms Mograve had no Australian project management experience prior to being engaged to oversee the refurbishment. Ms Mograve presented as a witness of truth, although it became apparent during her evidence that she was out of her depth on the Council House Project, had little to no true understanding of the need for and requirements of development and other approvals in the context of local government projects, and was heavily reliant on the advice of others (in particular, Mr Linares).

- Mr Linares was the Acting Manager, Properties in the Construction and Maintenance Directorate until 30 April 2018, when he was substantively appointed to the role. Mr Linares was Ms Mograve's supervisor. At times, he did not present as a forthcoming witness, and until confronted with evidence to the contrary effectively downplayed his involvement in the Council House Project. He did not readily accept propositions that seemed indisputable and at times gave improbable and conflicting evidence. The Inquiry approaches his evidence with caution, relying on it only when independently corroborated.
- Mr Lachlan Bugarin, Project Manager, Construction and Maintenance Directorate. Mr Bugarin worked alongside Ms Mograve and assisted her where he could. He raised a number of issues for the Inquiry's consideration. Mr Bugarin did not like Mr Linares. He frequently made comments critical of Mr Linares's management style and personality. While the Inquiry has no reason to doubt Mr Bugarin's candour or honesty, his recollection of events and his assignment of responsibility for acts and omissions may be coloured by his views about Mr Linares. For that reason, the Inquiry approaches his evidence with some caution.
- Ms Smith, Manager, Development Approvals, Planning and Development Directorate. Ms Smith was a sophisticated and reliable witness. She was candid in her criticism of the processes and procedures of the Construction and Maintenance Directorate, as well as the siloed mentality between the different directorates in the City. It was Ms Smith who first raised to an executive level, and documented, the issues with the ground floor refurbishment. Ms Smith gave helpful evidence about the planning context within which the Council House Project took place.
- Mr Sergio Massimini, Senior Project Officer, Construction and Maintenance Directorate. Mr Massimini was an experienced Project Officer and his evidence was generally helpful regarding City processes and procedures. However, as he started work at the City on 18 June 2018, his evidence was of limited direct assistance regarding the early stages of the Council House Project.
- Mr Craig Smith, City Architect, Planning and Development Directorate. Mr Smith had limited involvement with the Council House Project and his evidence was therefore of limited utility. However, to the extent that he could assist he was a generally helpful witness.
- Mr Noel Robertson, Principal Heritage and Strategy Officer, Economic Development and Activation Directorate. Mr Robertson's evidence was also of limited utility. He was only involved in the heritage aspect of the project. He offered general evidence regarding heritage processes and procedures, which was useful background information for the Inquiry.

40. The Inquiry also heard from Mr Carlo Menchetti, one of the directors of Menchetti Consolidated Pty Ltd (MG Group), the company awarded the construction contract for the Council House Project. Mr Menchetti's evidence was of limited assistance. This is not a criticism of Mr Menchetti, it simply reflects the fact that MG Group was not privy to the operations of City. Although he was generally forthcoming in his evidence, he could only comment from a third-party perspective.

## Evidence obtained by the Inquiry

### Council House Project is conceived, and funds are re-allocated

41. The customer experience centre and customer relationship management system CW2195 budget was a 2017/2018 budget item from the Community and Commercial Services Directorate for the purpose of enhancing the customer service experience of the City. Prior to this, customer service operations within the City were decentralised.
42. Within the CW2195 budget, \$700,000.00 was allocated to the Customer Relationship Management System (CRMS) aspect of the works.<sup>473</sup> The CRMS was, in effect, a centralised database of customer information which would, in due course, be used as a single reference point for customer interactions with the City.
43. The CRMS was to be delivered in three phases over a three-year period, commencing in 2017/2018 and including:
  - a pilot programme of the CRMS;
  - integration of the CRMS into the City; and
  - distribution of the CRMS throughout the City.
44. At the same time as the development of the pilot phase of the CRMS, level 5 of Council House was refurbished to create a centralised customer experience centre (also funded from the CW2195 budget). Previously, customer service operations were housed on separate floors of the building which, as Ms Higgins explained, was inefficient.<sup>474</sup>
45. At that point, in 2017, it was proposed to refurbish the ground floor of Council House in the following financial year, after the CRMS works had been completed.
46. The CRMS and the upgrade to Level 5 were scheduled for completion in the 2017/2018 financial year. At about the same time, an information technology (IT) core systems review was conducted into how the City's systems would or could work better together. The review included the CRMS, along with IT systems the City used as part of its everyday business activities.<sup>475</sup> At an early stage the review determined that, because of the interoperability of various IT systems, the roll-out of the 3 phases of the CRMS should be paused at the pilot stage until the review was completed.<sup>476</sup>

47. By this stage, only \$250,000.00 of the \$700,000.00 allocated to the CRMS had been expended, with an additional spend of \$150,000.00 anticipated for the balance of the 2017/2018 financial year. That left \$300,000.00 unspent and, owing to the pause on CRMS integration and distribution, notionally unallocated.
48. In those circumstances, Ms Higgins formed the view that the funds could be re-allocated to another project within the financial year, or could be returned to the City for re-allocation in the following financial year's budget.<sup>477</sup>
49. Ms Higgins, with Ms Moore's approval, advocated for and prepared advice to Council to have the funds re-allocated to the Council House Project. That re-allocation was considered and approved by Council in December 2017.<sup>478</sup> The effect of that decision was to bring the proposed completion of the ground floor refurbishment forward into the 2017/2018 financial year.

#### **Mr Linares's involvement in the Council House Project before budget re-allocation**

50. The decision to re-allocate funding was not made in a vacuum. Ms Higgins told the Inquiry that the decision was taken following discussions in October or November 2017 with Mr Linares about the feasibility of completing the Council House Project within the 2017/2018 financial year.<sup>479</sup>
51. Mr Linares said that he did not recall having any discussions about the Council House Project with Ms Higgins or anyone else before the budget re-allocation in December 2017. He said his first involvement was when Ms Moore told him that \$300,000.00 had been moved from the Customer Services Unit budget to the Properties Unit budget.<sup>480</sup>
52. Ms Higgins's evidence to the contrary is supported by a number of emails, including an email from her to Mr Linares on 19 October 2017, in which Ms Higgins provided four alternative drawings of the proposed ground floor refurbishment to Mr Linares.<sup>481</sup> Once Mr Linares was shown these emails in the course of his examination, he accepted that he must have discussed the project with Ms Higgins at that time, but could not recall the discussions.<sup>482</sup>
53. An email from Mr Linares to Ms Higgins on 13 November 2017 suggests that Ms Higgins and Mr Linares met to discuss the project around 14 or 15 November 2017.<sup>483</sup> As noted above, while Mr Linares said that he did not recall the emails or any meetings, upon being shown the emails he accepted that discussions would have taken place.<sup>484</sup>

54. Ms Higgins, who had a clear recollection of the discussions, told the Inquiry that:
- she discussed the proposed Council House Project with Mr Linares, by reference to the drawings which had been prepared by the City architect, Mr Smith;<sup>485</sup>
  - she asked Mr Linares whether the project was deliverable in the 2017/2018 financial year and Mr Linares said it was;
  - she told Mr Linares that if the project was not deliverable by June 2018, she would prefer to give the money back to the budget;
  - she and Mr Linares discussed the heritage implications of the project, and in particular that heritage approval would be required;<sup>486</sup>
  - Mr Linares provided a timeline for the project and said it could be completed in the three-month period between April – June 2018, which timeline was reproduced in the RFT that went to market;
  - the timeline and cost were based on Mr Linares’s experience in these sorts of matters; and
  - Ms Higgins had no expertise in construction or programming and was reliant on Mr Linares in respect of these matters.
55. Mr Linares generally had no reason to quibble with Ms Higgins’s recollection. However, he disagreed with some aspects of Ms Higgins’s evidence. In particular, he initially disputed the proposition that a manager (that is, Ms Higgins) would inquire, before the project was funded and approved, as to whether the project could be completed within the financial year. That is, he initially disputed Ms Higgins’s evidence as set out at paragraph 54 second and third points. Mr Linares said he could not understand why a manager would ask those things, although when it was suggested to him that the manager may have an interest because the manager would wish to use the facility being constructed, he reluctantly conceded that *“it would be arrogant for me to say no, it is something I don’t know”*.<sup>487</sup> To the extent that there is an evidential dispute between Ms Higgins and Mr Linares on this issue, Ms Higgins’s evidence, which was clear and cogent in its recollection, is preferred.
56. Following her discussions and exchanges of correspondence with Mr Linares, Ms Higgins advised Ms Moore to recommend to Council that it re-allocate the money to the Council House Project. She said she made this recommendation in reliance on Mr Linares’s advice.<sup>488</sup> As Ms Higgins had no project management or delivery experience herself, the Inquiry accepts she relied on Mr Linares.
57. On 19 December 2017, Ms Moore emailed Ms Higgins, in anticipation of the Council Meeting that evening, asking for clarification regarding how the \$300,000.00 budget was determined. Ms Higgins responded that, as to the capital cost component of \$200,000.00, *“we used prior works as a guide to come to these figures”*.<sup>489</sup> In evidence, as noted above, Ms Higgins said that information came from Mr Linares.



58. Mr Linares accepted that between him and Ms Higgins he was the one better placed to know about estimating the time for and the cost of the Council House Project.<sup>490</sup> The Inquiry finds that to be the case and that it was no part of Ms Higgins's role or expertise to estimate those types of things.
59. However, despite being asked, and given the opportunity to explain, it is not entirely clear on what basis Mr Linares determined that the Council House Project could be delivered in three months or for a budget of \$300,000.00 (or \$200,000.00, insofar as the capital component is concerned).
60. There is evidence before the Inquiry to suggest Mr Linares was to obtain a quote for the works, but there is nothing to suggest that quote was obtained. In evidence, Mr Linares said that he did not remember who (if anyone) obtained a quote for the project, or how it was obtained.<sup>491</sup> He suggested that might have been a task allocated to Ms Mograve.
61. When asked whether it could be the case that rather than obtain a quote he estimated the cost of the works by reference to other comparable work, he said that he had done that type of estimate before, that the approach was common, but it was not his practice.<sup>492</sup> Given this evidence, Ms Higgins's evidence that Mr Linares made the estimate based on *"previous works that he had undertaken at the City that had similar requirements"*,<sup>493</sup> and Ms Higgins's email to Ms Moore on 19 December 2017 to that effect, the Inquiry finds that it is more likely than not that Mr Linares used this approach to estimate the quantum of and timeline for the Council House Project.

#### **City of Perth fails to obtain appropriate approvals before the works are tendered**

62. Although Mr Linares does not recall their discussions, it is clear from Ms Higgins's evidence that as at November 2017, Mr Linares was at least aware that heritage advice would be required. However, Mr Linares's evidence indicates that he did not understand, as at late 2017 and early 2018, what was involved in obtaining heritage approval. He was under the impression that it was a process that could be completed internally through a heritage officer.<sup>494</sup> That understanding, as Mr Linares now knows, is incorrect.
63. Mr Linares's 2017–2018 misunderstanding of the requirements for and process relating to heritage advice is not unique, nor was it confined to heritage. Ms Mograve, like Mr Linares, similarly had little to no understanding of the process in the context of local government projects, either then or now. It appears that, as at November 2017 – April 2018, neither had been trained in the requirements of and process for obtaining development approval, heritage advice and building permits.

64. That said, it is remarkable that someone in the roles held by Mr Linares and Ms Mograve at the time, Manager, Properties and Project Officer, respectively, would not be aware of those sorts of approval processes, or would be permitted to proceed to embark on a tender process for capital works projects with understandings which, as the witnesses said, were incomplete or inaccurate. The Inquiry finds that state of affairs reflects failures of training, leadership and communication within the City at the time. The consequence of those failures is that it is likely that those officers' lack of understanding led directly to their failures to obtain development approval, heritage advice and a building permit before the works were tendered.
65. To the best that the Inquiry can determine, little happened in respect of the Council House Project between 19 December 2017, when Council approved the Finance and Administration Committee's recommendation that \$300,000.00 be re-allocated from the CW2195 budget to the Council House Project, and late January 2018.
66. In consequence, on 31 January 2018, Ms Moore emailed Mr Linares,<sup>aj</sup> copied to Mr Crosetta, writing:
- "Hi Kirk*
- The quotes for ground floor were due to be advertised 2 weeks ago. I and Alyce [Higgins] have asked for an update and also for the project plan for delivery.*
- This was approved by council in December and needs to be delivered by June.*
- Can you please confirm when this will be done and the project plan and delivery schedule ...".*
67. On 1 February 2018, after a follow-up email from Mr Crosetta asking for a response "today as a matter of urgency", Mr Linares responded as follows:
- "Rebecca*
- We've been working on the procurement plan for this project in order to simplify tender, specs are now ready and will be taken today to Contracts for advertisement on the weekend. Paola [Mogrove] will come up to Alyce [Higgins]'s office today to explain plan specifics".*
68. On 17 February 2018, the City advertised the tender.<sup>495</sup>
69. It is uncontroversial that by this stage no steps had been taken by the City to obtain development approval, heritage approval or a building permit for the works. Notwithstanding this, the project was permitted to go to tender with an ambitious timeframe which did not incorporate time for those approvals or the permit.
70. The failure to obtain them before going to tender, or alternatively to incorporate time for them within the tender timeframe, rendered the proposed timeframe absurd. As Mr Crosetta candidly observed, heritage approval alone could take up to eight weeks to obtain,<sup>496</sup> and inserting eight weeks into the planned programme would completely disrupt it.

aj At that time, Mr Linares was the Acting Manager, Properties within the Construction and Maintenance Directorate and reported to Mr Crosetta.

### City of Perth fails to obtain appropriate approvals, advice and a permit before the works are contracted

71. The failure to obtain approvals, advice and a permit before the works were tendered is regrettable and undoubtedly contributed to delays later suffered by the Council House Project.
72. For reasons which are explained below, the failure to obtain those things before the works were contracted is, in the Inquiry's view, and in the circumstances set out below, very difficult to understand and impossible to excuse.
73. On 13 April 2018, the City entered into a contract with MG Group for Tender 11317/18 (that is, the Council House Project).
74. At about the same time, on 12 and 13 April 2018, Ms Mograve sent and received a number of emails to and from the City's Principal Statutory Planner and the City's Acting Principal Building Surveyor, in relation to planning matters.
75. The first was an email dated 12 April 2018, with the subject line *"Building Permit"*,<sup>497</sup> to which Ms Mograve received responses from both office holders.
76. The response from the Acting Principal Building Surveyor,<sup>498</sup> receipt of which was acknowledged by Ms Mograve,<sup>499</sup> attached an application for a building permit and advised Ms Mograve that she would require certification by a private building surveyor to apply for the permit.
77. The response from the City's Principal Statutory Planner enclosed links to the applications for development approval required under the CPS2 and the MRS.<sup>500</sup> In a later email sent the same day (13 April 2018) the planner also advised Ms Mograve that *"As previously advised all works to Council House and grounds require planning approval noting that the building and grounds are state heritage listed"* and that *"the DA [development approval] approval can therefore be expected to take 60 days"*.<sup>501</sup>
78. No cogent reason has been advanced for the failure by the City to progress those applications and obtain the relevant approval and permit.
79. Ms Mograve gave evidence that she could not recall what she did when she received the emails indicating the Council House Project would require development approval, but said she (erroneously) understood it was the builder's responsibility.<sup>502</sup> When asked whether she had any recollection of speaking to Mr Linares about approvals specifically, Ms Mograve said that she spoke to Mr Smith, the City architect, and then she spoke with Mr Linares who told her *"just go ahead with the project"*.<sup>503</sup>

80. Ms Mograve was also asked whether Mr Linares ever told her to complete the works and get approvals later, to which Ms Mograve responded *“Probably he did but I don’t remember exactly. I just remember, ‘Go ahead with the project as planned’.* When asked what she meant by *“probably he did”*, Ms Mograve said *“Because he say, ‘Go ahead with the project’, that is what I remember, was the word”*. Ms Mograve also said Mr Linares never told her *“not”* to go ahead with the works until she had approvals.<sup>504</sup>
81. Mr Linares was asked about this exchange, and about the emails Ms Mograve had received from the City’s Principal Statutory Planner and the City’s Acting Principal Building Surveyor. He had no recollection of Ms Mograve showing him or forwarding to him either the emails or the applications documents hyperlinked in the emails.
82. Mr Linares also had no recollection of the conversation he had with Ms Mograve described at paragraph 79-80.<sup>505</sup>
83. When Mr Linares was presented with these emails and told that as a matter of fact development approval, heritage advice and a building permit were not obtained at this point in April 2018, Mr Linares could not offer an explanation about why Ms Mograve did not act upon the contents of the emails. He rejected the assertion that he would have advised her to go ahead with the works without approvals. On the contrary, he said that although he had no recollection of the discussion, if it happened, he would have told Ms Mograve to obtain the approvals.<sup>506</sup>
84. The Inquiry finds, on balance, that a conversation took place between Ms Mograve and Mr Linares about approvals following her receipt of the emails described at paragraph 75-77. The contrary proposition, that Ms Mograve, who insisted several times in evidence that she always sought the advice of and was reliant on Mr Linares, received the emails described and did not raise them with Mr Linares, or simply ignored them, strains credulity.
85. During his examination, Mr Linares was asked whether, if he had told Ms Mograve to obtain the approvals, he had any reason to think she would not have acted on that advice, particularly as it was consistent with the advice she had received in the emails described at paragraph 75-77.
86. In this respect, Mr Linares offered that *“the pressure [Ms Mograve] was under was enormous”*<sup>507</sup> and that not obtaining the approvals would have alleviated this pressure, because obtaining approvals meant *“she has to do approvals plus deliver the project ... so two things to think [about]”*.<sup>508</sup> However, he also conceded that the only pressure on Ms Mograve to deliver the project was pressure coming from him.<sup>509</sup>
87. As noted above, an indisputable fact is that development approval, heritage advice, and a building permit were not obtained at this time. Accordingly, on the state of the evidence the Inquiry must decide between two competing narratives. The first is that Ms Mograve received the emails at paragraph 75-77, discussed them with Mr Linares, was told by him to obtain the approvals, and ignored that instruction. The alternative is that Ms Mograve received the emails, discussed them with Mr Linares, was told by him to *“go ahead with the works”*, and complied with that instruction.

88. Faced with those competing narratives the Inquiry finds the second version more probable. As noted above, the Inquiry is cautious about accepting Mr Linares's evidence without independent corroboration. Furthermore, the second narrative is consistent with Ms Mograve's evidence. It provides a reasonable explanation as to why Ms Mograve failed to act on the emails from the City's planning and surveying officers. It is also consistent with Ms Mograve's tendency to rely on the advice of Mr Linares, and it is consistent with the fact that the approval, advice and permit was not obtained at that point in the project. The alternative version, that Ms Mograve independently ignored the advice of the planning and surveying officers, and disobeyed a direction from her line manager, is inherently less probable.
89. Mr Linares's motivation for instructing Ms Mograve in this way is also explicable. The Inquiry finds Mr Linares's motivation arose from, or was materially contributed to by, the pressure on Mr Linares to have projects completed by the end of financial year, and from his incomplete and erroneous understanding as at early 2018 of the need for development approval, heritage advice and building permits. Mr Linares's evidence regarding the pressure to have projects completed by the end of the financial year was cogent and consistent, and was supported by evidence given by others. That combination of pressure and lack of appreciation for the importance of regulatory control of developments readily explains why Mr Linares would have directed Ms Mograve as the Inquiry finds he did.

#### **Approvals and permit are eventually and retrospectively obtained**

90. The first, albeit very indirect, step taken towards obtaining approvals and a permit was that, in the week prior to 17 April 2018, Ms Mograve<sup>510</sup> had a discussion with a representative from SMEC,<sup>511</sup> an infrastructure consulting firm, inviting a quote to provide an accessibility audit, among other documents, to the City. The accessibility audit was necessary to apply for a building permit.
91. Consistently with the emails she had received from the City's planning and surveying officers, Ms Mograve noted in her email to the representative from SMEC that all works on Council House required planning approval and that the building is state heritage listed.<sup>512</sup>
92. As requested, SMEC provided a quote dated 18 April 2018, which was accepted by the City,<sup>513</sup> and which included:<sup>514</sup>
- providing an accessibility audit of the ground floor and lower ground floor and issuing a report to the City outlining suggested improvements for accessibility;
  - providing a design certification, which included providing a building code compliance report, issuing a BA3 and assisting the City with an application to Council for a building permit; and
  - "*Construction and finalisation*", including collating documentation and issuing a BA17 Certificate of Construction Compliance and assisting with an application to Council for occupancy.

93. The final plans for the Council House Project were due to be finalised by 26 April 2018. However, this timeframe was not achieved, because the City did not provide SMEC with the information required for it to write its report and recommendation. Specifically, SMEC was not informed that security gates would be installed and were not provided with any information referencing them.<sup>515</sup>
94. On 8 June 2018, Mr Paul Turney of SMEC emailed Ms Mograve with the Certificate of Design Compliance, BA3, for the City to undertake the Council House upgrade.<sup>516</sup> The BA3 attached the accessibility review of Council House dated June 2018, prepared by O'Brien Harrop Access, on instruction from SMEC.
95. Other than this, by June 2018, no other steps had been taken towards obtaining any other approvals or permit, despite demolition works being underway.
96. On 8 June 2018, Ms Smith emailed Ms Barrenger criticising the work that had been completed and stating that it was *"just another example of what goes wrong when our own works are not the subject of the required planning, heritage and building approvals"*.<sup>517</sup> Ms Barrenger's response, on 10 June 2018, referred to a memorandum Ms Smith was drafting regarding *"DAU [Development Approvals Unit] and DPD [Planning and Development Directorate] concerns with CMD [Construction and Maintenance Directorate] not getting approvals which they are required to"*.<sup>518</sup>
97. That memorandum was finalised on 11 June 2018 and eventually circulated, including to Mr Mileham, Mr Crosetta, Mr Linares and Ms Barrenger.<sup>519</sup> The issues in it were discussed at a meeting whose participants included Mr Linares on 14 June 2018.<sup>520</sup>
98. On Friday, 15 June 2018, Mr Dewald Gericke, the City's Principal Statutory Planner, and Mr Linares met and discussed the issue. Following this, on Monday 18 June 2018, Mr Gericke provided written advice by email to Mr Linares regarding the process and timeframe required for obtaining development approval (including the process and timing of heritage advice).<sup>521</sup>
99. The email exchange between Mr Gericke and Mr Linares suggests that:
  - consistently with Mr Linares's unfamiliarity with planning and heritage frameworks as disclosed during examinations, Mr Linares was not aware of which documents would be required to progress a development approval application for the works;
  - Mr Linares was not aware of the timeframe from submission to finalisation of development approval;
  - Mr Linares was not aware of what material was appropriate to use for the reception desk aspect of the project, suggesting unfamiliarity with the City's Conservation Management Plan;<sup>ak</sup> and
  - Mr Linares had not taken any steps towards obtaining development approval or seeking heritage advice prior to June 2018.

ak In evidence, Mr Linares said he knew the City of Perth had a Conservation Management Plan, but it was apparent he was not aware of its detail: Transcript, K Linares, private hearing, 17 October 2019, p 7.

100. In the week of 18 June 2018, Ms Mograve was also advised by Mr Smith, the City Architect, that the Council House Project should be stopped until development approval was in place, because the proposed materials for the reception desk were unacceptable from a heritage perspective.<sup>522</sup>
101. On 28 June 2018, Ms Smith noted that at a meeting a “*couple of weeks ago*” between her, someone from Properties and the CEO, it was agreed that works would not proceed until development approval had been received in accordance with “*advice from State Heritage*”.<sup>523</sup> The Inquiry infers the person “*from Properties*” was Mr Linares, given the meeting on 14 June 2018 noted at paragraph 97.
102. On 18 June 2018, Mr Massimini, Senior Facilities and Projects Officer, commenced employment with the City. To the best the Inquiry can determine, it was not until Mr Massimini took over the Council House Project that steps were taken to obtain development approval and heritage advice.
103. The first step towards an application for development approval was taken on 27 June 2018, when an incomplete application for development approval was submitted to the Development Approvals Unit (DAU).<sup>524</sup> Mr Massimini was listed as the contact person.
104. The development applications (under both the MRS and the CPS2) were accepted by the DAU on 29 June 2018.<sup>525</sup>
105. On 10 July 2018, Mr Roberto Colalillo of the DAU advised Mr Massimini that the application was deficient, telling him that the City’s Design Review Group had resolved to defer providing any recommendation to the WAPC until the following documentation was provided:<sup>526</sup>
  - an Access Statement;
  - a Heritage Impact Assessment Report; and
  - comprehensive plans of all work undertaken and envisaged.
106. Mr Colalillo advised that these standards were the minimum that would be required to assess and determine, given the heritage significance of Council House.
107. On 17 July 2018, a Heritage Impact Assessment was provided to the City by Griffiths Architects.
108. A Heritage Development Application Assessment, dated 9 August 2018, was conducted. It broadly approved of the works, but stated that the current design and use of materials for the desk were not supported.<sup>527</sup> This was because:

*“... The design does not address the original design philosophy of engaging with local artisans to create furniture and fittings of high quality for the building as outlined in the Conservation Management Plan. The design, location and quality and use of materials has not been assessed in the HIA to determine if impacts are minimal, the design of furniture has not addressed the heritage values ...”*<sup>528</sup>



109. On 21 August 2018, the DAU referred the development approval application to the WAPC with the recommendation that it be approved, subject to conditions regarding the compliance with the Conservation Management Plan. The referral letter also stated that *“no building works should proceed prior to the City issuing a building permit”*.<sup>529</sup>
110. On 13 September 2018, the DAU accepted the City’s application for building permit (BA1).<sup>530</sup> This included the certificate of design compliance.<sup>531</sup>
111. On 20 September 2018, the WAPC granted development approval subject to conditions.<sup>532</sup> On 25 September 2018, the State Heritage Office endorsed the drawings and plans for the Council House Project.<sup>533</sup> On 26 September 2018, the City approved the plan in the SMEC/O’Brien Harrop accessibility audit review report.<sup>534</sup>
112. On 26 September 2018, three months after the projected completion date, and two and a half months after the development application was lodged with the DAU, the City finally obtained the approvals and permit to undertake the Council House Project.
113. As Mr Linares accepted,<sup>535</sup> this process should have been completed after the works were scoped, but before the works were tendered. To do otherwise, as happened here, is to set a project up for disruption and, ultimately insofar as timeframes are concerned, failure.
114. Timely progress through the approvals and permit process can only take place where a project has been properly scoped. Until that is done, a decision-making authority is unable to reach a considered and informed decision on a development approval or permit.
115. In this case, as described in the next part of this extract, not only were approvals and a permit not sought until very late in the Council House Project, the project itself suffered from, to adopt the language of Mr Mileham, being inadequately programmed and scoped, even before the project went to tender.

### Late changes to the tender and variations to the contract

#### Security gates

116. At some point between Ms Higgins’s discussion with Mr Linares in November 2017, and the RFT being released in February 2018, a decision was made to expand the scope of the tender specification to include the installation of security gates. Ms Higgins gave evidence that:
  - this was not part of the scope of the original project, as requested by the Customer Service Unit;<sup>536</sup> and
  - Ms Higgins was not aware of this addition to the scope of the project prior to it going to tender.<sup>537</sup>

117. Ms Higgins understood that the addition of installation of the security gates to the tender scope resulted from the security audit conducted by the Properties Unit in conjunction with Community, Amenity and Safety Business Unit, which sat within the Community and Commercial Services Directorate.<sup>538</sup> This evidence was supported by Mr Linares<sup>539</sup>.
118. It is less clear who decided to add the installation of the security gates to the scope of the tender. While Mr Linares said he could not remember requesting the addition of security gates to the tender scope,<sup>540</sup> Ms Mograve said that Mr Linares assisted her in preparing the tender and she was told by Mr Linares to add security gates to the tender in around January 2018.<sup>541</sup> Mr Linares conceded that Ms Mograve would not have added security gates to the tender without his instruction.<sup>542</sup>
119. Relevantly, there was no additional budget or timeline incorporated into the tender to accommodate the time and cost associated with installation of the security gates. At the very least, this decision to significantly expand the works should have been reflected in the timeline and cost of the works as stated in the tender.
120. Ms Higgins's evidence indicated<sup>543</sup> that at the time the RFT was released, Mr Linares was also aware of the following factors that would add to the timeline and cost of the proposed works:
- the building was heritage listed. This meant that there would be heritage implications of installing security gates and the additional time and expense that went with obtaining the relevant reports and approvals; and
  - the Customer Services Unit required that the works support equal access and inclusion, which would need to be reflected in planning and designs.
121. The failure to include accessibility requirements in the tender resulted in:
- a variation of the contract with MG Group to construct gates that would permit universal access; and
  - a variation in the desk design, which meant that the engagement of an additional contractor was required.
122. Annexed to the contract with MG Group was correspondence between it and the City. The matters raised in the correspondence indicated that key aspects of the project had not been finalised prior to the tender being issued. In particular:<sup>544</sup>
- The City and MG Group discussed where to source security gates, with particular emphasis being placed on finding a manufacturer which could provide the gates within a short timeframe.
  - MG Group alerted the City to the difficulty of coordinating various contractors and the importance of smooth coordination to achieve timely completion of the project.

- MG Group stated that they anticipated finishing the job by the last week of June, which was later than the initially scoped practical completion day 6 June 2018, but that *“the program is very ambitious and depends heavily on other parameters”*.<sup>545</sup>
- Mr Ramzi Ibrahim, Senior Contracts Officer at the City, said that City would endeavour to provide the final design of the counter and security gates by 23 April 2018. In the project timeline provided on the tender document, the final design was to be approved by the City by 11 April 2018. From April until June 2018, several iterations of the desk and gate designs were provided to MG Group. The final designs were provided following the accessibility audit.
- Mr Menchetti gave evidence that the design for the gates was not finalised until the end of June or mid-July.<sup>546</sup>

#### Contract is varied

123. On 31 May 2018, Ms Mograve issued a memorandum to Mr Crosetta, seeking approval to vary the contract with MG Group. The reason for the variation was the addition of a further accessible gate in accordance with the recommendations of an accessibility consultant and the City’s Disability Access Inclusion Group. The value of the variation was \$9,440.20.<sup>547</sup>
124. If the accessibility audit had been completed prior to the project commencing, as it should have been, its findings could have been incorporated into an original plan for the gates and the desk and the variation would not have been required. The most likely reason that the audit was not conducted prior to commencement of the Council House Project was pressure to have the project completed by the end of the financial year, the late addition to the tender of the security gates and the generally inadequate approach to the proper planning and scoping of the project by those involved.

#### New desk is procured

125. On 7 June 2018, Ms Mograve emailed Mr Linares confirming their discussion that while MG Group had submitted an initial price for furniture supply/joinery of the customer service desk as a result of changes *“during the course of the development for the final design of the counter”*, the desk design had changed from the initially quoted design and an additional procurement would be required. She stated that these changes resulted from requests from the Customer Services Unit and recommendations of the disability audit.<sup>548</sup>
126. While it is accurate in one sense to say these changes arose *“during the course of the development”* of the project, it is only so because that issue was not specifically identified and planned for pre-tender. The RFT should have included details about accessibility from the outset. If it had, there would have been no need for this additional procurement.

### Carry-forwards

127. All witnesses, to varying degrees, gave evidence that there was a culture within the City to not allow budget “*carry-forwards*”. This aspect of the City’s culture has been touched on, in the context of the pressure on Mr Linares and Ms Mograve to complete the Council House Project, but is dealt with in some more detail here.
128. In effect, the (unwritten) policy against carry-forwards meant that money that was allocated to a particular financial year had to be spent before the end of that financial year and not “*carry forward*”, unspent, into the next financial year.
129. Ms Moore and Ms Higgins gave evidence that the culture within the Customer Service Unit resulted from rigour in budgeting and the desire to deliver projects to ratepayers in the financial year promised, rather than from a specific and arbitrary budgetary aim to prevent carry-forwards.<sup>549</sup>
130. In the Construction and Maintenance Directorate, there seemed to be a perception, particularly at an officer level, that avoiding budget carry-forwards was important. In particular, Ms Mograve and Mr Bugarin said that Mr Linares emphasised the importance of reducing budget carry-forwards. Mr Bugarin said Mr Linares told him that “*you need to realise if you haven’t completed your projects you have failed*”.<sup>550</sup> Mr Linares did not recall saying these words to Mr Bugarin, but he agreed that he did convey that sentiment to his staff and was quite firm about it.<sup>551</sup> It reflected, in turn, the pressure placed on him by Mr Crosetta and the ELG.
131. Mr Linares had to report the status of projects to the City Administration’s financial management taskforce, which included, among others, the ELG and colleagues from finance, at monthly meetings. He said that if, at the end of the financial year, a project had a carry-forward, that was considered “*under-performance*” by the taskforce and the ELG.<sup>552</sup>
132. The City’s position on carry-forwards was a source of tension. That tension arose predominantly between those who oversaw the management of the City’s finances, much of which is derived from ratepayers, and those who had a closer understanding of the somewhat uncertain nature of capital works projects.
133. Mr Crosetta’s evidence about this is representative. He said although he was “*frustrated*” by carry-forwards, and acted under the direction of the CEO in an attempt to reduce them, if there was a reasonable basis for the duration of a project to extend beyond the end of the financial year, his view was a carry-forward would be valid.<sup>553</sup> He further stated that if a project officer believed a project could not be completed within the allocated time, he would expect that project officer to approach him and identify the issue.<sup>554</sup> Given Mr Crosetta’s extensive project management experience, this evidence is credible. However, there is a question as to whether, and to what extent, this sentiment was communicated to staff below management level. On the evidence before the Inquiry, it is open to doubt that communication occurred, given officer-level evidence that the pressure to complete was significant.

134. Regardless of the extent to which leadership intended to create an atmosphere in which carry-forwards were discouraged, or the objective existence of pressure to prevent carry-forwards, the reality was that officer level staff such as Ms Mograve and Mr Bugarin perceived there to be real pressure to do whatever necessary to prevent carry-forwards, even at the expense of the quality or cost of the project. Mr Linares echoed this in his evidence, where he said every manager will do as much as possible to go to that monthly meeting to say, “I’m okay”.<sup>555</sup>
135. In the context of the Council House Project, Ms Mograve perceived that she was under pressure to complete the works before the end of the financial year. In fact, as noted above, Mr Linares conceded “*the pressure [Ms Mograve] was under was enormous*”.<sup>556</sup> One example of the absurd position that the emphasis on carry-forwards created at an officer level was the request to the contractor by Ms Mograve, in June 2018, for the contractor to invoice the City for the entirety of the contracted works, including significant portions of works which had not been completed (and which would not be completed until December 2018), in order to “*to get all done before EOFY*”.<sup>557</sup> This behaviour, which reflects poor financial management, is not explicable, and was not explained in the evidence, other than as a response to the pressure from the City’s approach to carry-forwards.<sup>al</sup>
136. The Inquiry finds there was haste to complete the Council House Project in an inappropriately short timeframe and that the City’s approach to carry-forwards was a significant contributing factor to that haste. In turn, that haste contributed to the City failing to properly plan and scope the works for the project before it went to tender, as completion before the end of financial year was prioritised above other considerations.
137. Compounding the impact of carry-forwards is that there was, during the period of the Council House Project, no documented policy in place about carry-forwards, which led to variations in the understandings of staff about the concept. The absence of a documented policy may also explain the disconnect between Mr Crosetta’s evidence that he would expect a project officer to come forward and justify the need for carry-forwards, and the evidence from officers that carry-forwards were simply seen as black marks against their names, reflecting failure or under-performance.

## Conclusion

138. The City’s approach to carry-forwards, and the pressure this placed on officers delivering capital works projects, was, as the Inquiry notes above, a factor in the poorly planned and poorly executed Council House Project.
139. Another factor which, the Inquiry finds, contributed to the issues with the project, is that Ms Mograve’s skillset at the time was not appropriate to do what was required, which was compounded by what appears to be a general lack of training within the Properties Unit of the Construction and Maintenance Directorate.

al For example, Mr Linares’s evidence on this topic, which is representative of the evidence of other witnesses: Transcript, K Linares, private hearing, 12 April 2019, p 93.

140. As observed earlier in this Section, neither Ms Mograve nor Mr Linares properly understood then, or understand now, the regime for development approval, heritage advice or building permits in the context of local government projects. That is remarkable given the roles they occupied.
141. Mr Linares said he was not trained in those matters, nor did he seek it out. It is apparent that Ms Mograve was not either. To the extent that situation prevails at the City, it should be rectified. Officers delivering capital works projects need to understand the planning frameworks within which they are operating. Steps must be taken, if they have not already been, to bring the City's project officers into a closer working relationship with the City's planning and heritage officers. Furthermore, a documented process in which all project officers are trained in the planning regime should be developed, adopted and promulgated.
142. It is apparent to the Inquiry that Ms Mograve was not the appropriate person to manage the refurbishment project. She had no Australian project management experience prior to managing the Council House Project. Her professional experience was limited to design and architecture, and much of it was conducted in Spain and Chile. She did not understand, and was not educated on, the regulatory frameworks within which the project had to be undertaken.
143. The difficulties posed by Ms Mograve's limited capacity in this area were compounded by Mr Linares's lack of understanding about the relevant planning, heritage and other regulatory frameworks.
144. The situation in which the City undertook the Council House Project was replete with deficiencies. The following factors all played a role in creating the dysfunctional environment within which the Council House Project was undertaken:
- the pressure not to have carry-forwards;
  - the siloed nature of the way various units and directorates involved operated;
  - the lack of any documented process or accurate understanding within the properties division of the planning, heritage and other regulatory frameworks within which they were required to work;
  - the failures in planning and scoping that bedevilled the tender and contract process; and
  - the engagement of a relatively inexperienced officer to carry out a project within a relatively complex regulatory framework.

145. One of the more striking aspects of the Council House Project, is the way in which it highlighted the siloed nature of some teams within the City during the Inquiry's Terms of Reference. There appears, on the material before the Inquiry, to have been little in the way of management-driven proper, formalised and adequate communication between the properties and planning teams. Rather, it seems liaison was largely left up to the initiative of officer level staff. There were no formal liaison arrangements, the Directors did not – as described elsewhere in the Inquiry's report – get along particularly well, and there were no documented processes (at least until Ms Smith's attempts in June 2018) in place for officers within the teams, particularly Properties, to follow in the event that liaison was required, as it clearly was here. That is, in the Inquiry's view, reflective of failings at a structural and executive level.
146. Like many things in the City, the failures described as part of the Council House Project are not the particular failures of any one person. Rather, the issues arose as a result of systemic failures within the City's structure, policy, documentation and leadership. All of these areas failed on this project, and all should be reviewed and improved by the City to avoid history repeating itself. The Council House Project is a valuable source of lessons to be learned, and should be treated as such by the City.



## Findings

### Finding 2.3.4 – 8

The Inquiry makes the following findings:

- i. Mr Linares was better placed than Ms Higgins to know about estimating the time for and cost of the Council House Project.
- ii. It is more likely than not that Mr Linares estimated the quantum of and timeline for the Council House Project by reference to previous works with which he had been involved.
- iii. The Council House Project was released to tender before it was adequately planned or scoped.
- iv. The City failed to take steps to obtain development approval, heritage advice or a building permit until well after the works for the Council House Project had been commenced.
- v. Mr Linares and Ms Mograve had little to no understanding of planning requirements for the project, and failures of training, leadership and communication within the City at the time were responsible for that lack of understanding.
- vi. Ms Mograve received the emails at paragraph 75-78, discussed them with Mr Linares, was told by him to “*go ahead with the works*”, and complied with that instruction.
- vii. Mr Linares’s motivation for instructing Ms Mograve in this way arose from, or was materially contributed to by, the pressure on Mr Linares to have projects completed by the end of financial year, and from his incomplete and erroneous understanding, as at early 2018, of the need for development approval, heritage advice and building permits.
- viii. There was unnecessary haste to complete the project within an inappropriately short timeframe and the City’s approach to carry-forwards was a significant contributing factor to that haste.
- ix. The City’s approach to carry-forwards and the pressure it generated on officer level staff resulted in perverse practices being adopted, including for example the request by Ms Mograve to MG Group for the contractor to invoice for the entirety of the works “*before EOFY*” even though the works were yet to be completed.

## Endnotes

- 1 Report, City of Perth Procurement Strategy, 2018, p 6-7.
- 2 Report, Transparency International, Curbing corruption in public procurement: A practical guide, 2014, p 4.
- 3 Policy, City of Perth Council Policy Manual, CP 9.7 Purchasing, p 4-5.
- 4 Transcript, R Ibrahim, private hearing, 29 April 2019, p 65-66.
- 5 Transcript, D Richards, private hearing, 23 April 2019, p 10. Procedure, Procedure, City of Perth, PR0965, Sole Supplier Justification and Approval.
- 6 Website, Western Australian Local Government Association, Preferred Supplier FAQ.
- 7 Transcript, M Jorgensen, public hearing, 9 October 2019, p 116.
- 8 Policy, City of Perth Council Policy Manual, CP 10.1 Code of Conduct, p 6.
- 9 Statement, City of Perth Statement of Business Ethics, November 2016, p 3.
- 10 Policy, City of Perth Council Policy Manual, CP 9.7 Purchasing, 15 March 2016, p 4-5.
- 11 Policy, City of Perth Council Policy Manual, CP 9.7 Purchasing, p 11.
- 12 Policy, City of Perth Council Policy Manual, CP 10.9 City of Perth Common Seal and Document Signing Authority, p 5. These authorisations are pursuant to s 9.49A(4) of the *Local Government Act 1995*.
- 13 Report, Corruption and Crime Commission, Report on Misconduct Risk in Local Government Procurement, 4 February 2015.
- 14 Report, Victorian Independent Broad-based Anti-Corruption Commission, Special report on corruption risks associated with procurement in local government: Operations Dorset, Royston and others, 30 September 2019; Report, Victorian Independent Broad-based Anti-Corruption Commission, Local government integrity frameworks review, March 2019.
- 15 Report, Office of the Auditor General for Western Australia, Local Government Procurement, 11 October 2018, p 4.
- 16 Media alert, Corruption and Crime Commission, Former City of Perth officer sentenced, 30 May 2014.
- 17 Media alert, Corruption and Crime Commission, Former City of Perth Facilities Officer pleads guilty to corruption and bribery, 13 March 2018.
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- 19 Framework adopted from Report, Victorian Independent Broad-based Anti-Corruption Commission, Special report on corruption risks associated with procurement in local government: Operations Dorset, Royston and others, 30 September 2019.
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- 21 Report, Office of the Auditor General for Western Australia, Local Government Procurement, 11 October 2018, p 12-15.
- 22 Report, Office of the Auditor General for Western Australia, Management of Supplier Master Files, 7 March 2019, p 7-8.
- 23 Report, Office of the Auditor General for Western Australia, Management of Supplier Master Files, 7 March 2019, p 11.
- 24 Report, Office of the Auditor General for Western Australia, Fraud Prevention in Local Government, 15 August 2019, p 7.
- 25 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017, p 18.
- 26 Report, Deloitte, City of Perth Organisational Capability and Compliance Assessment, 6 June 2017, p 39-40.
- 27 Report, City of Perth Procurement Strategy, 2018, p 3.
- 28 Report, City of Perth Procurement Strategy, 2018, p 6-7.
- 29 Report, Crowe Horwath, Tender 031-17/18: Maintenance of Irrigation Bores, Pumps and Associated Works Report, p 21.
- 30 Transcript, B Humble, private hearing, 20 May 2019, p 14.
- 31 Email, M Copeman to B Humble, 11.04 am 19 September 2017; Transcript, M Copeman, public hearing, 15 August 2019, p 12-20.
- 32 Transcript, M Copeman, public hearing, 15 August 2019, p 13.
- 33 Document, City of Perth Invitation to Tender number 031-17/18 – Maintenance of Irrigation Bores, Pumps and Associated Works.
- 34 Procedure, City of Perth, Evaluation Panels for Assessing Tenders, Expressions of Interest and Quotations, p 1; Transcript, R Ibrahim, private hearing, 29 April 2019, p 53.
- 35 Transcript, G Boros, private hearing, 13 May 2019, p 7.
- 36 Transcript, B Humble, private hearing, 17 May 2019, p 18-19; Transcript, M Bovell, private hearing, 15 May 2019, p 68; Transcript, S Pascoe, private hearing, 16 May 2019, p 7; Transcript, M Wilson, private hearing, 13 May 2019, p 63-65.
- 37 Procedure, City of Perth, PR0660, Evaluation Panels for Assessing Tenders, Expressions of Interest and Quotations, p 3.
- 38 Transcript, S Pascoe, private hearing, 16 May 2019, p 17; Transcript, M Bovell, private hearing, 15 May 2019, p 73; Transcript, S Pascoe, private hearing, 16 May 2019, p 17.
- 39 Transcript, S Pascoe, private hearing, 16 May 2019, p 17-18; Transcript, M Bovell, private hearing, 15 May 2019, p 74; Transcript, B Humble, private hearing, 17 May 2019, p 21-22.
- 40 Transcript, S Pascoe, private hearing, 16 May 2019, p 16, 24.
- 41 Transcript, B Humble, private hearing, 17 May 2019, p 26.
- 42 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18, p 15.
- 43 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18, p 22-24.
- 44 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18, p 17-19; Transcript, M Ridgwell, public hearing, 15 August 2019, p 48-49; 52-53.
- 45 Transcript, B Humble, private hearing, 17 May 2019, p 5; Transcript, G Boros, private hearing, 13 May 2019, p 18.

- 46 Transcript, B Humble, private hearing, 17 May 2019, p 14-15.
- 47 Email, A Ogden to numerous recipients, 11.19 pm 17 February 2016.
- 48 Form, City of Perth, General Disclosure of Interest, p 1; Transcript, B Humble, private hearing, 20 May 2019, p 10.
- 49 Transcript, A Ogden, private hearing, 16 May 2019, p 59; Email, A Ogden to numerous recipients, 7.53 am 31 August 2016; Email, A Ogden to Blake Humble, 2.23 pm 10 March 2016.
- 50 Transcript, A Ogden, private hearing, 16 May 2019, p 67-68; Transcript, B Humble, private hearing, 20 May 2019, p 12-13.
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- 54 Transcript, B Humble, private hearing, 20 May 2019, p 12-16.
- 55 Email, A Ogden to numerous recipients, 11.19 pm 17 February 2016.
- 56 Email, B Humble to A Ogden and others, 3.29 pm 25 July 2016; Email, A Ogden to Blake Humble and others, 4.01 pm 25 July 2016.
- 57 Transcript, A Ogden, private hearing, 16 May 2019, p 74; Transcript, B Humble, private hearing, 20 May 2019, p 15.
- 58 Tender submission, Western Irrigation, Tender No 031-17/18, p 9; Transcript, B Humble, private hearing, 20 May 2019, p 20.
- 59 Form, Evaluation Panel – Assessment of Tenders, Expressions of Interest and Formal Quotations – Declaration of Confidentiality and Interest, p 1.
- 60 Transcript, A Ogden, private hearing, 16 May 2019, p 76, 88; Transcript, B Humble, private hearing, 20 May 2019, p 64.
- 61 Transcript, B Humble, private hearing, 17 May 2019, p 15.
- 62 Document, City of Perth Invitation to Tender number 031-17/18 – Maintenance of Irrigation Bores, Pumps and Associated Works.
- 63 Transcript, B Humble, private hearing, 17 May 2019, p 11; Transcript, M Bovell, private hearing, 15 May 2019, p 69-70; Transcript, S Pascoe, private hearing, 16 May 2019, p 9.
- 64 Transcript, S Pascoe, private hearing, 16 May 2019, p 10; Transcript, M Bovell, private hearing, 15 May 2019, p 71; Transcript, B Humble, private hearing, 17 May 2019, p 11.
- 65 Document, City of Perth Invitation to Tender number 031-17/18 – Maintenance of Irrigation Bores, Pumps and Associated Works.
- 66 Transcript, M Bovell, private hearing, 15 May 2019, p 74.
- 67 Transcript, S Pascoe, private hearing, 16 May 2019, p 17-18.
- 68 Transcript, B Humble, private hearing, 17 May 2019, p 21.
- 69 Form, Evaluation Panel – Assessment of Tenders, Expressions of Interest and Formal Quotations – Declaration of Confidentiality and Interest, p 1.
- 70 Document, City of Perth, Invitation to Tender number 031-17/18 – Maintenance of Irrigation Bores, Pumps and Associated Works.
- 71 AS/NZS 2299.1:2015, clause 2.2(a); *Occupational Safety and Health Regulations 1996* (WA), reg 3.29(2)(a).
- 72 Tender submission, Hydroquip Pumps & Irrigation, Tender no 031-17/18, p 70.
- 73 Tender submission Western Irrigation Tender No 031-17/18, 20.5381.
- 74 Transcript, B Humble, Private hearing, 17 May 2019, p 57; Transcript, A Ogden, Private hearing, 16 May 2019, p 83.
- 75 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18, p 7.
- 76 Divers qualifications.
- 77 Transcript, S Pascoe, private hearing, 16 May 2019, p 19-20.
- 78 Transcript, B Humble, private hearing, 17 May 2019, p 57-58.
- 79 Transcript, B Humble, private hearing, 17 May 2019, p 57-58.
- 80 Emails between A McFadden and B Humble, 30 October 2017 – 2 November 2017.
- 81 Transcript, B Humble, private hearing, 17 May 2019, p 60.
- 82 Transcript, B Humble, private hearing, 17 May 2019, p 61-62.
- 83 Email, B Humble to A McFadden, 9.28 am 2 November 2017; Transcript, B Humble, private hearing, 17 May 2019, p 63.
- 84 Also refer to Stantons's findings on this issue: Report, Stantons International, City of Perth Probity Review for Tender 31-17/18.
- 85 Transcript, G Boros, private hearing, 13 May 2019, p 22-23.
- 86 Document, City of Perth Invitation to Tender number 031-17/18 – Maintenance of Irrigation Bores, Pumps and Associated Works; Transcript, B Humble, private hearing, 17 May 2019, p 23-24; Transcript, M Bovell, Private hearing, 15 May 2019, p 77; Transcript, S Pascoe, private hearing, 16 May 2019, p 22.
- 87 Document, City of Perth Invitation to Tender number 031-17/18 – Maintenance of Irrigation Bores, Pumps and Associated Works; Transcript, B Humble, private hearing, 17 May 2019, p 24; Transcript, M Bovell, private hearing, 15 May 2019, p 78; Transcript, S Pascoe, private hearing, 16 May 2019, p 23-24.
- 88 Transcript, B Humble, private hearing, 17 May 2019, p 24; Transcript, S Pascoe, private hearing, 16 May 2019, p 23; Transcript, M Bovell, private hearing, 15 May 2019, p 78.
- 89 Document, City of Perth Record of Delegated Authority Decision – 1.2.9 Expressions of Interest and Tenders – Tender 31-17/18; Transcript, B Humble, private hearing, 17 May 2019, p 20-21, 27.
- 90 Transcript, B Humble, private hearing, 17 May 2019, p 21; Transcript, S Pascoe, private hearing, 16 May 2019, p 25-26. The Stantons report considered the nature and extent of Mr Pascoe's input: Report, Stantons International, City of Perth Probity Review for Tender 31-17/18.

- 91 Transcript, B Humble, private hearing, 17 May 2019, p 29; Document, City of Perth Record of Delegated Authority Decision – 1.2.9 Expressions of Interest and Tenders – Tender 31-17/18.
- 92 Transcript, M Wilson, private hearing, 14 May 2019, p 8; Transcript, S Pascoe, private hearing, 16 May 2019, p 20.
- 93 Tender submission, All Pumps and Waterboring Tender No 031-17/18; Tender submission, Total Eden Tender No 031-17/18; Tender submission, Western Irrigation Tender No 031-17/18.
- 94 Tender submission, Hydroquip Pumps & Irrigation – City of Perth, Tender no 031-17/18; Transcript, B Humble, private hearing, 17 May 2019, p 36.
- 95 Transcript, B Humble, private hearing, 17 May 2019, p 19-20, 27.
- 96 Transcript, B Humble, private hearing, 17 May 2019, p 28-29.
- 97 Email, B Humble to R Ibrahim, 12.14 pm 12 September 2017.
- 98 Transcript, B Humble, private hearing, 17 May 2019, p 32; Email, A McFadden to B Humble, 2.10 pm 12 September 2017; Email, B Humble to J Sanders, 1.59 pm 12 September 2017; Email, J Sanders to B Humble, 2.55 pm 12 September 2017.
- 99 Email, A McFadden to B Humble, 2.10 pm 12 September 2017.
- 100 Email, B Humble to R Ingram, 2.04 pm 12 September 2017; Email, R Ingram to B Humble, 3.01 pm 29 September 2017.
- 101 Transcript, B Humble, private hearing, 17 May 2019, p 42-43.
- 102 Email, B Humble to B Scarterfield, 2.01 pm 12 September 2017; Email, B Scarterfield to B Humble and B McKenzie, 7.20 am 13 September 2017.
- 103 Email, B Humble to J Sanders, 1.59 pm 12 September 2017 and Email, J Sanders to B Humble, 2.55 pm 12 September 2017.
- 104 Transcript, B Humble, private hearing, 17 May 2019, p 42.
- 105 Email trail between A McFadden and B Humble, 30 October 2017 – 2 November 2017.
- 106 Transcript, B Humble, private hearing, 17 May 2019, p 42.
- 107 Transcript, B Humble, private hearing, 17 May 2019, p 34-35.
- 108 Transcript, B Humble, private hearing, 17 May 2019, p 37-38.
- 109 Transcript, B Humble, private hearing, 17 May 2019, p 40-41.
- 110 Transcript, S Pascoe, private hearing, 16 May 2019, p 24, 30.
- 111 Transcript, M Copeman, private hearing, 22 May 2019, p 37-38; Transcript, S Pascoe, private hearing, 16 May 2019, p 30.
- 112 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18.
- 113 Transcript, B Humble, private hearing, 17 May 2019, p 38-40.
- 114 Transcript, B Humble, private hearing, 17 May 2019, p 34-40.
- 115 Transcript, B Humble, private hearing, 17 May 2019, p 24, 34-40, 44-46.
- 116 Transcript, B Humble, private hearing, 17 May 2019, p 43-44; Tender submission, All Pumps and Waterboring Tender No 031-17/18.
- 117 Transcript, A Ogden, private hearing, 16 May 2019, p 81; Tender submission, Total Eden Tender No 031-17/18; Tender submission, Western Irrigation Tender No 031-17/18.
- 118 Transcript, S Pascoe, private hearing, 16 May 2019, p 29-30.
- 119 Transcript, M Copeman, private hearing, 22 May 2019, p 45.
- 120 Email, M Copeman to B Humble, 11.04 am 19 September 2017.
- 121 Email, M Copeman to B Humble, 11.04 am 19 September 2017.
- 122 Transcript, M Copeman, public Hearing, 15 August 2019, p 17.
- 123 Transcript, M Copeman, public Hearing, 15 August 2019, p 14.
- 124 Transcript, M Copeman, public Hearing, 15 August 2019, p 15-16, 18.
- 125 Letter, Morgan Alteruthemeyer Legal Group to CEO City of Perth, 17 November 2017.
- 126 Transcript, M Ridgwell, public Hearing, 15 August 2019 p 27.
- 127 Transcript, M Ridgwell, public Hearing, 15 August 2019, p 28.
- 128 Letter, Corruption and Crime Commission to M Mileham, 10 January 2018.
- 129 Transcript, B Moyser, private hearing, 14 May 2019, p 51.
- 130 Transcript, M Ridgwell, public hearing, 15 August 2019, p 28-29.
- 131 Transcript, B Moyser, private hearing, 14 May 2019, p 52.
- 132 Transcript, B Moyser, public hearing, 16 August 2019, p 4.
- 133 Transcript, B Moyser, public hearing, 15 August 2019, p 102; Transcript, B Moyser, Public hearing, 16 August 2019, p 18.
- 134 Transcript, M Ridgwell, public hearing, 15 August 2019, p 23.
- 135 Transcript, M Ridgwell, public hearing, 15 August 2019, p 30.
- 136 Transcript, B Moyser, private hearing, 14 May 2019, p 53; Transcript, B Moyser, private hearing, 15 May 2019, p 9-10.
- 137 Email, W Dunstan to B Moyser, 10.54 am 21 March 2018.
- 138 Transcript, B Moyser, public hearing, 16 August 2019, p 24.
- 139 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18.
- 140 Transcript, B Moyser, public hearing, 16 August 2019, p 24.
- 141 Email, W Dunstan to B Moyser and K Donnelly, 1.59 pm 4 July 2018.
- 142 Transcript, B Moyser, private hearing, 14 May 2019, p 53-54.

- 143 Transcript, B Moyser, private hearing, 15 May 2019, p 7-10.
- 144 Transcript, M Ridgwell, public hearing, 15 August 2019, p 35.
- 145 Transcript, B Moyser, private hearing, 14 May 2019, p 53-54, 55; Report, Stantons International, City of Perth Probity Review for Tender 31-17/18.
- 146 Email, W Dunstan to B Moyser, 9.09 am on 5 February 2019.
- 147 Email, D Watson and B Moyser, 13-18 March 2019.
- 148 Email, D Watson to B Moyser, 2.35 pm on 5 April 2018.
- 149 Draft report, Draft Shenton Aquatics report, p 1.
- 150 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18; Email, W Dunstan to B Moyser, 10.54 am 21 March 2018; Transcript, B Moyser, private hearing, 14 May 2019, p 61-622.
- 151 Draft report, Draft Shenton Aquatics report, p 1.
- 152 Transcript, B Moyser, private hearing, 15 May 2019, p 36-37.
- 153 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18.
- 154 Transcript, B Moyser, private hearing, 14 May 2019, p 57.
- 155 Transcript, B Moyser, private hearing, 15 May 2019, p 37-39.
- 156 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18.
- 157 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18.
- 158 Transcript, B Moyser, private hearing, 15 May 2019, p 35-36.
- 159 Email, W Dunstan to B Moyser, 10.54 am 21 March 2018; Report, Stantons International, City of Perth Probity Review for Tender 31-17/18; Transcript, B Moyser, private hearing, 14 May 2019, p 72; Transcript, B Moyser, private hearing, 15 May 2019, p 35.
- 160 Report, Stantons International, City of Perth Probity Review for Tender 31-17/18; Transcript, B Moyser, private hearing, 14 May 2019, p 63, 65-67.
- 161 Report, Draft Shentons Aquatics Report, p 2.
- 162 Letter, M Mileham to the Commissioner, Corruption and Crime Commission, 6 June 2018.
- 163 Transcript, B Moyser, private hearing, 14 May 2019, p 73.
- 164 Transcript, M Ridgwell, public hearing, 15 August 2019, p 54-55.
- 165 Email, W Dunstan to B Moyser, 4.06 pm 6 April 2018.
- 166 Transcript, M Ridgwell, public hearing, 15 August 2019, p 58-61.
- 167 Transcript, B Moyser, public hearing, 16 August 2019, p 29-36.
- 168 Transcript, B Moyser, public hearing, 16 August 2019, p 40-43.
- 169 Transcript, B Moyser, public hearing, 16 August 2019, p 39.
- 170 Transcript, M Ridgwell, public hearing, 15 August 2019, p 23.
- 171 Transcript, M Ridgwell, public hearing, 15 August 2019, p 28.
- 172 Transcript, K O'Brien, private hearing, 13 May 2019, p 50.
- 173 Transcript, M Ridgwell, public hearing, 15 August 2019, p 63.
- 174 Transcript, K O'Brien, private hearing, 13 May 2019, p 51.
- 175 Transcript, M Copeman, private hearing, 22 May 2019, p 62; Transcript, M Ridgwell, public hearing, 15 August 2019, p 64.
- 176 Form, City of Perth, Western Irrigation Contract Extensions Form for Tender 031-17/18, 2 July 2018.
- 177 Transcript, B Humble, private hearing, 17 May 2019, p 83-85.
- 178 Transcript, G Boros, private hearing, 13 May 2019, p 5.
- 179 Letter, M Mileham to the Commissioner, Corruption and Crime Commission, 22 May 2018, under cover of Email, M Ridgwell to B Moyser, 1.20 pm 1 June 2018.
- 180 Letter, M Mileham to The Commissioner, Corruption and Crime Commission, 6 June 2018.
- 181 Transcript, G Boros, private hearing, 13 May 2019, p 5; Transcript, M Wilson, private hearing, 13 May 2019, p 62.
- 182 Transcript, M Ridgwell, public hearing, 15 August 2019, p 65.
- 183 Transcript, B Moyser, private hearing, 15 May 2019, p 46-47.
- 184 Transcript, M Mileham, private hearing, 30 July 2019, p 73.
- 185 Email, G Bartlett to M Mileham, 11.08 am on 7 July 2016; Transcript, G Bartlett, private hearing, 8 May 2019, p 3.
- 186 Transcript, G Bartlett, private hearing, 8 May 2019, p 5-6.
- 187 Transcript, G Bartlett, private hearing, 8 May 2019, p 8.
- 188 Email, G Bartlett to M Mileham, 5.39 pm on 7 September 2016.
- 189 Email, M Mileham to R Mianich cc M Howells, 5.41 pm on 7 September 2016.
- 190 Transcript, M Mileham, private hearing, 30 July 2019, p 79.
- 191 Transcript, M Mileham, private hearing, 30 July 2019, p 74.
- 192 Email, G Bartlett to M Mileham, 3.29 pm on 19 April 2017; Proposal, Bartlett Workplace, City of Perth Workplace 360 review focusing on culture and behaviours and conducting a facilitated interactive workshop for the leadership group (Councillors and Executive Group).
- 193 Transcript, G Bartlett, Private hearing, 8 May 2019, p 9-10.

- 194 Transcript, M Mileham, Private hearing, 30 July 2019, p 74.
- 195 Transcript, G Bartlett, Private hearing, 8 May 2019, p 12.
- 196 Proposal, Bartlett Workplace, City of Perth Workplace 360 review focusing on culture and behaviours and conducting a facilitated interactive workshop for the leadership group (Councillors and Executive Group).
- 197 Email, M Mileham to G Bartlett, 2.03 pm 21 April 2017.
- 198 Form, Application for Leave, City of Perth, M Mileham.
- 199 Transcript, M Mileham, private hearing, 30 July 2019, p 81.
- 200 Transcript, M Mileham, private hearing, 30 July 2019, p 79-80.
- 201 Personal communication, SMS Text; M Mileham to G Bartlett, 3.50 pm 20 April 2017; Letter, G Bartlett to Inquiry, 14 May 2019, p 7.
- 202 Letter, G Bartlett to Inquiry, 14 May 2019, p 7.
- 203 City of Perth Policy Manual, Policy 10.1.
- 204 Transcript, M Mileham, private hearing, 30 July 2019, p 82.
- 205 Gift Declaration, M Mileham, 28 April 2017.
- 206 Transcript, M Mileham, private hearing, 30 July 2019, p 83.
- 207 Transcript, M Mileham, private hearing, 30 July 2019, p 86-87.
- 208 Transcript, M Mileham, private hearing, 30 July 2019, p 88.
- 209 Transcript, M Mileham, private hearing, 30 July 2019, p 87-88.
- 210 Transcript, M Mileham, private hearing, 30 July 2019, p 88-91.
- 211 Transcript, M Mileham, private hearing, 30 July 2019, p 85-86, 92.
- 212 Email, M Tuohy to N Parkinson, documents for Submission to the Inquiry, 4.28 pm 7 October 2019; Transcript, M Saracini (counsel for M Mileham), private hearing, 11 October 2019.
- 213 Transcript M Saracini (counsel for M Mileham), private hearing, 15 October 2019.
- 214 For example, *Local Government Act 1995*, s 5.82, as at April 2017.
- 215 *Local Government Act 1995*, s 5.83(2)(c), as at April 2017.
- 216 Email, M Mileham to M Ridgwell, 1.47 pm 4 May 2017.
- 217 Transcript, M Ridgwell, private hearing, 25 July 2019, p 103; compare Mr Mileham's evidence to the effect that he had no recollection of informing Mr Ridgwell of the gift: Transcript, M Mileham, private hearing, 30 July 2019, p 95.
- 218 Transcript, M Ridgwell, private hearing, 25 July 2019, p 104.
- 219 Policy, City of Perth Policy Manual, Policy 10.1 – Code of Conduct, p 12.
- 220 Form, City of Perth Formal Quotation Request Form, Quotation 057-17/18, 21 September 2017.
- 221 Transcript, M Ridgwell, private hearing, 25 July 2019, p 106.
- 222 Email, S Cuttone to G Bartlett, 2.19 pm 30 August 2019.
- 223 Email, G Bartlett to S Cuttone, 8.08 am 31 August 2019.
- 224 Form, Addendum, Quotation No 057-17/18, 29 September 2019.
- 225 Transcript, M Ridgwell, private hearing, 25 July 2019, p 106.
- 226 Transcript, M Ridgwell, private hearing, 25 July 2019, p 106-107.
- 227 Transcript, M Ridgwell, private hearing, 25 July 2019, p 108.
- 228 Selection Criteria, City of Perth, Culture and Values Framework, 10 October 2017.
- 229 Form, City of Perth Declaration of Confidentiality and Interest Form, B Moyser, 18 October 2017.
- 230 Transcript, B Moyser, private hearing, 14 May 2019, p 28-29.
- 231 Form, Evaluation Panel – Score Sheet, B Moyser, Tender 057-17/18, 18 October 2017.
- 232 File note, B Moyser, Tender 057-17/18, 17 October 2017.
- 233 Transcript, B Moyser, private hearing, 14 May 2019, p 30.
- 234 Transcript, M Ridgwell, private hearing, 25 July 2019, p 114.
- 235 Tender submission, Bartlett Workplace, 10 October 2017.
- 236 Tender submission, Jackson McDonald, 10 October 2017; Transcript, B Moyser, private hearing, 9 May 2019, p 68.
- 237 Transcript, B Moyser, private hearing, 9 May 2019, p 66.
- 238 Transcript, B Moyser, private hearing, 9 May 2019, p 45.
- 239 Form, Qualitative Selection Criteria Matrix, Tender 057-17/18, 19 October 2017.
- 240 Transcript, M Ridgwell, private hearing, 25 July 2019, p 113.
- 241 Email, M Ridgwell to B Moyser and F Pandolfino, 3.37 pm on 27 October 2017.
- 242 Transcript, M Ridgwell, private hearing, 25 July 2019, p 110.
- 243 Transcript, M Ridgwell, private hearing, 25 July 2019, p 115.
- 244 Transcript, M Ridgwell, private hearing, 25 July 2019, p 116-117.
- 245 Transcript, M Ridgwell, private hearing, 25 July 2019, p 117.
- 246 Transcript, M Ridgwell, private hearing, 25 July 2019, p 120.



- 247 Invoice, Bartlett Workplace to City, City of Perth – Values and Culture Framework, 5 April 2018; Invoice, Bartlett Workplace to City, City of Perth – Values and Culture Framework, 31 May 2018.
- 248 Memorandum, Finance Manager to CEO, all directors and managers, 23 July 2018.
- 249 Transcript, M Ridgwell, private hearing, 25 July 2019, p 108.
- 250 Transcript, M Ridgwell, private hearing, 25 July 2019, p 108-109.
- 251 Transcript, M Mileham, private hearing, 30 July 2019, p 95-96.
- 252 Transcript, M Ridgwell, private hearing, 25 July 2019, p 108.
- 253 Transcript, M Ridgwell, private hearing, 25 July 2019, p 108-109.
- 254 Memorandum, City of Perth, P Crosetta to M Mileham, 9 March 2016 (signed M Mileham 16 March 2016).
- 255 Transcript, M Pereira, private hearing, 30 April 2019, p 4, 17.
- 256 Transcript, S Kan, private hearing, 2 May 2019, p 8.
- 257 Transcript, S Kan, private hearing, 2 May 2019, p 61-64.
- 258 Transcript, S Kan, private hearing, 2 May 2019, p 64-65.
- 259 Letter, D Richards to Panel Member, 11 January 2016.
- 260 Transcript, N Gallin, private hearing, 1 May 2019, p 14.
- 261 These were the only tenders received; Transcript, M Pereira, private hearing, 30 April 2019, p 12.
- 262 Letter, D Richards to Panel Member, 18 February 2016.
- 263 Transcript, M Pereira, private hearing, 30 April 2019, p 12-13; Transcript, N Gallin, private hearing, 1 May 2019, p 14; Transcript, S Kan, private hearing, 2 May 2019, p 38-39.
- 264 Invitation to tender, City of Perth, request for tender specification.
- 265 Transcript, N Gallin, private hearing, 1 May 2019, p 23.
- 266 Transcript, M Pereira, private hearing, 30 April 2019, p 15; Transcript, N Gallin, private hearing, 1 May 2019, p 21-22.
- 267 Transcript, N Gallin, private hearing, 1 May 2019, p 22.
- 268 Transcript, N Gallin, private hearing, 1 May 2019, p 10-11.
- 269 Transcript, M Pereira, private hearing, 30 April 2019, p 22.
- 270 Transcript, M Pereira, private hearing, 30 April 2019, p 18; Transcript, P Claxton, private hearing, 30 April 2019, p 61.
- 271 Transcript, M Pereira, private hearing, 30 April 2019, p 15, 17; Transcript, S Ranjan, private hearing, 3 May 2019, p 81.
- 272 Transcript, S Ranjan, private hearing, p 83-84.
- 273 Transcript, N Gallin, private hearing, 1 May 2019, p 10; Transcript, S Kan, private hearing, 2 May 2019, p 22; Transcript, M Pereira, private hearing, 30 April 2019, p 147.
- 274 Transcript, N Gallin, private hearing, 1 May 2019, p 15.
- 275 Emails, M Stevens and N Gallin, 3.09 pm and 3.15 pm on 16 February 2016.
- 276 Transcript, N Gallin, private hearing, 1 May 2019, p 17.
- 277 Transcript, S Ranjan, private hearing, 3 May 2019, p 82, 84-88.
- 278 Transcript, N Gallin, private hearing, 1 May 2019, p 17-18; Email, M Stevens to N Gallin, 3.15 pm on 16 February 2016; Investigation Report, INVision, 23 February 2017.
- 279 Transcript, M Pereira, private hearing, 30 April 2019, p 39-40; Transcript, N Gallin, private hearing, 1 May 2019, p 16-17. Transcript, S Kan, private hearing, 2 May 2019, p 33-35. Transcript, R Ibrahim, private hearing, 29 April 2019, p 55-56, 62.
- 280 Transcript, M Pereira, private hearing, 30 April 2019, p 17.
- 281 Transcript, N Gallin, private hearing, 1 May 2019, p 24.
- 282 Transcript, S Ranjan, private hearing, 3 May 2019, p 81-89.
- 283 Transcript, S Kan, private hearing, 2 May 2019, p 41-42.
- 284 Transcript, N Gallin, private hearing, 1 May 2019, p 24; Transcript, M Pereira, private hearing, 30 April 2019, p 16-17.
- 285 Transcript, S Kan, private hearing, 2 May 2019, p 36.
- 286 Transcript, S Kan, private hearing, 2 May 2019, p 41.
- 287 Transcript, S Kan, private hearing, 2 May 2019, p 51.
- 288 Procedure, City of Perth, PR0660, Evaluation Panels for Assessing Tenders, Expressions of Interest and Quotations; Transcript, R Ibrahim, Private hearing, 29 April 2019, p 53.
- 289 Transcript, M Pereira, Private hearing, 30 April 2019, p 7; Transcript, N Gallin, Private hearing, 1 May 2019, p 5; Transcript, S Kan, Private hearing, 2 May 2019, p 24.
- 290 Transcript, M Pereira, Private hearing, 30 April 2019, p 6; Transcript, N Gallin, Private hearing, 1 May 2019, p 13; Transcript, S Kan, Private hearing, 2 May 2019, p 27 (Mr Kan was not part of the panel at that stage).
- 291 Investigation Report, INVision, 4 April 2017.
- 292 Paragraph 64 of this Section; Transcript, N Gallin, private hearing, 1 May 2019, p 12-13.
- 293 Score sheet, City of Perth, Evaluation panel score sheet, 4 March 2016.
- 294 Transcript, M Pereira, private hearing, 30 April 2019, p 19, 24-25.



- 295 Transcript, P Claxton, private hearing, 30 April 2019, p 52-53; Transcript, L McCabe, private hearing, 1 May 2019, p 53-55; Transcript, K Nguyen, private hearing, 3 May 2019, p 6-7.
- 296 Transcript, M Pereira, private hearing, 30 April 2019, p 34-35; Transcript, N Gallin, private hearing, 1 May 2019, p 34-35; Transcript, S Kan, private hearing, 2 May 2019, p 30.
- 297 Transcript, S Kan, private hearing, 2 May 2019, p 15-17; Transcript, M Pereira, private hearing, 30 April 2019, p 13; Transcript, N Gallin, private hearing, 1 May 2019, p 13.
- 298 Transcript, P Crosetta, private hearing, 26 July 2019, p 68.
- 299 Evaluation matrix, City of Perth, Qualitative Selection Criteria Evaluation Matrix, 4 March 2016.
- 300 Memorandum, P Crosetta to M Mileham, 9 March 2016.
- 301 Tender submission, BOS Civil.
- 302 Gantt Chart, Platinum's timeline, 28 January 2016.
- 303 Letter, D Richards to Panel Member, 18 February 2016.
- 304 Email, K Nguyen to J Jones, 2.57 pm on 3 March 2016.
- 305 Transcript, N Gallin, Private hearing, 1 May 2019, p 28, 30, 32; Transcript, M Pereira, private hearing, 30 April 2019, p 25-27.
- 306 Score sheets, City of Perth, Evaluation panel score sheets, 4 March 2016.
- 307 Transcript, N Gallin, private hearing, 1 May 2019, p 32.
- 308 Transcript, M Pereira, private hearing, 30 April 2019, p 26-27.
- 309 Transcript, S Kan, private hearing, 2 May 2019, p 44-47.
- 310 Transcript, R Ibrahim, private hearing, 29 April 2019, p 63; Transcript, M Pereira, private hearing, 30 April 2019, p 4, 12; Transcript, N Gallin, private hearing, 1 May 2019, p 24.
- 311 Transcript, M Pereira, private hearing, 30 April 2019, p 29-30; note, the City had previously spoken to Mr Kan about his relationship with Civcon: Transcript, S Ranjan, Private hearing, 3 May 2019, p 64.
- 312 Transcript, N Gallin, private hearing, 1 May 2019, p 32-33; Transcript, M Pereira, private hearing, 30 April 2019, p 29. Transcript, S Kan, private hearing, 2 May 2019, p 38-39.
- 313 Transcript, S Kan, private hearing, 2 May 2019, p 12-13.
- 314 Transcript, S Ranjan, private hearing, 7 May 2019, p 36, 40.
- 315 Transcript, S Kan, private hearing, 2 May 2019, p 8-9; Transcript, S Ranjan, private hearing, 3 May 2019, p 66-67; Transcript, S Ranjan, private hearing, 7 May 2019, p 36-38; Transcript, J Scott, private hearing, 7 May 2019, p 17.
- 316 Transcript, S Kan, private hearing, 2 May 2019, p 53; For example, Transcript, M Pereira, private hearing, 30 April 2019, p 29-30.
- 317 Transcript, M Pereira, private hearing, 30 April 2019, p 21; Transcript, N Gallin, private hearing, 1 May 2019, p 16, 18-19; Transcript, S Kan, private hearing, 2 May 2019, p 15, 32-35.
- 318 Transcript, N Gallin, private hearing, 1 May 2019, p 16-17.
- 319 Paragraph 84-92 of this Section.
- 320 Transcript, N Gallin, private hearing, 1 May 2019, p 19.
- 321 Transcript, N Gallin, private hearing, 1 May 2019, p 19.
- 322 Transcript, S Kan, private hearing, 2 May 2019, p 28.
- 323 Transcript, J Scott, private hearing, 7 May 2019, p 7.
- 324 Transcript, P Claxton, private hearing, 13 April 2019, p 54, 57.
- 325 Transcript, S Ranjan, private hearing, 7 May 2019, p 41-44; Transcript, P Claxton, private hearing, 13 April 2019, p 54-55.
- 326 Transcript, P Claxton, private hearing, 13 April 2019, p 57-59.
- 327 Transcript, K Nguyen, private hearing, 3 May 2019, p 15-17; Transcript, S Ranjan, private hearing, 7 May 2019, p 44.
- 328 Transcript, P Claxton, private hearing, 13 April 2019, p 56.
- 329 Transcript, K Nguyen, private hearing, 3 May 2019, p 50-52; Transcript, S Ranjan, private hearing, 7 May 2019, p 46.
- 330 Transcript, S Ranjan, private hearing, 7 May 2019, p 46.
- 331 Transcript, S Ranjan, private hearing, 7 May 2019, p 47-48.
- 332 Tender submission, Platinum, Schedule of Items.
- 333 Email, K Nguyen to S Kan, 5.08 pm on 12 May 2016.
- 334 Email, S Kan to S Ranjan, 9.00 am on 16 May 2016.
- 335 Email, S Ranjan to S Kan, 9.12 am on 16 May 2016.
- 336 Email, S Kan to S Monteath, 1.02 pm on 19 May 2016.
- 337 Calculated as \$53,759.97-\$48,872.70.
- 338 Investigation Report, INVision, 4 April 2017.
- 339 Investigation Report, INVision, 4 April 2017.
- 340 Letter, BOS Civil to City of Perth, 8 June 2016.
- 341 Transcript, S Ranjan, private hearing, 3 May 2019, p 67; Transcript, M Mileham, private hearing, 30 July 2019, p 61; Transcript, P Crosetta, private hearing, 26 July 2019 p 56-57.
- 342 Transcript, M Mileham, private hearing, 30 July 2019, p 61-62.
- 343 Transcript, P Crosetta, private hearing, 26 July 2019 p 56-60.

344 Transcript, P Crosetta, private hearing, 26 July 2019 p 58.

345 Which Mr Crosetta accepted: Transcript, P Crosetta, private hearing, 26 July 2019 p 64.

346 Transcript, M Mileham, private hearing, 30 July 2019, p 64-65.

347 Transcript, M Ridgwell, private hearing, 25 July 2019, p 66-67.

348 Letter, BOS Civil to City of Perth, 8 June 2016.

349 Transcript, S Ranjan, private hearing, 3 May 2019, p 68 and 75.

350 Mr Kan was named in BOS Civil's correspondence to the CCC: Email, B O'Sullivan to CCC, 12.09 pm on 8 August 2016.

351 Transcript, S Ranjan, private hearing, 3 May 2019, p 70.

352 Memorandum, Tender Assessment Panel to P Crosetta through S Ranjan, Railway Street and Market Street Project.

353 Transcript, S Ranjan, private hearing, 3 May 2019, p 72-74.

354 Transcript, S Ranjan, private hearing, 3 May 2019, p 69; Email, S Ranjan to P Crosetta, 9.05 am on 27 July 2016; Email P Crosetta to P Crosetta, 9.09 am on 27 July 2016; Email, P Crosetta to S Ranjan, 3.07 pm on 26 July 2016. Transcript, P Crosetta, private hearing, 26 July 2019 p 61-62.

355 Transcript, S Ranjan, private hearing, 3 May 2019, p 70.

356 Transcript, B Moyser, private hearing, 9 May 2019, p 9-11.

357 Transcript, M Ridgwell, private hearing, 25 July 2019, p 61-64.

358 Transcript, P Crosetta, private hearing, 26 July 2019 p 61.

359 Email, P Crosetta to A Sunderland, 11.56 am on 29 July 2016.

360 Letter, M Mileham to B O'Sullivan, 2 August 2016.

361 Transcript, M Mileham, private hearing, 30 July 2019, p 63-64.

362 Transcript, M Mileham, private hearing, 30 July 2019, p 64.

363 Transcript, M Mileham, private hearing, 30 July 2019, p 65.

364 Transcript, M Mileham, private hearing, 30 July 2019, p 65.

365 Transcript, M Ridgwell, private hearing, 25 July 2019, p 72-73.

366 Email, B O'Sullivan to CCC, 12.09 pm on 8 August 2016.

367 Letter, CCC to M Mileham, 17 August 2016.

368 Transcript, P Crosetta, private hearing, 26 July 2019.

369 Transcript, B Moyser, private hearing, 9 May 2019, p 12.

370 The INVision Report is dated 23 February 2016, but was produced in 2017.

371 Investigation Report, INVision, 23 February 2017.

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374 Transcript, B Moyser, private hearing, 9 May 2019, p 15.

375 Transcript, J Scott, private hearing, 7 May 2019, p 4, 6-7, 15.

376 Transcript, P Crosetta, private hearing, 26 July 2019 p 66.

377 Transcript, M Mileham, private hearing, 30 July 2019, p 67.

378 Emails, B Moyser and Professionals Australia, 1-10 May 2017.

379 B Moyser, private hearing, 9 May 2019, p 29.

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381 Transcript, B Moyser, private hearing, 9 May 2019, p 28.

382 Transcript, B Moyser, private hearing, 9 May 2019, p 23-24, 27.

383 Human Resources Recommendation, City of Perth, 17 May 2017; Transcript, B Moyser, private hearing, 9 May 2019, p 33-35.

384 Transcript, J Scott, private hearing, 7 May 2019, p 16.

385 Transcript, B Moyser, private hearing, 9 May 2019, p 37-38.

386 Transcript, B Moyser, private hearing, 9 May 2019, p 43-45.

387 Letter, M Mileham to CCC, 28 June 2017.

388 Transcript, D Richards, private hearing, 23 April 2019, p 6.

389 Council Policy Manual, City of Perth, CP 9.7 Purchasing.

390 Procedure, City of Perth, Sole Supplier Justification and Approval.

391 Proposal, City of Perth to D Aberle 15 July 2016; Proposal, D Aberle to City of Perth (erroneously dated 21 July 2017).

392 Transcript, M Howells, private hearing, 10 May 2019, p 11.

393 Transcript, D Aberle, private hearing, 29 April 2019, p 4.

394 Invoice, Marple Bridge to City of Perth, Consulting Services, 3 October 2016.

395 Transcript, D Aberle, private hearing, 29 April 2019, p 4.

396 Transcript, M Howells, private hearing, 10 May 2019 p 6-8, 18, 39-40, 45.

397 Transcript, M Mileham, private hearing, 30 July 2019, p 102.

398 Transcript, D Aberle, private hearing, 29 April 2019, p 5.

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- 400 Invoice, Marple Bridge to City of Perth, Consulting Services, 3 October 2016.
- 401 Council Policy Manual, City of Perth, CP 9.7 Purchasing.
- 402 Transcript, M Mileham, private hearing, 30 July 2019, p 105.
- 403 Transcript, D Richards, private hearing, 23 April 2019, p 14.
- 404 Email, C Poerwanto to M Howells, 11.45 am on 11 January 2017.
- 405 Transcript, M Howells, private hearing, 10 May 2019, p 23.
- 406 Transcript, M Howells, private hearing, 10 May 2019, p 35.
- 407 Transcript, M Mileham, private hearing, 30 July 2019, p 115-116, 118.
- 408 Transcript, M Mileham, private hearing, 30 July 2019, p 118.
- 409 Form, Sole Supplier Justification, Application and Approval, City of Perth, D Aberle.
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- 411 Transcript, M Howells, private hearing, 10 May 2019, p 33.
- 412 Transcript, M Howells, private hearing, 10 May 2019, p 41-43.
- 413 Transcript, M Howells, private hearing, 10 May 2019, p 29-32.
- 414 Transcript, R Mianich, private hearing, 19 July 2019, p 34.
- 415 For example, Transcript, R Mianich, private hearing, 18 July 2019, p 65-66.
- 416 Transcript, M Howells, private hearing, 10 May 2019, p 34, 37.
- 417 Transcript, M Mileham, private hearing, 30 July 2019, p 109.
- 418 Transcript, M Mileham, private hearing, 30 July 2019, p 30.
- 419 Transcript, M Mileham, private hearing, 30 July 2019, p 112.
- 420 Invoice, Marple Bridge to City of Perth, Consulting Services and Strategic Planning Session ELG, 5 May 2017.
- 421 Transcript, D Aberle, private hearing, 29 April 2019, p 11-12.
- 422 Email, A Sunderland to K Pember, 10.12 am 16 May 2017.
- 423 Transcript, M Mileham, private hearing, 30 July 2019, p 118-119.
- 424 Invoice, Marple Bridge to City of Perth, KRA/KPI CMD Directorate Workshop (incl pre and post work) 1 May, No. D1301, 2 June 2017.
- 425 Invoice, Marple Bridge to City of Perth, Consulting Services and CMD Teambuilding Workshop 16 June 2017, 20 June 2017.
- 426 Transcript, D Aberle, private hearing, 29 April 2019, p 15.
- 427 Transcript, D Aberle, private hearing, 29 April 2019, p 14.
- 428 Email, K Pember to D Quinlivan, 11.34 am on 29 June 2017.
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- 430 Email, K Pember to M Mileham, 1.45 pm on 28 August 2017.
- 431 Memorandum, A Egan to M Mileham, 2 February 2018 – Attachment, Review of Services Provided by Marple Bridge, no date.  
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- 432 Email, M Mileham to K Pember, 4.57 pm on 28 August 2017.
- 433 Email, T Obern to K Pember, 2.37 pm on 29 August 2017.
- 434 Transcript, K Pember, private hearing, 17 June 2019, p 70, 72.
- 435 Email, K Pember to M Mileham, 10.34 am on 30 August 2017.
- 436 Transcript, K Pember, private hearing, 17 June 2019, p 70-72; Email, K Pember to R Mianich, 10.35 am on 30 August 2017.
- 437 Transcript, R Mianich, private hearing, 19 July 2019, p 36.
- 438 Transcript, M Mileham, private hearing, 30 July 2019, p 124-125.
- 439 Email, K Pember to R Mianich, 10.35 am 30 August 2017.
- 440 Transcript, M Mileham, private hearing, 30 July 2019, p 125-126.
- 441 Transcript, M Mileham, private hearing, 30 July 2019, p 127.
- 442 Transcript, S Weary, private hearing, 24 April 2019, p 37.
- 443 Email, S Yan to A Egan, 11.08 am on 29 January 2018.
- 444 Memorandum, A Egan to M Mileham, 2 February 2018.
- 445 Email, S Yan to D Richards, 11.05 am on 21 February 2018.
- 446 Email, S Yan to D Richards cc R Mianich and others, 7.24 am on 26 February 2018.
- 447 Email, S Yan to D Richards and A Egan, 7.53 am on 27 February 2018.
- 448 Email, A Egan to S Yan, 8.32 am on 27 February 2018.
- 449 Form, City of Perth, Sole Supplier Justification and Approval, 27 February 2018.
- 450 Quotes Cover Sheet for Requisitions, City of Perth, 2 March 2018.
- 451 Transcript, S Weary, private hearing, 24 April 2019, p 40.
- 452 Transcript, S Weary, private hearing, 24 April 2019, p 42.
- 453 Transcript, S Weary, private hearing, 24 April 2019, p 43-45.
- 454 Transcript, S Weary, private hearing, 24 April 2019, p 46.

- 455 Transcript, S Weary, private hearing, 24 April 2019, p 49.
- 456 Transcript, R Munro, private hearing, 24 April 2019, p 11.
- 457 Transcript, R Munro, private hearing, 24 April 2019, p 15-16.
- 458 Email, S Yan to D Richards and A Egan, 9.40 am on 7 March 2018; Email, S Yan to D Richards and A Egan, 7.18 am on 8 March 2018.
- 459 Email, D Richards to A Egan, 5.06 pm on 8 March 2018.
- 460 Email, R Munro to E Barrenger, 9.11 am on 11 April 2018.
- 461 Minutes, Ordinary Council Meeting, 19 December 2017.
- 462 Request for Tender, City of Perth, Ground and Lower Ground Floor Access Upgrade – Council House – RFT Number: 113-17/18, 17 February 2018.
- 463 Transcript, K Linares, private hearing, 12 April 2019, p 8; Transcript, P Mograve, private hearing, 3 April 2019, p 6.
- 464 Request for Tender, City of Perth, Ground and Lower Ground Floor Access Upgrade – Council House – RFT Number: 113-17/18, 17 February 2018.
- 465 *Planning and Development Act 2005*, s 162.
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- 468 Transcript, M Smith, private hearing, 2 April 2019, p 10-11.
- 469 Transcript, E Barrenger, private hearing, 19 August 2019, p 16.
- 470 Sections 72 and 73 of the *Heritage Act 2018*, read with s 163 of the *Planning and Development Act 2005*; and s 78 of the *Heritage Act of Western Australia 1990* (repealed 1 Jul 2019).
- 471 *Building Regulations 2011*, reg 18(2).
- 472 Transcript, M Mileham, private hearing, 30 July 2019, p 47.
- 473 Transcript, A Higgins, private hearing, 23 August 2019, p 5.
- 474 Transcript, A Higgins, private hearing, 23 August 2019, p 15.
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- 476 Transcript, A Higgins, private hearing, 23 August 2019, p 6.
- 477 Transcript, A Higgins, private hearing, 23 August 2019, p 7.
- 478 Minutes, Ordinary Council Meeting, 19 December 2017.
- 479 Transcript, A Higgins, private hearing, 23 August 2019, p 9.
- 480 Transcript, K Linares, private hearing, 17 October 2019, p 14.
- 481 Email, A Higgins to K Linares, 9.45 am 19 October 2017.
- 482 Transcript, K Linares, private hearing, 17 October 2019, p 23.
- 483 Email, K Linares to A Higgins, 5.52 pm 13 November 2018.
- 484 Transcript, K Linares, private hearing, 17 October 2019, p 23.
- 485 Transcript, A Higgins, private hearing, 23 August 2019, p 11-12.
- 486 Transcript, A Higgins, private hearing, 23 August 2019, p 13.
- 487 Transcript, K Linares, private hearing, 17 October 2019, p 18-19.
- 488 Transcript, A Higgins, private hearing, 23 August 2019, p 11, 24-25.
- 489 Email, A Higgins to R Moore, 6.13 pm 19 December 2017.
- 490 Transcript, K Linares, private hearing, 17 October 2019, p 23.
- 491 Transcript, K Linares, private hearing, 17 October 2019, p 25.
- 492 Transcript, K Linares, private hearing, 17 October 2019, p 27.
- 493 Transcript, A Higgins, private hearing, 23 August 2019, p 8.
- 494 Transcript, K Linares, private hearing, 17 October 2019, p 6-7.
- 495 Advertisement, Western Australian Newspaper, Tender No 113-17/18, 17 February 2018.
- 496 Transcript, P Crosetta, private hearing, 26 July 2019, p 37.
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- 498 Email, C Mok to P Mograve, 9.33 am on 13 April 2018.
- 499 Email, P Mograve to C Mok, 4.15 pm on 13 April 2018.
- 500 Email, D Gericke to P Mograve, 9.17 am on 13 April 2018.
- 501 Email, D Gericke to P Mograve, 10.12 am on 13 April 2018.
- 502 Transcript, P Mograve, private hearing, 16 October 2019, p 21.
- 503 Transcript, P Mograve, private hearing, 16 October 2019, p 23.
- 504 Transcript, P Mograve, private hearing, 16 October 2019, p 24-25
- 505 Transcript, K Linares, private hearing, 17 October 2019, p 35.
- 506 Transcript, K Linares, private hearing, 17 October 2019, p 35.
- 507 Transcript, K Linares, private hearing, 17 October 2019, p 37.
- 508 Transcript, K Linares, private hearing, 17 October 2019, p 39.

- 509 Transcript, K Linares, private hearing, 17 October 2019, p 38.
- 510 Email, P Mograve to P Turney, 12.24 pm on 17 April 2018.
- 511 Email, P Turney to P Mograve, 9.54 am on 18 April 2018.
- 512 Email, P Mograve to P Turney, 12.24 pm on 17 April 2018.
- 513 Document, Quotes Cover Sheet for Requisitions, City of Perth, 19 April 2018
- 514 Proposal, SMEC, SMEC Proposal for Ground and Lower Ground Floor Access Upgrade at Council House – Accessibility and Building Survey Certification.
- 515 Email, E Landers to K Linares, 9.44 am on 25 April 2018.
- 516 Email, P Turney to P Mograve, 2.44 pm on 8 June 2018.
- 517 Email, M Smith to E Barrenger, 4.36 pm on 8 June 2018.
- 518 Email, E Barrenger to M Smith, 3.08 pm on 10 June 2018.
- 519 Memorandum, M Smith to E Barrenger, 11 June 2018; Memorandum, E Barrenger to M Mileham cc P Crosetta, C Smith and M Smith, 26 June 2018.
- 520 Memorandum, E Barrenger to M Mileham cc P Crosetta, C Smith and M Smith, 26 June 2018.
- 521 Email, D Gericke to K Linares, 5.20 pm on 18 June 2018.
- 522 Email, C Smith to E Barrenger and others, 8.50 am on 28 June 2018.
- 523 Email, M Smith to C Smith E Barrenger and R Rees, 9.57 am on 28 June 2018.
- 524 Email, K Linares to E Barrenger, 4.36 pm on 2 July 2018.
- 525 Application, City of Perth, Application for Development Approval (Local Planning Scheme), 29 June 2018.
- 526 Email, R Colalillo to S Massimini, 5.03 pm on 10 July 2018.
- 527 Assessment, City of Perth, Heritage Development Application Assessment, 8 August 2018.
- 528 Assessment, City of Perth, Heritage Development Application Assessment, 8 August 2018.
- 529 Letter, M Smith to S Massimini, 27-29 (lot 760) St Georges Terrace, Perth – Alterations and Additions to the Lower Ground and Ground Floor levels of Council House, 21 August 2018.
- 530 Application, City of Perth, Application for building permit – certified (BA1), 13 September 2018.
- 531 Certificate, City of Perth, Certificate of design compliance (BA3), 13 September 2018.
- 532 Approval, Western Australian Planning Commission, Approval to Commence Development, 20 September 2018.
- 533 Letter, Department of Planning, Lands and Heritage to City of Perth, Council House, Perth, 25 September 2018.
- 534 Report, O'Brien Harrop Access, Accessibility Review City of Perth, Council House Security gates and concierge, June 2018.
- 535 Transcript, K Linares, private hearing, 17 October 2019, p 7.
- 536 Transcript, A Higgins, private hearing, 23 August 2019, p 21.
- 537 Transcript, A Higgins, private hearing, 23 August 2019, p 23.
- 538 Transcript, A Higgins, private hearing, 23 August 2019, p 22.
- 539 Transcript, K Linares, private hearing, 17 October 2019, p 29.
- 540 Transcript, K Linares, private hearing, 17 October 2019, p 29.
- 541 Transcript, P Mograve, private hearing, 3 April 2019, p 12.
- 542 Transcript, K Linares, private hearing, 17 October 2019, p 29-30.
- 543 Transcript, A Higgins, private hearing, 23 August 2019, p 12.
- 544 Contract, City of Perth and MG Group, Ground and Lower Ground Floor Access Upgrade – Council House – Contract Number: 113-17/18.
- 545 Email, MG Group to P Mograve and R Ibrahim cc K Linares and C Menchetti, 2.50 pm on 6 April 2018.
- 546 Transcript, C Menchetti, Private hearing, 10 April 2019, p 11.
- 547 Memorandum, P Mograve to P Crosetta, Variation to Contract (Policy 9.8) 113-17/18 Ground and Lower Ground Floor Access Upgrade – Council House, 31 May 201.
- 548 Email, P Mograve to K Linares, 7.49 am on 7 June 2018.
- 549 Transcript, R Moore, private hearing, 20 August 2019, p 15-16; Transcript, A Higgins, private hearing, 23 August 2019, p 10.
- 550 Transcript, L Bugarin, private hearing, 16 April 2019, p 5.
- 551 Transcript, K Linares, private hearing, 17 October 2019, p 12.
- 552 Transcript, K Linares, private hearing, 17 October 2019, p 10.
- 553 Transcript, P Crosetta, private hearing, 26 July 2019, p 41.
- 554 Transcript, P Crosetta, private hearing, 26 July 2019, p 35.
- 555 Transcript, K Linares, private hearing, 17 October 2019, p 11.
- 556 Transcript, K Linares, private hearing, 17 October 2019, p 37.
- 557 Email P Mograve to C Daniel, 4.08 pm on 22 June 2018.

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# 2.4

## Final Days





## 2.4.1 Events leading to the suspension of the Council

Final Days describes events within the City of Perth Council (Council) and Administration of the City of Perth (City) at the end of 2017, and the beginning of 2018, which led to calls from council members, the Chief Executive Officer (CEO) and senior officers for intervention. The level of apparent dysfunction caused the Minister for Local Government (Minister) to suspend the Council in March 2018.

### Timeline

2017	21 October	Council elections held.
	24 October	Dr Jemma Green was appointed as Deputy Lord Mayor.
	27 October	Dr Green sought access to legal advice. Mr Mark Ridgwell recommended Herbert Smith Freehills (HSF).
	9 November	Dr Green met HSF and gave them information about a conversation between Mr Martin Mileham and a property developer. The HSF investigation became 'Project Percy'.
	28 November	Dr Green gave information to HSF about the developer and Ms Lisa Scaffidi.
2018	29 January	HSF provided its report on Project Percy to the City. It found no misconduct.
	6 February	Mr Ridgwell provided Mr Mileham with the HSF report on Project Percy.
	8 February	Mr Mileham sought legal advice on Project Percy.
	12 February	Mr Mileham, supported by the Executive Leadership Group (ELG), wrote to the Director General of the Department of Local Government, Sport and Cultural Industries (Department) about dysfunction at the City.
	16 February	Mr Mileham took personal leave because of health issues caused by Project Percy. Mr Robert Mianich became Acting CEO.
	22 February	By this date, Mr Mianich, had forwarded complaints about Dr Green and Mr Reece Harley interfering in administrative matters to the Local Government Standards Panel. Those complaints were ultimately dismissed.
	24 February	Five council members requested a Special Council Meeting to change a policy so they could appoint an Acting CEO.
	26 February	Mr Mianich took personal leave for health reasons, advising he would be on leave <i>"for at least one week"</i> .
	27 February 8:00am	A special ELG session, with Ms Erica Barranger, Ms Rebecca Moore, Ms Nicola Brandon, Mr Paul Crosetta and Mr Ridgwell, took place in the CEO Boardroom. <ul style="list-style-type: none"> <li>Ms Brandon was asked to leave by Ms Moore.</li> <li>Ms Annaliese Battista telephoned the meeting and said she had been told the Council was intending to make her Acting CEO, and she had spoken to the Department.</li> <li>The ELG members in the meeting called a legal advisor and asked if the ELG could delay the Special Council Meeting.</li> <li>At 10:30 am they called the Minister's Chief of Staff and asked whether the Minister or his office could prevent the Special Council Meeting. They were told he could not.</li> </ul>
	11:00am	The three ELG members declared a Priority 1 crisis, enacted the Crisis Management Plan, and formed a Crisis Management Team which held three meetings during the day.
	5:00pm	A Special Council Meeting was held. It amended the policy for appointment of an Acting CEO and appointed Ms Battista.
	2 March	The Minister suspended the Council and appointed Commissioners to oversee the City of Perth.

## Activation of the Crisis Management Plan and holding of a Special Council Meeting on 27 February 2018

### Introduction

1. On Saturday, 24 February 2018, a majority of council members at the City of Perth (City) requested a Special Council Meeting (SCM) to be held on 27 February 2018. The purpose of the meeting was to move a motion (Motion) to amend a Council policy and appoint an Acting Chief Executive Officer (CEO). On the morning of 27 February 2018, certain members of the Executive Leadership Group (ELG) enacted the City's Crisis Management Plan (CMP), declaring a Priority 1 crisis.
2. The calling of the SCM, the enactment of the CMP and the declaration of a crisis, occurred against the following background:
  - in early January, the return of Lord Mayor Ms Lisa Scaffidi to the City, following the Court of Appeal's December 2017 decision in *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222;
  - on 29 January 2018, the delivery to the City of the Project Percy report by Herbert Smith Freehills (HSF), solicitors;
  - the provision of a copy of that report to the CEO, Mr Martin Mileham, and the Lord Mayor;
  - the engagement by the City, on or about 8 February 2018, of another law firm to review the process leading up to the Project Percy report, and the delivery to the City by that firm of its review on 27 February 2018;
  - Mr Mileham, with the support of the ELG, sending a letter of concern and complaint on 12 February 2018 to the Director General of the Department of Local Government, Sport and Cultural Industries (Department) suggesting "corrective measures" may need to be taken in respect of the City of Perth Council (Council);
  - from close of business on 16 February 2018, Mr Mileham taking personal leave for medical reasons;
  - from 19 February 2018, Mr Robert Mianich taking on the role of Acting CEO;
  - Mr Mianich complaining to the Local Government Standards Panel (LGSP) about council members Mr Reece Harley and Dr Jemma Green, and writing to council member Mr James Limnios with concerns about his behaviour, on 21 and 22 February 2018;
  - the request by certain council members on 24 February 2018 to Mr Mianich, in his capacity as Acting CEO, calling for the SCM;
  - from close of business on 26 February 2018, Mr Mianich taking personal leave for medical reasons; and
  - the ongoing speculation in the media that the Minister for Local Government (Minister) was considering suspending the Council.

## Issues considered by the Inquiry

3. The calling of the SCM and the enactment of the CMP raise serious questions about the governance of the City and the relationships between certain members of the ELG and the Council, which the Inquiry was required to consider and inquire into pursuant to A.3(ii), A.3(iii), A.3(v) and A.3(vi) of its Terms of Reference.

4. The issues identified by the Inquiry and considered in this Section include:

- Why did the ELG enact the CMP? Was the decision to do so reasonable, having regard to the criteria in the plan? Was it a reasonable response to circumstances “*on the ground*” at the time? Was it enacted for a purpose other than to respond to a perceived crisis?
- Why did certain council members call the SCM? Was there some ulterior purpose behind the Motion? Was it motivated by retribution?
- What does the activation of the CMP and the holding of the SCM reveal about relationships between and in the ELG and the Council in February 2018, and what do those events say about the level of dysfunction at the City at that time?

## Investigation by the Inquiry

### Witnesses

5. The Inquiry interviewed, and held private and public hearings, involving a number of people in the course of investigating this section. The positions given below are the positions they held at the time of the events described in this Section:

- Ms Rebecca Moore, Director, Community and Commercial Services.
- Mr Paul Crosetta, Director, Construction and Maintenance.
- Ms Erica Barrenger, Director, Planning and Development.
- Ms Annaliese Battista, Director, Economic Development and Activation.
- Mr Mark Ridgwell, Acting Director, Corporate Services and Manager, Governance.
- Mr Desmond Ngara, Acting Manager, Governance between 27 February 2018 and 9 March 2018.
- Mr Paul Gale, Manager, Strategy and Partnerships.
- Ms Lisa Scaffidi, Lord Mayor.
- Dr Green, Deputy Lord Mayor.
- Council members Mr Steve Hasluck, Mr Harley, Ms Lexi Barton and Mr Limnios.
- Mr Gary Hamley, Chief of Staff to the Minister.
- Mr Neil Douglas, Partner, McLeods, Barristers and Solicitors.

6. Ms Moore, Director, Community and Commercial Services, was a member of the ELG who enacted the CMP and was appointed to the principal role of Crisis Manager. She was, in respect of this topic, a combative witness, both in her responses to questions and her demeanour. Ms Moore was at pains to justify the enactment of the CMP, particularly when it was put to her that the enactment was not justified by the terms of the plan. Ms Moore was also inclined to obfuscate when questioned about the timing of, and changes to, file notes made by her in the days and weeks following the enactment of the CMP. As described later in this Section, some of her evidence on these topics stretches the bounds of credulity. Her evidence on this topic is approached with caution and is not accepted in the absence of objective corroboration, preferably documentary.
7. Mr Crosetta, Director, Construction and Maintenance, was also a member of the ELG present at and involved in the decision to enact the CMP. On this issue, Mr Crosetta's evidence was of limited value. His memory of the events of 27 February 2018 was unreliable. For example, he gave evidence that he thought the first meeting of the ELG on 27 February 2018 occurred in the afternoon, when it in fact occurred in the morning. His evidence is not accepted in the absence of contemporaneous corroboration. Mr Crosetta also maintained confusingly inconsistent positions. For example, he accepted that the absence of a CEO from the City was a day-to-day operational issue (which would not engage the CMP), but at the same time maintained that enactment of the CMP was an appropriate step for the ELG to take.
8. Ms Barrenger, Director, Planning and Development, was the third member of the ELG involved in and supportive of the decision to enact the CMP. In general Ms Barrenger's evidence was candid, assisted the Inquiry and filled a number of gaps in the Inquiry's knowledge of what happened at that time. However, Ms Barrenger was at times evasive and inconsistent, particularly on topics which did not reflect favourably on her or the actions of the ELG<sup>a</sup>. Her evidence on this topic is treated with some caution.
9. Ms Battista, Director, Economic Development and Activation, was not present at the meeting when the ELG enacted the CMP. She is, however, an important witness for this topic as she was ultimately installed by Council as Acting CEO at the SCM. Ms Battista gave evidence that she was on leave on 27 February 2018, that she requested her acting delegate (Ms Nicola Brandon) to attend meetings in her place, that she was disappointed and dismayed to find that Ms Brandon was excluded from critical meetings and that she was surprised and perplexed to this day about the ELG's decision to enact the CMP. She also gave evidence about the extent to which she and other members of the ELG considered it likely, and preferable, that the Minister suspend the Council. In relation to this topic Ms Battista presented as a candid and forthright witness. Her evidence is generally accepted.

<sup>a</sup> For example, Ms Barrenger's evidence about whether she had considered that the Minister for Local Government might suspend Council changed from denial to acceptance: Transcript, E Barrenger, public hearing, 18 September 2019, p 610.

10. Mr Ridgwell, Acting Director, Corporate Services (in lieu of Mr Mianich who was on leave at the time) and Manager, Governance, was present from time to time at the meeting at which the CMP was enacted. Mr Ridgwell was an honest and candid witness, although owing to the number of matters he had to deal with on 27 February 2018 and the fact that he was in and out of meetings relating to the CMP throughout the day, his evidence is of somewhat limited value.
11. Ms Scaffidi, the Lord Mayor, appears to have been a less obvious player in the events leading up to the SCM and CMP. She, together with council member Mr Jim Adamos, opposed all aspects of the Motion advanced at the SCM. When asked why, she said she thought it was unnecessary and that *“the feeling was that there was more to it”*.<sup>1</sup> While there is no reason to disbelieve the Lord Mayor, her evidence is of limited probative value on this topic.
12. Dr Green presented as a considered witness, whose evidence gave important context to the events of 27 and 28 February 2018. In that respect, Dr Green’s evidence traversed not only the CMP and the SCM, but also some of the events that led up to the City reaching the point it did. Dr Green’s evidence is generally accepted.
13. Mr Hasluck presented as a witness eager to assist the Inquiry. While Mr Hasluck’s evidence assisted in giving some context to the CMP and SCM, his recollection of events was at times poor. To his credit, Mr Hasluck readily accepted that his recollection was open to doubt.
14. Mr Harley was another witness who gave the impression of being eager to assist the Inquiry. He was a thoughtful, although at times, exuberant witness. He had clearly given considerable thought to the issues facing the City and his conduct in relation to them. Along with the Lord Mayor, he was the most obviously politically attuned of the witnesses examined on this topic. To a significant degree, Mr Harley’s evidence was marked by its candour. He readily accepted propositions that did not necessarily cast him or his behaviour in a positive light.<sup>2</sup> He was forthright in his opinions of others, gave qualified answers where he considered qualification was necessary and direct ones when pressed. Generally, Mr Harley’s evidence as to what happened is accepted, although some caution is taken when considering whether to accept Mr Harley’s evidence as to why things occurred the way they did.

15. Ms Barton's demeanour in the witness box was direct and engaging, but otherwise unremarkable. While Ms Barton appeared to do her best to recall events, it did appear that on occasions, and perhaps unsurprisingly, some of her recollection was poor.<sup>3</sup> In the event, Ms Barton was a minor player in the events leading up to the CMP and SCM. While she signed the Motion and supported the resolutions in it, including by voting in support of them at the SCM, she had a more limited role in respect of the Motion when compared to Dr Green and Mr Harley. This may be because, like Mr Hasluck, Ms Barton was relatively new to the City as at 27 February 2018.
16. Mr Limnios's recollection of events surrounding the CMP and SCM was very poor and, in the absence of corroboration, is not relied on.
17. Finally, the Inquiry heard evidence from Mr Hamley, Chief of Staff to the Minister, and Mr Douglas, partner at law firm McLeods. Messrs Hamley and Douglas were, in the scheme of things, relatively minor witnesses. Their evidence is generally accepted.

### Crisis Management Plan

18. The CMP sits within a suite of documents captured by the Crisis and Business Continuity Management Framework. That suite also includes the Business Continuity Plan. The Business Continuity Plan is engaged when the City needs to respond to an incident that could result in a prolonged disruption of the services and business activities of the City. The Business Continuity Plan sets out three ascending levels of disruption. Not all disruptions engage the CMP. It is only when the disruption is a Priority 1 "*crisis*" that the CMP is activated. Its purpose is to provide a framework for dealing with that kind of crisis (Figure 2.38).<sup>4</sup>
19. More specifically, the CMP provides a process for facilitating organised decision-making in the event of a major incident or crisis, "[t]o reduce the risk and impact of a disruption that may have an effect on the life, safety or reputation of the City and its employees using effective communication, teamwork, coordination, assessment and decision-making".<sup>5</sup>
20. The Crisis and Business Continuity Management Framework gives some examples of the types of incidents that could lead to the activation of the CMP, including:
  - fire, flood or explosion causing significant damage to building and infrastructure, and rendering part of or all of the premises inaccessible or unusable;
  - prolonged loss of electric power to the site;
  - prolonged outage to networks, telephony and or IT services;
  - security or criminal incident resulting in denial of access to the site; and
  - accidents, sabotage, theft or intentional acts resulting in significant loss of or damage to critical assets.<sup>6</sup>

21. Further guidance as to what the CMP and Business Continuity Plan are designed to deal with is provided under the heading “scope” in the Business Continuity Plan, where, among other things, it is provided that:
 

*“This plan is designed to address significant disruptions to entire workflows or processes that result from a total infrastructure outage or denial of access to the work premise. It is not based on any specific scenario or causes of disruption but considers entire processes and the supporting infrastructure needed to recover prioritised services and business activities.*

*This plan is activated in a Priority 1 incident when a crisis has been declared by the Crisis Management Team (CMT). The plan does not address procedures for dealing with emergencies (such as bomb threat, fire or building evacuation) or day-to-day operational problems. These are respectively addressed in the appropriate emergency response plans and standing operating procedures”.*<sup>7</sup>
22. There are several priorities that can be assigned to an incident. They are, in ascending order of seriousness:
 

*“Incident – Priority 3: Minor problems with little or no impact to daily operations, including – i) Loss or damage to critical assets that can easily be rectified or replaced; and ii) Minor injury to staff or visitors that may require first aid;*

*Emergency – Priority 2: Significant delays or interruption to daily operations lasting less than 24 hours, including – i) Loss or damage to critical assets that will take at least 24 hours to rectify or replace; and ii) Injuries to staff or visitors requiring medical attention; and*

*Crisis – Priority 1: Prolonged interruption to operations lasting more than 24 hours, including – i) Irreparable damage or total loss to critical assets; and ii) Death / injuries to staff or visitors requiring hospitalisation”.*<sup>8</sup>
23. A Priority 1 escalation engages the CMP and triggers the appointment of the CEO or the Director, Community and Commercial Services as the Crisis Manager to convene the Crisis Management Team and oversee the running of the City.
24. A Priority 1 crisis is reserved for prolonged and extremely serious interruptions to the operations of the City.
25. On 27 February 2018, three directors, Ms Moore, Ms Barrenger and Mr Crosetta, with the acquiescence of Mr Ridgwell, activated the CMP and declared a Priority 1 crisis.
26. In this Section the Inquiry examines how and why the CMP was enacted.



**CITY OF PERTH  
CRISIS MANAGEMENT PLAN**

**NOTIFICATION AND ESCALATION**

Level	Impact	Actions	Person in-charge
<b>INCIDENT</b>  Priority 3	Minor problems will little or no impact to daily operations.  Including -  i) Loss or damage to critical assets can easily be rectified or replaced.  ii) Minor injury to staff or visitor that may require first aid	Person who encounters a problem or an imminent threat should notify his / her immediate Manager or delegate.  The Manager will take the necessary actions to resolve the situation using routine standard operating procedures (SOPs).  If the situation cannot be resolved using SOPs or requires a structured and coordinated response, the Director of the impacted area should be notified and the incident escalated to the Emergency level.	Manager of impacted area
<b>EMERGENCY</b>  Priority 2	Significant delays or interruption to daily operations lasting < 24 hours  Including -  i) Loss or damage to critical assets that will take at least 24 hours to rectify or replace.  ii) Injuries to staff or visitors requiring medical attention.	The Director of the impacted area will mobilise the Critical Incident Control Team (CICT) to coordinate all necessary internal and external resources to resolve the problem.  If the situation is likely to take > 24 hours to resolve or there is irreparable damage to assets, the Crisis Manager should be notified and the Emergency escalated to the Crisis Level.	Critical Incident Control Team
<b>CRISIS</b>  Priority 1	Prolonged interruption to operations lasting > 24 hours.  Including -  i) Irreparable damage or total loss to critical assets.  ii) Death / injuries to staff or visitors requiring hospitalisation	The Crisis Manager will convene the Crisis Management Team (CMT).  The CMT will <u>activate</u> the Business Continuity Plans, if appropriate  The CMT will consider the broader strategic and reputational implications of the incident and provide any necessary support to the CICT. The CICT will continue to resolve the situation at the impacted site.	Crisis Management Team

Figure 2.38: Notification and escalation table, City of Perth, Crisis Management Plan, 1 December 2017.

## Evidence obtained by the Inquiry

### Mr Martin Mileham receives the Project Percy report, writes to the Department of Local Government, Sport and Cultural Industries, and takes leave

27. On 6 February 2018, Mr Ridgwell provided Mr Mileham with the HSF Investigation Report (also known as the Project Percy report). The broader context of Project Percy is set out in this Section.
28. At first, Mr Mileham thought the report was amusing, or so absurd as to be laughable, although he soon realised it was not.<sup>9</sup> He took advice from one of the City's usual lawyers, McLeods, and two days later requested Mr Ridgwell engage with that law firm in order for the City to take advice as to "*next steps*".<sup>10</sup> Mr Ridgwell, together with Mr Mianich, did that. Beyond requesting the review occur, there is nothing to suggest that Mr Mileham had any further substantive involvement with Mr Douglas in connection with Project Percy.
29. In the meantime, on 12 February 2018, Mr Mileham with the support of the ELG wrote to the Director General of the Department expressing concern about dysfunction within the City, perceived failures in good governance, and his attempts to correct those matters.
30. Mr Mileham's letter included the following passage:
 

*"Notwithstanding these and other ongoing measures aimed at achieving good government as is required by both the City of Perth and Local Government Acts, it is my opinion that the conduct of Council should continue to be closely monitored and that corrective measures, should same be indicated, are applied swiftly".*
31. Mr Mileham's letter was co-signed by the entire ELG.
32. Mr Mileham told the Inquiry that his letter had been prepared in a draft form for some time and had been the subject of discussions between him and the ELG during that period. He said that those discussions included discussion of the suspension of Council.<sup>11</sup>
33. Mr Mianich gave evidence that in the months leading up to February 2018, he and the rest of the ELG had several discussions and meetings about what steps, if any, they could take to deal with their concerns about the Council. One of those steps, Mr Mianich accepted, was to have the Council suspended by the Minister. That evidence was echoed in substance by Mr Crosetta, Ms Battista and Mr Ridgwell.<sup>12</sup> Ms Barrenger also explained that, as at 12 February 2018, one of the "*corrective measures*" she was contemplating was a suspension of council following a warning, "*if we went through that full process*".<sup>13</sup>

34. Consistently with this evidence, Dr Green and Ms Battista told the Inquiry about a meeting attended by the ELG and Dr Green on or about 6 or 7 December 2017, at which Dr Green was asked by the ELG to approach the Minister and request the suspension of Council.<sup>14</sup>
35. In view of this evidence, the Inquiry finds it more likely than not that by 12 February 2018, Mr Mileham and the ELG held the view and implicitly conveyed that view to the Department by sending the letter dated 12 February 2018,<sup>b</sup> that one of the “*corrective measures*” that the Minister should consider was the suspension of the Council.
36. Four days after his letter to the Director General, at close of business on 16 February 2018, Mr Mileham took medical leave. In an email to the Lord Mayor on 14 February 2018, he cited the Project Percy investigation and report as a contributor to that decision. He appointed Mr Mianich, Director, Corporate Services, to act in his absence and notified the Council (through the Lord Mayor) that he considered the Project Percy investigation to constitute a breach of his employment contract.<sup>15</sup>

**Deputy Lord Mayor Dr Jemma Green requests, the City of Perth pay her legal costs and Mr Robert Mianich complains about Dr Jemma Green, Mr Reece Harley and Mr James Limnios**

37. Between 17 and 23 February 2018, Mr Mianich received a number of emails from Dr Green concerning requests by her for the City to meet her legal costs of dealing with and responding to the review then being conducted by McLeods into the Project Percy investigation. On 23 February 2018, Mr Mianich, in an email which appears to have brought the exchange to at least a temporary halt, indicated to Dr Green that he was not prepared to release the report being prepared by Mr Douglas and that he and Mr Douglas agreed that the best approach was for Mr Douglas to make a verbal presentation.<sup>16</sup>
38. At about the same time, Mr Mianich was also busy finalising and lodging complaints with the LGSP about Mr Harley and Dr Green and writing to Mr Limnios about concerns the City had with his behaviour.
39. By the end of 22 February 2018, those council members were all aware of the various complaints and allegations made about or against them.
40. The complaints against Mr Harley and Dr Green, and the letter written to Mr Limnios, are substantial documents. Shorn of detail, the documents effectively complain about the way those council members had allegedly conducted themselves in their dealings with the administration and that the conduct at times infringed the legislative prohibition against council members involving themselves in the administration of the City. The complaints about Mr Harley and Dr Green were ultimately dismissed by the LGSP.

<sup>b</sup> Some witnesses, for example Mr Crosetta, appeared to consider the letter to the Department of Local Government, Sport and Cultural Industries to, in effect, be to the Minister for Local Government, although this was not directly put to Mr Crosetta: Transcript, P Crosetta, public hearing, 23 September 2019.

### Council members Mr Steve Hasluck, Ms Lexi Barton, Dr Jemma Green, Mr Reece Harley and Mr James Limnios request the Special Council Meeting

41. At 4.54 pm on Saturday, 24 February 2018, Mr Hasluck emailed Mr Mianich requesting Mr Mianich, as Acting CEO, call the SCM for Tuesday, 27 February 2018. Mr Hasluck's email was not copied to anyone.
42. Attached to Mr Hasluck's email was a motion signed by Mr Hasluck, Ms Barton, Dr Green, Mr Harley and Mr Limnios, by which it was proposed to amend Council Policy "CP12.6" (CP12.6) to, among other things, reserve to Council the right to appoint an Acting CEO during any period of the CEO's absence and to appoint an as then unnamed person to be the Acting CEO of the City (Motion).
43. The Motion, and its timing, is interesting for several reasons.
44. First, until its receipt by Mr Mianich, there is no record in the materials available to the Inquiry of any suggestion or discussion by Council or the administration that a motion of this type would be forthcoming or contemplated.
45. Secondly, the Motion was provided just before 5.00 pm on a Saturday.
46. Thirdly, the Motion proposed the appointment of an Acting CEO in circumstances where, as at the date of the Motion, an Acting CEO (Mr Mianich) was already in the role.
47. Fourthly, the Motion was sent by Mr Hasluck to Mr Mianich within two days of Mr Mianich complaining about, or writing to, three of the signatories to the Motion: Dr Green, Mr Limnios and Mr Harley.

#### Who drafted the Motion?

48. Mr Harley, Mr Hasluck and Dr Green all gave evidence that the Motion (Figure 2.39) was conceived of on or just before Saturday, 24 February 2018. It is also the evidence of those witnesses that the Motion was considered, discussed, drafted and signed on Saturday, 24 February 2018. The Inquiry so finds.
49. The primary authors of the Motion were Dr Green and Mr Harley, with some involvement from Ms Barton and Mr Hasluck.<sup>17</sup> While at the SCM, Mr Hasluck told the Lord Mayor that he had crafted the document. However, he accepted during his examination that the truth was that he had not done so.<sup>18</sup> His explanation for why he told the Lord Mayor something that was not true was that *"under the stress and the pressure that we were under at that moment, I wanted to just simplify and streamline and my natural reaction was to say yes"*. It is not a good explanation. However, Mr Hasluck denied that his response to the Lord Mayor was contrived to disguise the identity of the true authors.<sup>19</sup> Mr Harley said no consideration was given to whether it would be strategically advantageous to have Mr Hasluck present the Motion and that he would have been more than happy to move it himself.<sup>20</sup>

24 February 2018

**Request of the CEO to schedule a Special Council Meeting  
27<sup>th</sup> February 2018**

**We hereby request a Special Council Meeting to be held on Tuesday 27<sup>th</sup>  
February 2018 5PM to address the following:**

**1. That Council Policy 12.6 be amended to state:**

CP12.6 Staff - Local Government Employees – Senior Employees

**POLICY OBJECTIVE**

To :

1. determine those employees that are considered to be suitably qualified to act in the position of Chief Executive Officer (Section 5.36(2)(b) of the Local Government Act 1995);

2. determine how the position of Chief Executive Officer will be filled on an acting basis as required; and

3. determine those employees that are designated as senior employees for the purposes of Section 5.37(1) of the Local Government Act 1995.

**POLICY STATEMENT**

1. In accordance with Section 5.36(2)(b) of the Local Government Act 1995, all Directors employed by the City are considered to be suitably qualified to act in the position of Chief Executive Officer.

2. Where the Chief Executive Officer is to be absent from work for more than one business day, or at work but interstate or overseas, one of the City's Directors must be appointed to act in the position of Chief Executive Officer.

3. Where the period of absence of the Chief Executive Officer is for a period exceeding four consecutive weeks, the Council shall determine which Director it wishes to appoint to act in the position of Chief Executive Officer.

4. Where the Chief Executive Officer appoints a Director to act in the position of Chief Executive Officer in accordance with point 2 above, the Chief Executive Officer must advise all Elected Members in writing which Director has been appointed and the period of appointment. For periods of pre-arranged leave the Chief Executive Officer must inform all Elected Members of the arrangements for Acting Chief Executive Officer as soon as practically possible.

5. Directors are designated as senior employees for the purposes of Section 5.37(1) of the Local Government Act 1995.

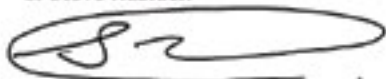
6. Notwithstanding clauses 1 to 5, Council reserves its right under the Local Government Act 1995 to appoint an Acting CEO, in the CEO's absence, for any period.

7. This policy is effective immediately.

**2. That Council appoints \_\_\_\_\_ to the role of acting Chief Executive Officer.**

Signed

Cr Steve Hasluck



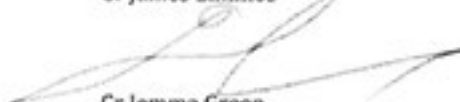
Cr Lexi Barton



Cr Reece Harley



Cr James Limnios



Cr Jemma Green

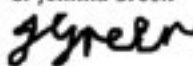


Figure 2.39: Request for a Special City of Perth Council Meeting on 27 February 2018.

50. In the event, it seems most likely that Mr Hasluck volunteered to move the Motion simply because he agreed with it<sup>21</sup> and he told the Lord Mayor he had crafted the Motion to avoid embarrassment in the clearly heated environment of the SCM.<sup>22</sup>

#### What motivated the Motion?

51. As described below, the Inquiry finds that the Motion was motivated by a desire to remove Mr Mianich from the role of Acting CEO and that the desire was contributed to, at least in part, by Mr Mianich lodging complaints about Dr Green and Mr Harley and writing to Mr Limnios in the terms he did, on 21 and 22 February 2018.
52. Mr Mianich told the Inquiry that he was out at dinner on the evening of Saturday, 24 February 2018, but that he expected he would have seen an email about the Motion on his telephone that evening. Mr Mianich's immediate reaction when he learned of the Motion was that it related to the standards breaches complaints he had made to the LGSP.<sup>23</sup>
53. On the following day, Mr Mianich forwarded Mr Hasluck's email and the Motion to Mr Douglas at McLeod's, noting that he had recently complained to the LGSP, that it appeared to him that the two matters were linked and requesting advice as to the protections available to him in the circumstances.<sup>24</sup> Mr Mianich gave evidence that he subsequently spoke to Mr Douglas about the topic, but could not recall with any specificity what advice he received. Mr Mianich described this day as *"very difficult"*.<sup>25</sup>
54. The day after, on 26 February 2018, Mr Ridgwell similarly forwarded Mr Hasluck's email and the Motion to Mr Ron Murphy, Manager Sector Governance – Local Government at the Department, observing that in his view *"there [were] strong grounds to suspect that there is a link between the complaints made to the Standards Panel ... and the proposed Special Council meeting"*.
55. Mr Ridgwell also observed that conduct of that nature would, if it had arisen in the context of a Corruption and Crime Commission complaint and if it were made out, constitute the serious offence of victimisation under the *Corruption, Crime and Misconduct Act 2003*.<sup>26</sup> It is clear that Mr Ridgwell, quite properly, took this concern very seriously. On 27 February 2018, he reiterated it to Mr Murphy and expressed the view that the State Solicitor's Office should *"consider the action of the last few days in respect to the handling of the complaints and the actions against the A/CEO"*.<sup>27</sup>
56. When asked why he did not raise his concerns regarding the Motion with Mr Hasluck, Ms Barton, Dr Green, Mr Harley and Mr Limnios, Mr Ridgwell said it was because he was concerned that if he did so, then some of those council members might have placed pressure on a new CEO or Acting CEO to terminate his employment or take action against him.<sup>28</sup>
57. The concerns of Mr Mianich and Mr Ridgwell were echoed by the members of the ELG who participated in the events of 27 February 2018, including in an administration advice prepared for, but apparently not received by, Council.<sup>29</sup>



58. The Inquiry finds that the victimisation concerns expressed by Mr Mianich and Mr Ridgwell in relation to Mr Mianich, and echoed by the ELG, were genuinely and reasonably held in the circumstances as apprehended by them at that time.
59. Dr Green and Mr Harley denied that the simple fact of the lodging of complaints about them motivated the Motion. Both witnesses explained that they considered the complaints were primarily the work of Mr Mileham and that Mr Mianich was simply *“in the chair”* when the time came for their lodgement.<sup>30</sup> Mr Limnios also denied that the letter he received from Mr Mianich had anything to do with his support for the Motion.<sup>31</sup> Rather, a more nuanced view of the timing of and motivation for the Motion was proffered by these witnesses.
60. Dr Green considered the complaints lodged about her to be amateur and patronising and denied they related to her support for the Motion. She said that her primary concern was that Mr Mianich had failed to respond to her questions about the confidentiality of the Project Percy report and that requests by her to have Mr Ridgwell removed from being involved in the McLeod’s review of that report *“fell on deaf ears”*. Dr Green’s view was that Mr Mianich was *“undertaking his work in a way that was not appropriate or professional”*.<sup>32</sup> She had, in effect, lost confidence in him as an Acting CEO.
61. Mr Harley’s evidence was that the connection between the complaints and the Motion was the way in which those complaints, and complaints more generally, were handled within the City. Mr Harley considered the complaints against him were vexatious and was quick to inform the Inquiry that the complaint had been *“thrown out”* by the LGSP. Mr Harley also thought Mr Mileham, while on leave, was in the background instructing Mr Mianich to act in ways that would damage certain council members, although he accepted he had no evidence for that view and that it was an assumption or belief of his at the time. As with Dr Green, Mr Harley had little confidence in Mr Mianich’s capacity as Acting CEO.<sup>33</sup>
62. Mr Limnios said that he felt that Mr Mileham and Mr Mianich *“didn’t really like me”* at the time and that he was motivated to support the Motion, because he wanted Council to consider its options and not be told what to do. In respect of Mr Mianich’s capacity to lead the City, Mr Limnios said that he thought *“there could have been others that could have done it better”*. He pointed to the fact that the Acting CEO role was a public interface role and that Mr Mianich was *“purely involved in our finances”*.<sup>34</sup>
63. In addition to expressing dissatisfaction with the professionalism of Mr Mianich, including in relation to complaints handling, Dr Green and Mr Harley also expressed support for the capacity of Ms Battista to take on the role of Acting CEO in Mr Mileham’s absence. Mr Harley described Ms Battista as professional and willing to deal with council members.<sup>35</sup> Dr Green recounted a conversation she had with Ms Battista in which she said that she could not see anyone else had the *“capability and had the integrity to steady the ship at that time”*.<sup>36</sup> It is clear that Ms Battista was, for Dr Green and Mr Harley, a preferable Acting CEO to Mr Mianich.



64. This preference was shared by Councillors Limnios, Barton and Hasluck, all of whom considered Ms Battista as the best option available to the Council at the time.<sup>37</sup>
65. An issue which arose in the course of evidence on the topic of the motivations of Councillors Green, Harley, Barton, Limnios and Hasluck in moving the Motion was whether Councillors Barton and Hasluck were aware of the complaints lodged against Councillors Green and Harley by Mr Mianich before supporting the Motion.
66. Ms Barton accepted that she was aware of these complaints as at the time of giving evidence to the Inquiry, but could not say whether she was aware of these complaints before she signed the Motion. She said it was something Dr Green and Mr Harley told her about, but she could not be sure whether it happened before or after the SCM.<sup>38</sup> Dr Green said she told Ms Barton on Saturday, 24 February 2018 that she had received two complaints and that in the course of that conversation she and Ms Barton also shared views about Mr Mianich's capacity to be Acting CEO.<sup>39</sup>
67. The Inquiry finds, on balance, that it is more likely than not that Ms Barton knew that complaints had been lodged by Mr Mianich about Dr Green and Mr Harley before signing the Motion.
68. The position with respect to Mr Hasluck is less clear. While he was aware that complaints about Mr Harley and Dr Green had been made, he denied knowing at the time of supporting the Motion that the complaints had been lodged by Mr Mianich.<sup>40</sup>
69. There is some evidence to the contrary:
- Mr Harley's evidence, albeit refreshed from emails, that he told Mr Hasluck about the complaints before 24 February 2018, a discussion which Mr Hasluck could not recall;<sup>41</sup>
  - Dr Green's evidence that she told Mr Hasluck about the complaints about her and said she described them to him (and Mr Harley) as "*vexatious and ridiculous*";<sup>42</sup>
  - an email dated 23 February 2018 from Mr Harley to Mr Mianich, which was forwarded to, among others, Mr Hasluck, in which Mr Harley wrote "*I received a letter from you [Mr Mianich] notifying me of a complaint of a minor breach to the standards panel*";<sup>43</sup> from which an inference can be drawn that the complaint is a complaint about Mr Harley made by Mr Mianich;
  - a responsive email dated 24 February 2018 from Mr Hasluck to, among others, Mr Harley, in which Mr Hasluck writes "*Reece did you receive a reply from Mianich?*"<sup>44</sup> Mr Hasluck accepted these words were a reference to Mr Harley's email to Mr Mianich which indicates at least that Mr Hasluck was aware of that email; and
  - Mr Hasluck being present at the SCM, at which the Lord Mayor asked whether there was any connection between the Motion and the complaints recently lodged by "*the Acting CEO*", who at the time was Mr Mianich.<sup>45</sup>

70. This evidence, particularly the evidence of Dr Green and Mr Harley, and the question posed by the Lord Mayor at the SCM, supports the conclusion that at least before voting on the Motion Mr Hasluck knew the complaints had been lodged by Mr Mianich. Furthermore, it strikes the Inquiry as unusual that Mr Hasluck would be aware that LGSP complaints had been made about his colleagues, but unaware as to who lodged the complaints, particularly in circumstances where frustration with Mr Mianich in connection with the handling of the complaints was an issue for Dr Green and Mr Harley at the time.
71. On the other hand, the evidence is equivocal. Mr Harley had no independent recollection of the discussion on 24 February 2018 until his memory was refreshed by a contemporaneous email. That prompts the Inquiry to be cautious in accepting the recollection as entirely accurate. Dr Green was dismissive of the complaints, and it may be inferred that as a result she may not have divulged much detail about them to Mr Hasluck. The emails of 23 and 24 February 2018 are inconclusive.
72. In respect of the question posed by the Lord Mayor, which directly referred to Mr Mianich by title, Mr Hasluck said in evidence that he did not *“put it together that [the Lord Mayor] was referring to the information I found out yesterday”*.<sup>46</sup> Given that Mr Hasluck knew that complaints had been made about Dr Green and Mr Harley, the reasonable inference to be drawn is that the complaints to which the Lord Mayor was referring were the complaints about Dr Green and Mr Harley. However, one possible explanation for Mr Hasluck’s failure to *“put it together”* may be that the SCM was a particularly intense environment, and because Mr Hasluck felt under stress and pressure during the meeting his capacity to connect the dots was impaired. That explanation is supported, in part at least, by the fact that Mr Hasluck was an inexperienced councillor, who had only been on the Council for about three months and who had no similar experience.<sup>47</sup>
73. In the event, the Inquiry finds that Mr Hasluck knew that complaints had been made about Dr Green and Mr Harley, and in all the circumstances described above should have at least deduced that they were lodged by Mr Mianich. However, in view of the equivocal nature of the evidence and Mr Hasluck’s consistent and emphatic denials, the Inquiry makes no finding as to whether Mr Hasluck actually knew, before voting on the Motion, that the complaints about Dr Green and Mr Harley had been lodged by Mr Mianich.
74. In summary, the Inquiry finds that:
  - the Motion was motivated by several matters, including the performance, or perceived performance, of Mr Mianich in the role of Acting CEO and the desire of certain council members to ensure that the most appropriate person held that role;
  - there was a connection between the lodging of the complaints by Mr Mianich and the Motion, but the connection was one in which the affected council members (Dr Green and Mr Harley) saw the lodgement of the complaints as symptomatic of underlying problems with Mr Mianich’s conduct and performance as Acting CEO;
  -

- the council members who signed the Motion preferred Ms Battista to Mr Mianich for the role of Acting CEO; and
- Mr Hasluck and Ms Barton knew that complaints had been lodged about Mr Harley and Dr Green before signing and supporting the Motion, though there is no evidence to suggest that Mr Hasluck and Ms Barton supported the Motion for any reason connected with the complaints – indeed, Ms Barton said they were irrelevant to her decision-making in this regard.

75. While, as noted above, there was some connection between the complaints and the Motion, there is insufficient evidence for the Inquiry to be satisfied that the Motion was motivated by a desire for retribution for the lodging of the complaints.

#### **Mr Robert Mianich arranges the Special Council Meeting, visits the doctor, and goes on leave**

76. Notwithstanding his concerns about victimisation, Mr Mianich arranged for the SCM to be convened, signing off on and circulating to the council members an agenda for the meeting in the middle of the day on Monday, 26 February 2018. In his evidence, Mr Mianich described this day as “*even worse*” than the preceding day, and that he ended up with a blood pressure of “*203 over 95*”.<sup>48</sup>
77. Ms Battista told the Inquiry that on this day she was contacted while on leave by Mr Mianich who left a voicemail for her, the gist of which was that Council planned to install her as Acting CEO.<sup>49</sup>
78. Mr Mianich accepted that he might have spoken to Ms Battista or left a message for her, but could not recall what he spoke about or what the message might have been. Mr Mianich could also not say where, if he did convey to Ms Battista that she would be installed as Acting CEO, he obtained that information from.<sup>50</sup>
79. After signing off on the agenda for the SCM, Mr Mianich visited his doctor at about 3.00 pm. That was an appointment Mr Mianich had in his diary for about a week.<sup>51</sup> The outcome of that appointment is recorded in a text message sent by Mr Mianich to the Lord Mayor at 4.54 pm that afternoon:
- “Lord Mayor Just returned from doctors Not good news blood pressure up around 200 I will not be at work for at least one week Sorry for this but the environment at work is not safe at present I have spoken to mark and he will act as director corporate services and attend the briefing and council meeting tomorrow I will allow council to select an acting ceo Robert”*.<sup>52</sup>
80. Mr Mianich’s reference to being off work “*for at least one week*” suggests Mr Mianich’s earliest return date would have been 6 March 2018 (as 5 March 2018 was the Labour Day public holiday in Western Australia that year).
81. Mr Mianich attributes his elevated blood pressure, at least in part, to knowledge of the Motion.<sup>53</sup>

### The special Executive Leadership Group session

#### Mr Mark Ridgwell calls a special meeting of the Executive Leadership Group for 8.00 am, Tuesday, 27 February 2018

82. As is apparent from Mr Mianich's message to the Lord Mayor, Mr Ridgwell was aware that Mr Mianich would not be at work for at least a week, that he, Mr Ridgwell, would be Acting Director, Corporate Services in Mr Mianich's absence and that the City was effectively without a CEO *"on the ground"*.
83. Consequently, just after 5.00 pm on 26 February 2018, Mr Ridgwell sent a meeting invite to Ms Battista, Ms Barrenger, Mr Mileham, Mr Crosetta, Ms Moore, Mr Mianich and Ms Brandon for a *"special ELG session"* to be held in the CEO Boardroom at 8.00 am the next morning.
84. Mr Ridgwell told the Inquiry that the purpose of the meeting was *"to get the Executive together and plan out how the day would work through the process"*.<sup>54</sup>

#### The special Executive Leadership Group session is convened and Ms Nicola Brandon is excluded

85. Consistently with Mr Ridgwell's meeting invitation, Ms Barrenger, Ms Moore, Ms Brandon, Mr Ridgwell and Mr Crosetta met at 8.00 am on 27 February 2018 in the CEO Boardroom.
86. Ms Brandon was there in her capacity as Acting Director, Economic Development and Activation, as Ms Battista was on leave. Ms Battista gave evidence that she had told Mr Ridgwell in advance of the meeting that Ms Brandon would be at the meeting in her place.<sup>55</sup> This is supported by Mr Ridgwell's meeting invitation, described above, which was extended to Ms Brandon.
87. Shortly after arriving, Ms Brandon was asked by Ms Moore to leave the room. The reason why Ms Brandon was asked to leave is the subject of conflicting evidence:
- Ms Brandon's evidence, supported by an email she sent to Ms Battista about it at 8.53 am on 27 February 2018, is that she was asked to leave by Ms Moore *"for her own protection"*, that she questioned whether she needed to be present to represent Ms Battista and was told by Mr Crosetta and Ms Moore that she was not.
  - Ms Battista's evidence is that Ms Brandon told her that she was asked to leave, because the ELG were going to discuss matters relating to Ms Battista that might upset Ms Brandon.<sup>56</sup>

- Mr Ridgwell’s contemporaneous file note records only that Ms Brandon was asked to leave. In examination, Mr Ridgwell said that Ms Brandon was asked to leave, because *“they wanted to be the Executive that were full-time Executive members, not actings”*.<sup>57</sup>
  - Ms Moore’s evidence was that it was not improper for Ms Brandon to be at the meeting, but that she was excluded because Ms Moore suspected that Ms Brandon would report the content of the meeting to Ms Battista who would in turn report that to some or all the council members. Ms Moore also said Ms Brandon was excluded because of concerns that the substantive directors might need to discuss matters to which acting directors had not been privy. When pressed, Ms Moore remained of the view that Ms Brandon’s exclusion was done on a proper basis.<sup>58</sup>
  - Mr Crosetta’s file note, made 7 March 2018, records only that Ms Brandon was asked to leave and that Ms Brandon questioned why, but provides no reason for the decision. When examined, Mr Crosetta said that *“we as executives decided that it wasn’t appropriate for her to stay in the meeting as she wasn’t privy to the letter that went to the Minister ...”*.<sup>59</sup>
  - Ms Barrenger’s handwritten file note of the meeting states that Ms Moore asked Ms Brandon to leave so that *“ELG could discuss what had happened”* and that the ELG *“did not want to bring her into this to protect her”*.<sup>60</sup> However, her typed notes, made some time later, state only that Ms Moore asked Ms Brandon to leave and that *“there were confidential matters to discuss that only ELG and Mark Ridgwell in his capacity as Manager of Governance were aware of”*.<sup>61</sup> In evidence, Ms Barrenger explained that Ms Brandon was asked to leave, because she was not privy to the letter that the ELG had sent to the Department on 12 February 2018.<sup>62</sup>
  - Notably, while Mr Ridgwell gave evidence that he was in discussions with the ELG from time to time about ongoing relationships and issues at the City, he could not recall seeing that letter prior to giving evidence and could not recall Mr Mileham ever showing him a copy of the letter.<sup>63</sup>
88. The Inquiry finds that Ms Brandon should not have been excluded from the meeting, as she was acting in the role of Director, Economic Development and Activation at the request of Ms Battista. The Inquiry also finds that Ms Brandon was excluded from the meeting, at least in part, to avoid discussions at that meeting being reported back to Ms Battista. That was an improper basis for her exclusion.

### Ms Annaliese Battista dials into the meeting, Executive Leadership Group agrees not to appoint an Acting Chief Executive Officer

89. Following her exclusion from the meeting, Ms Brandon called Ms Battista, quite upset, to update her. Ms Battista in turn attempted to contact those in the meeting, but her telephone calls went unanswered. She then contacted the CEO's personal assistant, Ms Judith Arnold, and asked her to knock on the door of the boardroom to let those inside know Ms Battista was trying to dial in.<sup>64</sup>
90. Ms Battista dialled into the meeting. The evidence at this point is generally consistent. The ELG discussed whether an Acting CEO should be appointed, Ms Battista disclosed that she had been told that the Council was intending to install her as Acting CEO that afternoon and that she had been in contact with the Department, and the ELG agreed that they themselves should not appoint an Acting CEO.<sup>65</sup> Ms Battista also told the Inquiry that she told the ELG that Mr Mileham or Mr Mianich had conveyed to her that the ELG should wait for Council to appoint someone. Neither Mr Mileham nor Mr Mianich could recollect this<sup>c</sup> though it is apparent from telephone records that Mr Mianich and Ms Battista were in contact about this time, as Mr Mianich accepted. A contemporaneous text message from Ms Battista to Mr Ridgwell also supports the conclusion that Mr Mianich told Ms Battista to wait until the SCM to determine the role of Acting CEO.<sup>66</sup>
91. Ms Battista then rang off the meeting, thinking it had ended. She only later found out that it had not.<sup>67</sup>

### Special Executive Leadership Group meeting continues

92. Ms Barrenger's handwritten notes record that the information conveyed to them by Ms Battista was "*all new information*" to her, Mr Crosetta and Ms Moore, and that they "*were in shock*". They decided to seek advice. They called Mr Douglas.
93. As best as the Inquiry can determine, this happened at about 8.30 am or 8.45 am.<sup>68</sup>
94. Ms Barrenger's handwritten notes record that they sought advice about whether the ELG could delay the SCM and were told that all "*admin could do was to give advice*". Her typed notes record this, too, but also record that the ELG asked Mr Douglas whether Ms Battista's conduct in contacting the Department was a breach of her employment contract. Ms Barrenger's notes say that Mr Douglas told them it was breaking the code of conduct.<sup>69</sup> When asked why the ELG was seeking that advice on that morning, Ms Barrenger candidly admitted it was in part to prevent Ms Battista from being appointed Acting CEO.
95. Other than in respect of the admission about preventing Ms Battista from being appointed Acting CEO, Mr Crosetta's and Ms Moore's notes are to similar effect.<sup>70</sup>

<sup>c</sup> For example: Transcript, private hearing, R Mianich, 19 July 2019, p 48; Transcript, M Mileham, public hearing, 16 September 2019, p 26.

96. Ms Moore's typed notes, made some time after the event, record that Mr Douglas *"noted that there was a functioning ELG who were enacting the plan. Recommended stick to policy and procedures"* and that Mr Douglas *"stated that ELG should do what was necessary to keep City running"*.<sup>71</sup>
97. Mr Douglas recalled having a discussion with the ELG, but could not recall the specifics of the discussion. He did, however, agree that at some stage about this time he was asked to consider and advise on Ms Battista's contract. Mr Douglas explained that his priority for that day was completing his review of the Project Percy investigation.<sup>72</sup>
98. Significantly, from the moment when the call to Ms Battista ended until the first meeting of the Crisis Management Team at 11.00 am, neither Ms Battista nor the Acting Director, Ms Brandon were involved in any of the discussions that took place. As, respectively, a substantive member and acting member of the ELG, they should have been.
99. The Inquiry finds that Ms Battista and Ms Brandon were deliberately excluded from the discussions, although the other members of the ELG denied this. The Inquiry notes in this regard that the discussions of the ELG were focussed, at least in part, on deferring the SCM and preventing Ms Battista being appointed as Acting CEO.
100. The Inquiry also finds that the exclusion of Ms Brandon, and the failure of the assembled ELG to contact Ms Battista, was conduct symptomatic of the breakdown in relationships at an ELG level, reflecting a heightened level of competition and distrust between its members.

#### **The Executive Leadership Group considers initiating the Crisis Management Plan**

101. Following the ELG's initial telephone call with Mr Douglas, the ELG began to consider whether to enact the CMP. Ms Moore's evidence was that she believed Mr Ridgwell suggested the ELG look to the CMP.<sup>73</sup> Mr Ridgwell's evidence was that he did not bring the CMP into the meeting and was not involved in the decision to enact it.<sup>74</sup> The Inquiry finds that Mr Ridgwell did not suggest the CMP.
102. Ms Moore's notes record that Mr Ngara, Acting Manager, Governance, *"provided [a] copy of the BCP [Business Continuity Plan] as an option for ELG"*.<sup>75</sup> There is no reference to Mr Ngara providing the plan in the notes of Ms Barrenger or Mr Crosetta. Ms Barrenger's oral evidence was that Mr Gale, Manager Strategy and Partnerships, first raised the idea of the Business Continuity and CMP and that he had a copy of the plan.<sup>76</sup> However, Mr Gale said that as he arrived at the meeting at 9.15 am, he was told that the Crisis and Business Continuity Management Framework had been enacted and that members of the ELG already had copies of the CMP or Crisis and Business and Continuity Management Framework.<sup>77</sup> Beyond this, generally, witnesses were uncertain as to how the CMP landed on the desk of the ELG during the meeting.



103. When asked about this, Mr Ngara's evidence was that he provided the CMP to the ELG and that he may have done that at Mr Ridgwell's request. He was not sure whether he provided the CMP during the special ELG meeting that commenced at 8.00 am, or whether he only provided copies at a later meeting, around 11.00 am, after the crisis management team had assembled.
104. In respect of the first meeting, commencing at 8.00 am, Mr Ngara said that when he *"entered the room the discussions were more about how to activate the plan than whether to activate the plan itself"*.<sup>78</sup>
105. In view of this, it is not clear whether the ELG had available to them a copy of the CMP when it began considering whether to initiate the Business Continuity Plan and CMP, or where it obtained that copy from. It would be surprising, however, if it did not, and it is likely on balance that it did.
106. Although it is far from clear, owing to the lack of contemporaneous and thorough minutes, the Inquiry finds that it is likely the ELG began considering the CMP at around 9.00 am. This finding is made, because there is evidence to suggest consideration of that document started:
- after, or less possibly while, speaking with Mr Douglas at about 8.30 am or 8.45 am;<sup>79</sup>
  - before Mr Gale entered the room at about 9.15 am at the request of the ELG to arrange a call with the Minister's Chief of Staff;<sup>80</sup> and
  - before speaking with the Minister's Chief of Staff at about 10.30 am.
107. The timing of that consideration is, unfortunately, not recorded with specificity in any of the City's records, including in the notes taken by Ms Moore during the 8.00 am meeting or by Ms Barrenger later that day.
108. The Inquiry finds that the City's record-keeping in respect of when the ELG turned to consider enacting the CMP was significantly lacking. Consideration of action of that type should have been properly minuted. It was not.
109. After commencing their consideration of whether to enact the CMP, the assembled ELG appear to have reached what might be described as an in-principle decision to activate that plan. However, before they did so, those members of the ELG present made at least two further calls.
110. First, they called the Minister's Chief of Staff to ask whether the Minister or his office could do something about the SCM. The assembled ELG were told that the Minister could not. There is some evidence before the Inquiry to suggest that the ELG also notified the Minister's office during this call that they intended to enact the CMP and that the Minister's Chief of Staff did not cavil at, and possibly supported, that action. Mr Hamley could not recall this occurring.
111. Secondly, they called Mr Douglas again. This also happened at about 10.30 am.<sup>81</sup>

112. During her examination, Ms Barrenger said the ELG also sought Mr Douglas's advice on whether they could, or should, enact the CMP and that Mr Douglas told them to stick with process and procedure. Ms Barrenger recalled Mr Douglas approving the use of the CMP, or implying its use was okay. Ms Barrenger maintained this view when pressed, although she accepted that neither version of her notes (handwritten or typed) contained a clear reference to the advice she said Mr Douglas gave the ELG.<sup>82</sup> Given the significance of the effect of Mr Douglas's alleged advice, if given, its absence from Ms Barrenger's notes is remarkable.
113. Mr Douglas on the other hand gave cogent evidence that he has never seen the CMP, that he did not know what was involved in it, that he was not asked any details about it by the ELG, that it was not his suggestion that it be activated and that he could not recall giving advice on whether or not there was a proper basis to enact the CMP.<sup>83</sup> Mr Douglas also produced to the Inquiry a file note from a call he had with the ELG at 10.30 am that read, in part, "*City has activated business crisis plan*".
114. The Inquiry prefers the evidence of Mr Douglas, particularly in view of his file note which indicates the decision to activate the CMP had been taken by the time he was called.
115. At about 11.00 am, the assembled ELG enacted the CMP, notifying staff by email at 11.04 am.<sup>84</sup>
116. At about the same time there may also have been a third call to Mr Mileham. He does not recall it, and there is no reference to it in any of the notes of the meeting taken by the various participants, although Ms Barrenger and Mr Crosetta both gave evidence of its occurrence.<sup>85</sup> If the call did occur, it seems likely that the content of the call was limited to advising Mr Mileham that the CMP had been enacted.<sup>86</sup>

#### Why did the Executive Leadership Group initiate the Crisis Management Plan, and what process was followed to do so?

117. The failure of the ELG to properly record the decision-making process relating to the enactment of the CMP has made it difficult for the Inquiry to determine precisely how and why the decision was reached.
118. Compounding the problem is that notes made around the time of the event, including the handwritten notes of Ms Moore and Ms Barrenger, do not disclose an obvious reason for enacting the CMP.
119. Ms Moore's handwritten notes contain a reference to protecting the reputation of the City and a reference to "*any crisis – crisis management plan issue*".<sup>87</sup> The notes also record "*functioning ELG enacting plan*".
120. Ms Moore's typed notes record:
- "Reason for enacting Business Continuity Plan was had a functioning ELG supportive of existing CEO and ELG was doing what was necessary to keep city running without a CEO or an Acting CEO".<sup>88</sup>*
121. However, it is apparent that those notes were created some time after the event and are at risk of being, or incorporating, recreations to justify the enactment of the CMP.

122. Ms Moore's evidence as to the creation of her typed notes is also, to adopt the language of Counsel Assisting during Ms Moore's examination, somewhat extraordinary.
123. When the question of when the notes were created was first raised in examination, Ms Moore gave evidence that she created them within 48 hours of the enactment of the CMP. That is, by on or about 1 March 2018.
124. However, this version of events is strongly challenged by an email from Ms Moore to Mr Ngara dated 6 March 2018 in which Ms Moore writes, in response to a request from Mr Ngara for notes of the events of 27 February 2018: *"I do not have a file note or formal log"* and *"Based on your email extension my intention was to write up my recollections and file note today"*.<sup>89</sup>
125. When that email was put to Ms Moore in examination, and notwithstanding the clear inference to the contrary that can be drawn from Ms Moore's email, Ms Moore said that by the date of the email she *"had draft notes already"* and she was *"absolutely adamant"* about that.<sup>90</sup>
126. It was then put to Ms Moore that the metadata for her typed notes demonstrated that the creation date for the document was 6 March 2018 at 4.24 pm, about three and a half hours after Mr Ngara's email, and that the last modified and last printed dates were 7 March 2018.<sup>91</sup>
127. Ms Moore's explanation for this is that the document was not created on the City's system, but rather on a private computer within 48 hours of the close of the CMP on 28 February 2018. Ms Moore said it was possibly prepared at home, on her way to Gracetown, or in Gracetown.<sup>92</sup>
128. The following exchange then occurred:
- "And you then have indicated, or Mr Wyatt has indicated, that you brought the document that you created on either your Toshiba or your Apple over to the City of Perth, is that right?---On a USB.*
- So you copied it from your laptop onto a USB?---(No audible answer.)*
- Do you still have that USB?---I believe it would have been handed in with everything else that was handed in.*
- And so was it a City of Perth USB?---(No audible answer.)*
- COMMISSIONER: Is that a yes?---Yes, sorry. It was a yes.*
- MS LENDICH: And so you copied it over using – can you explain to the Commissioner precisely how you copied the document over to the City of Perth? I would have created a new document in the City of Perth system, and I would have cut and paste from the document into the new document on the system and saved it.*
- Using a USB?---(No audible answer.)*
- Did you personally do that?---Yes.*
- Ms Moore, that's quite an extraordinary way to create a document, do you understand that?---I'm trying to recall what I did, yes".<sup>93</sup>*

129. In view of Ms Moore's email to Mr Ngara on 6 March 2018, the file note's metadata, and the inherent improbability of Ms Moore's idiosyncratic method of "*copying and pasting*" the content of documents in the manner described above, the Inquiry rejects Ms Moore's evidence on this matter, finding that her typed file notes were likely created on and after 6 March 2018. As a result, the Inquiry has doubts about the accuracy and candour of the notes and does not rely on them, other than where the events they recount are independently corroborated.
130. Ms Barrenger's handwritten notes state that the "*ELG Present called Chief of Staff to check if Minister could delay Special Council Meeting or take action today*" and that the ELG "*informed Minister initiating Business Continuity plan*". Her typed notes refer to "*a risk to the reputation and staff safety*" and that the ELG "*reviewed the Crisis Management Plan*" and "*ran through the proposal to activate the Business Continuity and Crisis Management Plan*".<sup>94</sup> The typed notes record that the ELG advised the Minister's office that the reason for the enactment of the CMP was "*Staff Safety and Reputational Risk*" and that the Minister's office said that this was a "*good idea*".
131. Mr Crosetta's notes record:
- "Discussion was also around the fact that the CEO and A/CEO on sick leave, hence the view of ELG to proceed with the BCP and establish a CMT. The BCP was referred to and the reference of DCC to Chair the CMT as the Crisis Manager noting the absence of the CEO in order to maintain business and services".*<sup>95</sup>
132. However, while of varying degrees of sophistication, none of these notes shed light on the process that the ELG went through to determine if it was appropriate, in all the circumstances, to enact the CMP.
133. The absence of any documented decision-making process is remarkable, in circumstances where:
- the enactment of the CMP was unprecedented in the City's history;
  - the members of the ELG who activated the CMP, later confirmed that they did so on the basis that the City was facing a Priority 1 crisis;
  - the activation of the CMP and establishment of the Crisis Management Team distorted the ordinary leadership structures of the City;
  - the members of the ELG who activated the CMP and formed the Crisis Management Team did so in the full knowledge that the Council would be meeting that afternoon with the intention of appointing an Acting CEO; and
  - the special ELG meeting commenced at 8.00 am and continued for three hours until about 11.00 am, leaving the members of the ELG at that meeting with ample time to consider, debate and record the decisionmaking process.

134. The evidence of the witnesses during examination took the matter little further. The following exchange with Ms Moore is illustrative:

*“And this was the first time that the City had called on the Crisis Management Plan, is that right?---Yes.*

*And in your role as a member of the ELG was it not incumbent on you to record that decision-making process?---Yes. It was, yes.*

*And the highest you can put your evidence today is that the decision was made during a call with Neil Douglas but you can’t recall whose idea it was, whose proposal it was, and what discussion or debate took place between the three members of the ELG who were present about that decision?---Correct.*

*Notwithstanding it being unprecedented?---Correct.”<sup>96</sup>*

135. The Inquiry finds that there was no crisis, as understood in the Crisis and Business Continuity Management Framework or CMP, to which the City had to respond when it enacted the CMP on 27 February 2018. Viewed cynically, it was a management plan in search of a crisis.

136. As observed above, contemporaneous and near-contemporaneous notes of the enactment of the CMP do not disclose with any clarity the crisis to which the ELG were responding when it enacted the CMP. Each of the assembled ELG were taken during the course of examinations to the CMP. However, none of them could give the Inquiry a persuasive and cogent explanation as to how the CMP supported the calling of a Priority 1 crisis.

137. On this issue, Ms Moore’s typed notes contain the following statements:

*“BCF includes imminent threat to people, property and reputation. Council endorsed plan that was consistent with framework. ND noted that there was a functioning ELG who were enacting the plan. Recommended stick to policy and procedures. ND stated that ELG should do what was necessary to keep City running.*

*...*

*Reason for enacting Business Continuity Plan was had a functioning ELG supportive of existing CEO and ELG was doing what was necessary to keep city running without a CEO or an Acting CEO.”<sup>97</sup>*

138. None of this supports the calling of a Priority 1 crisis, as defined in the CMP.

139. In evidence, Ms Moore said, of the decision to declare a Priority 1 crisis:

*“I do recall that they asked was it necessarily to enact the Crisis Management Team when Priority 1 talked about death or life, etcetera. And as the Crisis Manager my response was that it gives – it’s the framework that we have and that it will go for more than 24 hours and it was reasonable that to protect the reputation and look after the welfare of the staff that it was the right way to go.”<sup>98</sup>*

140. The difficulty with Ms Moore's evidence on this topic is that when the ELG enacted the CMP they knew a majority of council members were likely to support the appointment of an Acting CEO later that day, they could reasonably infer that Acting CEO would be Ms Battista (as Ms Battista had told them she had been approached for the role), and the criteria for a Priority 1 crisis says nothing about reputational risk.
141. It was also suggested that the CMP was enacted in response to "*significant media attention*", to help with delegated authorities, and to provide for staff welfare.<sup>99</sup>
142. However:
- each of these concerns was, as Mr Crosetta candidly accepted,<sup>100</sup> an "*operational problem*" to which the Business Continuity Plan and CMP expressly do not respond;
  - as to media attention, the City's media staff told the Inquiry that there was nothing unusual about the level of media attention on 27 February 2018 and that it was business as usual,<sup>101</sup> a fact borne out by the City's media log for the day;<sup>102</sup>
  - as to delegated authorities, the CMP has no effect on that process; and
  - no witness could point to any specific evidence that staff welfare was at risk and that the enactment of the CMP allayed that risk.
143. Mr Crosetta, in evidence, suggested that they could not have been certain an Acting CEO would have been appointed by the Council at the SCM, because to do so required the consent of the nominee and the ELG had agreed, as between themselves, not to accept that nomination. On that basis, Mr Crosetta suggested that there was a real likelihood that the City would have been without an Acting CEO or CEO for more than 24 hours, which was one of the criteria for declaring a crisis. When pressed in examination, Mr Crosetta did not appear to understand that in reaching that agreement the ELG were, in effect, themselves creating one plank of the platform for declaring a crisis.
144. Despite acknowledging that the issues facing the executive on 27 February 2018 were operational issues, Mr Crosetta maintained in his examination that the decision to enact the CMP and declare a Priority 1 crisis was appropriate. However, he was not able to articulate why it was appropriate, other than it gave the executive a process to follow.<sup>103</sup>
145. Mr Ridgwell was not involved in the decision to enact the CMP. However, he supported it because it gave the City's ELG a process to follow and, as Mr Ridgwell explained in evidence, "*As the Manager of Governance, I like process*".<sup>104</sup>
146. In March and April 2018, following the enactment and then standing down of the CMP and the aftermath of the SCM, the City engaged an external consultancy to conduct a post-incident desktop review on the activation of the CMP. The consultancy delivered a report in which it emphasised that the review was not intended to be a formal audit or formal investigation, and ultimately found that the "*decision to activate the CMP appears to be appropriate*".<sup>105</sup>

147. One of the observations made in the report along the way to reaching that conclusion was that the ELG arrived at its decision to enact the CMP on the basis that the City was without a “*leader*” in the midst of “*serious ongoing issues*”.
148. The author of the report was called by the Inquiry. In the course of his evidence, it became apparent that the author had not been made aware that the ELG knew, before enacting the CMP, that the Council intended to appoint an Acting CEO later that day. When asked whether knowledge of that would have affected his view as to the appropriateness of the enactment of the CMP, he conceded that in those circumstances it would not have been necessary to activate the CMP.<sup>106</sup>

**Did enactment of the Crisis Management Plan ensure the continuity of the operations of the City of Perth?**

149. It was suggested by members of the ELG that the enactment of the CMP was appropriate, because it put in place a process to ensure the continuity of the business of the City in the absence of a CEO. Indeed, that was the reason given to staff on 27 February 2018 for the enactment of the CMP.<sup>107</sup>
150. However, the Inquiry finds that the enactment of the CMP achieved very little, if anything, in respect of the smooth operation of the City. The Inquiry doubts the continuity of the business of the City was ever actually at risk. In this latter respect, the minutes of the first Crisis Management Team meeting at 11.15 am record, under the heading “*Is there any current or on-going threats or issues?*” only that “*Media are of concern*”.<sup>108</sup> It is difficult to understand how media being of concern would compromise the continuity of the business of the City.
151. The members of the ELG were highly paid executives. One of their principal roles was to manage and direct the City. It is what they were paid to do. In the Inquiry’s view, a functional ELG certainly had the capacity to manage the City for the eight or so business hours between the commencement of the working day and the Council Meeting scheduled for that afternoon. It is perverse to suggest that the City would cease to function, or suffer some other calamity, simply because a CEO was absent for a day.
152. Nothing that happened on 27 February 2018, other than the enactment of the CMP itself, was so significantly out of the ordinary that it could not have been managed by the ELG.
153. The City has staff whose role it is to liaise with the media. The City, being the capital of Western Australia and having regard to the recent media interest in the Lord Mayor, was no stranger to media queries. Media interest would have been manageable as business as usual.
154. On the contrary, it may be that enactment of the CMP damaged the continuity of business at the City by distracting the directors and other senior level staff from the demands of the ordinary business of the City.



155. The material before the Inquiry discloses that the ELG were in meetings for the bulk of the day. The first meeting, the special ELG meeting, ran from 8.00 am until about 11.00 am. It was followed by the first Crisis Management Team meeting at 11.15 am, which in turn was followed by the second Crisis Management Team meeting at 11.55 am. This was followed by the third Crisis Management Team meeting at 3.00 pm. All these meetings had as their core business either the decision to enact the CMP or the steps to take once that decision had been taken.<sup>109</sup> The meetings, and the focus in them on CMP related matters, self-evidently took the ELG away from the ordinary business of the City.
156. Furthermore, on the face of the material available to the Inquiry, the meetings achieved very little. For example, the minutes of the first Crisis Management Team meeting record under “*short term response*” that the priority for the next several hours was “*encourage business as normal within the City staff*”. The irony of that response is that had the CMP not been enacted there would be no need to encourage business as usual. It would have been the status quo.

**Crisis Management Plan was enacted to disrupt or delay the Special Council Meeting, and to encourage the Minister for Local Government to suspend the City of Perth Council**

157. The Inquiry finds that the CMP was enacted, at least in part, to disrupt or delay the SCM scheduled for that afternoon to prevent Ms Battista’s appointment as Acting CEO and to encourage the Minister to intervene and suspend the Council.
158. This finding is made on the basis that:
- Each of Mr Mianich, Ms Moore, Mr Crosetta and Ms Barrenger held, as at 27 February 2018, the view that the Minister should consider, as a possible option, the suspension of the Council.
  - The ELG had been considering for some time the “*corrective measures*” or steps it could take to remedy what it saw as the dysfunction of Council and had written to the Director General of the Department about those concerns and suggested that corrective measures may be required a fortnight before the CMP was engaged.
  - There was, when regard is had to the criteria in the CMP itself, no proper basis for the calling of a Priority 1 crisis on 27 February 2018.
  - During the special ELG meeting on 27 February 2018, the ELG sought Mr Douglas’s advice as to how they might delay the SCM and as to whether they could suspend Ms Battista (and thus prevent her from being appointed Acting CEO).
  - During the special ELG meeting on 27 February 2018, the ELG asked the Minister’s Chief of Staff whether the Minister could delay the SCM.
  - The file notes made by Ms Moore and Ms Barrenger refer specifically to the delaying of the SCM and Mr Crosetta accepted that one of the purposes of enacting the CMP was to delay or defer the SCM given Mr Mileham’s foreshadowed return.<sup>110</sup>

- Ms Barrenger accepted, in evidence, that every step the ELG had taken up to the point of enacting the CMP was directed towards delaying the SCM and preventing Ms Battista’s appointment as Acting CEO.
- The ELG’s advice to Council was that Council should delay the SCM until after the Minister had met with Council, as he planned to do at 3.30 pm on 28 February 2018.
- Mr Mileham, who was on personal leave at the time, wrote to the Council (by way of Ms Moore) at 3.25 pm on 27 February 2018 to inform the Council that he would be returning to work on 6 March 2018 and that he saw no “*urgent reason or requirement*” for Council to appoint an Acting CEO or change policy “*given the acknowledged capacity of the Executive Leadership Group to manage all operational matters until*” his return.<sup>111</sup> The Inquiry finds that the timing and content of this correspondence was designed to persuade Council to defer the SCM.
- There was considerable media at the time suggesting that the Minister was close to intervening, including by suspending Council.
- Mr Mianich sent text messages to various people on 28 February 2018 stating, among other things, that:

*“Hopefully the Minister will give the Council a 21 day show cause notice today and we have a Commissioner within 3 weeks*

*Council meeting Minister today, hopefully a Commissioner within 3 weeks*

*Things should improve once the Council goes*

*The last few weeks have been very difficult but some senior staff have had to draw a line in the sand which I believe was the final straw for the State Government to suspend the Council”.*<sup>112</sup>

159. It may also be the case, as suggested by some witnesses, that the CMP was enacted to give the ELG a process to follow on 27 February 2018. However, no witness was able to give a plausible explanation of what the CMP permitted the ELG to do that was different from what the ELG could have done as an executive group anyway. Furthermore, while on one view the enactment of a business plan like the CMP might have been appropriate to provide structure to a somewhat rudderless day, on no view advanced to the Inquiry by a witness has it been explained why it was necessary to declare a Priority 1 crisis to achieve that objective.

### Special Council Meeting goes ahead

160. Notwithstanding the advice from the Administration that the Council should defer the SCM,<sup>113</sup> the meeting went ahead.<sup>114</sup>

### Executive Leadership Group brief the Lord Mayor, Ms Lisa Scaffidi

161. Just before it did, the ELG and Mr Ridgwell met with the Lord Mayor to brief her on what had occurred during the day. Ms Moore explained in her evidence that they discussed standing up the CMP, the media attention around it, that the ELG was running the City, that the ELG had a plan for “*tomorrow*” regardless of how Council’s decision went that evening and the Motion. Ms Moore also said that she believed the Lord Mayor was supportive of what the ELG had done and she understood the Lord Mayor was in favour of deferring the SCM.<sup>115</sup>
162. There are no contemporaneous notes from the briefing of the Lord Mayor, although the minutes of the SCM reveal that the Lord Mayor supported a procedural motion moved by Mr Adamos to defer voting on that part of the Motion which contemplated the appointment of an Acting CEO<sup>116</sup> and, as described below, on the evening of the day the decision was made, the Lord Mayor expressed her support of the decision to enact the CMP.

### Council members Mr Steve Hasluck, Ms Lexi Barton, Dr Jemma Green, Mr Reece Harley and Mr James Limnios support the Motion

163. Mr Hasluck, Ms Barton, Dr Green, Mr Harley, and Mr Limnios were strong proponents of the meeting, having signed the Motion.<sup>117</sup>
164. The unusual circumstances in which the Motion was presented to the administration have been summarised above. In addition to those matters, the Motion and the SCM are remarkable for at least the following reasons:
- the Motion was brought on with a degree of unexplained urgency;
  - despite working most closely with the CEO or Acting CEO, the Lord Mayor’s views were not (but should have been) sought on the Motion, either before it was advanced by Mr Hasluck to Mr Mianich or before it was debated;
  - the Motion was pressed by Mr Hasluck, Ms Barton Dr Green, Mr Harley, and Mr Limnios notwithstanding Mr Mileham’s advice that he would return to work within five days, and was of the view that an Acting CEO was not required; and
  - correspondence leading up to, and debate and voting at, the SCM clearly exposed the rift between Mr Hasluck, Ms Barton, Dr Green, Mr Harley, and Mr Limnios on the one hand, and the Lord Mayor and the remaining council members on the other hand.
165. It is apparent from the documents that Dr Green and Mr Limnios considered the decision by the ELG to enact the CMP to be a poor one, with Mr Limnios describing it as “*pretty desperate*”.<sup>118</sup>

166. On the documents, it is also apparent that Mr Harley was the most vocal and active of the proponents for the Motion. For example:
- On receipt of the Administration’s advice to defer the meeting, Mr Harley wrote to Ms Moore, copied to all council members and the ELG, stating that in his view Council had “*a legal obligation and a duty of care*” to appoint an Acting CEO, and that to defer the council meeting would “*leave the City without an Acting CEO for an unacceptable period*”. He described the affairs at the City as demonstrating “*a leadership vacuum*”.<sup>119</sup>
  - Mr Harley described the enactment by the ELG of the CMP as “*absolutely astounding*” and went on to remark to Ms Barton and Mr Hasluck that if Ms Moore “*is willing to take this extraordinary step despite the clear will of councillors, that gives you some indication of how she would function in the acting CEO role*”.<sup>120</sup>
  - Despite the Motion being, on its face, put up by Mr Hasluck,<sup>121</sup> it was Mr Harley who sought advice on the Motion from the Department and the Administration.<sup>122</sup>

### The Special Council Meeting

167. At the SCM the Council resolved, by majority (Mr Hasluck, Mr Harley, Dr Green, Mr Limnios and Ms Barton against the Lord Mayor and Mr Adamos) to amend CP12.6 and to appoint Ms Battista to the role of Acting CEO.
168. The SCM was an unusual event, because of the circumstances in which the Motion was debated and the circumstances in which Ms Battista was appointed Acting CEO.
169. As to the former, at the meeting Mr Hasluck was asked to speak to the Motion, including to speak to why it was brought on with urgency. He either could not or would not do so. Rather than respond to the question of urgency in a direct way, Mr Hasluck gave a nonresponsive answer, with a significant pause indicated below with ellipses, to the effect that “*Council at all times reserves rights under the Local Government Act to ...*” “*... have the meeting that it was having*”.
170. The Lord Mayor also questioned whether there was any connection between the complaints made by Mr Mianich about Mr Harley and Dr Green and the letter he wrote to Mr Limnios, and either the Motion itself or the timing of it. The question was directed to the room at large, and notwithstanding that the Motion was on its face one advanced by Mr Hasluck, it was Mr Harley who responded, saying there was no connection.<sup>123</sup> This, again, supports the finding that Mr Harley was a dominant force behind the Motion.
171. Finally, the Lord Mayor asked Mr Hasluck whether he did not have faith in Mr Mianich. Again, rather than respond directly, Mr Hasluck responded to say that the question was irrelevant.
172. Eventually, after about 10 minutes of discussion, the first part of the Motion, to amend CP12.6, was passed.
173. Council then moved to consider the second part of the Motion, the appointment of an Acting CEO.

174. This too was unusual, because:

- Ms Barton nominated Ms Battista for the role, which nomination was immediately seconded by Mr Hasluck, notwithstanding that Ms Battista was not present and was, in fact, on annual pre-approved leave.
- Mr Adamos nominated Ms Moore for the role, which nomination was not seconded.
- Mr Ridgwell advised the meeting that the practice in circumstances like these was for Council to obtain the consent of the person nominated. Mr Harley resisted this practice, citing the Local Government Act, but in the event accepted Mr Ridgwell's advice.
- Council adjourned on two occasions to attempt to obtain the consent of Ms Battista, resulting in a delay of over half an hour to the meeting. During this period Mr Harley again agitated for Ms Battista to be appointed notwithstanding the failure (at that time) to obtain Ms Battista's consent and Mr Ridgwell again restated his advice that Council should not do that.
- After the Lord Mayor asked Ms Moore whether she consented to being nominated, notwithstanding that Ms Moore said that the ELG supported Mr Mianich and Mr Mileham and took the view that there was no need for an Acting CEO, the Lord Mayor nonetheless took that as a "*caveated*" acceptance of the nomination.
- Mr Hasluck (the mover of the original Motion), Ms Barton, Dr Green and Mr Limnios were largely, although not entirely, silent.<sup>124</sup>

175. In the event, Ms Battista was eventually contacted. She then consented to the appointment as Acting CEO and was so appointed. In evidence, Ms Battista denied having aspirations at this time of being CEO and told the Inquiry that by this stage in the City's history she did not want to stay there and that she took on the acting role "*by default*" out of concern for the welfare of her team and because she took the view that the appointment of Ms Moore, who was the other candidate nominated at the SCM, would not have been in the best interests of the City.<sup>125</sup>

### **What were the motivations of council members at the Special Council Meeting?**

176. The Inquiry finds that:

- the Lord Mayor expressed her support for the decision to enact the CMP;
- Mr Harley and Dr Green supported the Motion, and the appointment of Ms Battista, in part because they did not respect the capacities of Mr Mileham and Mr Mianich as CEO and Acting CEO and may in due course have wanted to replace Mr Mileham with someone else;
- Mr Hasluck supported the Motion, because he did not think Mr Mianich was the appropriate person to "*calm the waters*", he considered Mr Mianich to be obstructive and he thought that Ms Battista was better suited to that role;<sup>126</sup>
- Mr Limnios supported the Motion, because he did not want Council to be told what to do in respect of the appointment of an Acting CEO and he thought others, including Ms Battista, were more capable of filling the role of Acting CEO; and

- Ms Barton supported the Motion, because she had identified that Council required or needed to retain its power to appoint who it decided was the best or most appropriate person to be CEO or Acting CEO.<sup>127</sup>

177. Further support for the first two of these findings is found in the events that took place after the SCM.
178. In relation to the first finding, following the SCM the Lord Mayor gave a statement to the media, which statement appears to have been prepared in the first instance for the purposes of being read at the SCM.
179. In that statement, Ms Scaffidi expressed the view that the Motion *“usurped what would be a simple administrative matter namely allowing good people who the City employs to run its administration to determine the best and most appropriate person to fill in for an employee who is away for less than four weeks”*.
180. The Lord Mayor also said:  
*“Tonight’s resolution may well aggravate the already difficult and disappointing position in which the City finds itself in this regard I would’ve hoped there would have been consideration to defer the matter this evening in view of the fact we had enacted the Crisis Management Plan”*.<sup>128</sup>
181. The Inquiry finds that this conduct supports the finding that the Lord Mayor supported, after the event (as there is no evidence that the Lord Mayor knew of any proposal to enact the CMP before the decision to do so was made), the decision to enact the CMP and to defer the SCM and the proposals in the Motion.
182. In relation to the finding as to the potential motivation of Mr Harley and Dr Green in advancing the Motion, it is relevant to note the conduct of Dr Green on the morning of 28 February 2018, where Dr Green emailed the Department, informed it that Council was considering scheduling a SCM for 5 March 2018, to suspend Mr Mileham, and asked whether the agenda for the meeting could be kept generic so as not disclose that fact.<sup>129</sup>
183. In the event, that meeting did not take place, because the Minister suspended the Council on 2 March 2018.

## Conclusion

184. Having regard to the foregoing, the Inquiry finds that the relationships between the council members of the City and its executive administration staff had, by 27 February 2018, deteriorated to such an extent as to render the proper and effective good government of the City extremely difficult, and perhaps impossible.
185. At least three of the members of the *“new majority”* on Council had little confidence in Mr Mileham and Mr Mianich as CEO and Acting CEO. There was a strong preference among the new majority for Ms Battista to assume, at least in the interim, the role of Acting CEO.

186. It seems the ELG also had limited confidence in the Council. Moves had been afoot since at least 7 December 2017, and were formalised in a confidential letter on 12 February 2018 to the Department, to have the State Government intervene. The preferred intervention of the ELG was, the Inquiry finds, the suspension of the Council by the Minister. When the Motion arrived in Mr Mianich's inbox on 24 February 2018, the ELG was immediately concerned about victimisation, leading even Mr Ridgwell, who had previously advised against encouraging the suspension of Council, to accept that by that stage the *"relationship had deteriorated so much that I didn't see a real viable way that the City could recover its relationship ..."*<sup>130</sup>
187. The activation of the CMP, which was in the Inquiry's view unnecessary, was likely a step taken by the ELG to, among other things, attempt to maintain control of the City against what it saw as an incursion into the administrative arena by the Council through the Motion to be considered at the Special Council Meeting that day. That the Motion was considered necessary, and that the CMP was activated in the circumstances in which it was, speaks volumes about the distrust between the ELG and the Council and the absence of any useful working relationship between them.
188. Relationships between the council members had also frayed to a point where professional working relationships appeared impossible to maintain. This was probably exacerbated by the return to the City, on 8 January 2018, of the Lord Mayor who found that there was, as some members candidly accepted during examination, a *"new majority"* on Council.
189. An example of the frayed nature of the relationships at Council level is the complete failure of any of the new majority to seek the views of the Lord Mayor on the Motion, notwithstanding the close working relationship the Lord Mayor would have with any replacement CEO. The audio recording of the SCM, played in part at a hearing of the Inquiry, demonstrates the palpable intensity of the debate, and an obvious schism between the new majority on the one hand, and the Lord Mayor and those generally aligned with her on the other hand.
190. At the same time, and as described elsewhere in this report, the ELG was internally fractured, with effective communication and mutual trust having broken down.<sup>131</sup> It is apparent that Ms Battista was having conversations with the Department and, at least, Dr Green, to which the other members of the ELG were not directly privy. Ms Barrenger, in evidence, explained how she had concerns that Ms Battista was undertaking her *"own plan"* without regard to the rest of the ELG. The effective exclusion of Ms Battista and her deputy, Ms Brandon, from the special ELG meeting held on 27 February 2018 was symptomatic of the fractured nature of the ELG.
191. By 27 February 2018, the City's governing bodies, the ELG and the Council, were dysfunctional to such an extent, both among and between themselves, that the good governance of the City was imperilled, if not significantly damaged. In the absence of relationships of trust and confidence between and among the ELG and the Council, it was impossible for the City and its constituent organs to properly, professionally and effectively meet their obligations under the Local Government Act, the *City of Perth Act 2016* and to the City's ratepayers.



## Findings

### Finding 2.4.1 – 1

The Inquiry finds that the council members who called the SCM were, as at least from the return to the City of the Lord Mayor on 8 January 2018, a “*new majority*” on Council.

### Finding 2.4.1 – 2

The Inquiry finds the new majority was motivated to call the SCM and move the Motion for various reasons including:

- i. In the case of Dr Green and Mr Harley, because of their disappointment in and frustration with Mr Mileham and Mr Mianich, including in respect of complaints lodged by Mr Mianich with the LGSP on 22 February 2018. Complaints which Dr Green and Mr Harley saw as symptomatic of underlying problems with Mr Mianich’s conduct and performance as Acting CEO. The Inquiry notes that there is insufficient evidence to suggest the Motion was motivated by a desire for retribution.
- ii. In the case of Mr Hasluck, because he considered Mr Mianich to be obstructive and not the appropriate person to “*calm the waters*” which, at the time, were turbulent.
- iii. In the case of Mr Limnios, because he did not want Council to be dictated to in relation to Council’s choice as to who should be Acting CEO.
- iv. In the case of Ms Barton, because she had identified that Council required or needed to retain its power to appoint who it decided was the best or most appropriate person to be CEO or Acting CEO.
- v. In the case of all of the new majority, because they:
  - preferred Ms Battista to Mr Mianich as Acting CEO, particularly if the substantive CEO, Mr Mileham, were to remain absent from the City for a prolonged period; and
  - may have considered it would demonstrate to the Minister that the Council, or at least the new majority, were in control of the City, thus removing the need for the Minister to suspend the Council.

### Finding 2.4.1 – 3

The Inquiry finds the CMP was enacted, and a Priority 1 crisis was declared:

- i. contrary to the CMP, the terms of which did not support the declaration of a Priority 1 crisis in the circumstances in which the ELG found itself on 27 February 2018;
- ii. to delay or defer the SCM;
- iii. to prevent the appointment of anyone, including specifically in the events as they unfolded, Ms Battista, to the role of Acting CEO; and
- iv. possibly to provoke or encourage the Minister to suspend the Council.

**Finding 2.4.1 – 4**

The Inquiry finds the Lord Mayor supported, after the event, the decision to enact the CMP.

**Finding 2.4.1 – 5**

The Inquiry finds that by 27 February 2018, there had been a breakdown in the relationships among the:

- i. council members themselves;
- ii. members of the ELG; and
- iii. council members and the ELG,

such that the City was in a state of dysfunction which imperilled, and significantly damaged, good governance.

## ‘Project Percy’

### Introduction

1. Project Percy was an investigation undertaken by law firm Herbert Smith Freehills (HSF) in late 2017 and early 2018 into allegations that the Lord Mayor, Ms Lisa Scaffidi, and the Chief Executive Officer (CEO) Mr Martin Mileham had, in mid-2017, offered a bribe to a property developer, Mr Adrian Fini.
2. The investigation culminated in the provision of some advice, known as the Project Percy report (Report), which was provided to the City of Perth (City) by HSF on 29 January 2019.<sup>132</sup> In it, HSF concluded that there were no “*reasonable grounds to suspect serious or minor misconduct may have occurred*”, that “*HSF have not identified any other evidence of possible serious or minor misconduct*” and that the City’s “*principal officer [had] no obligation to report the matter to*” the Corruption and Crime Commission (CCC).

### Issues considered by the Inquiry

3. The Inquiry’s interest in Project Percy is not in whether or not the allegations were made out. Rather, consistently with A.3(ii) and A.3(iii) of the Inquiry’s Terms of Reference. The Inquiry considered:

- the involvement of Deputy Lord Mayor Dr Jemma Green in the project and whether, in being involved, she breached certain obligations imposed on council members by the *Local Government Act 1995* (LG Act) and the *Local Government (Rules of Conduct) Regulations 2007* (Conduct Regulations);
- whether Manager, Governance, Mr Mark Ridgwell, acted reasonably in continuing to engage HSF when, between 19 and 22 December 2017, he had the opportunity to bring that engagement to an end; and
- what light, if any, the circumstances surrounding Project Percy shed on relationships at the City in February 2018.

## Investigation by the Inquiry

### Witnesses

4. The Inquiry interviewed, and held private and public hearings, involving a number of people in the course of investigating this Section:

- Deputy Lord Mayor Dr Green presented as a considered witness, whose evidence gave important context to the events surrounding and involving Project Percy. Her recollection was good and her evidence was thoughtfully given and generally supported by contemporaneous documents.
- Lord Mayor Ms Scaffidi was a relatively minor witness in respect of this topic. Though she was not involved in Project Percy, she was the subject of some of the investigations conducted and her evidence was to the effect that the matter upset her.
- Mr Mileham, CEO. Similarly to Ms Scaffidi, Mr Mileham was not involved in Project Percy, although he was subject to its investigation. He gave evidence about the impact Project Percy had on him and how it contributed to him taking medical leave in February 2018.
- Mr Ridgwell, Manager, Governance for the City, presented as an honest witness. He was involved in the initial engagement of HSF in October and November 2017 and its continued engagement through December 2017 and January 2018.

## Evidence obtained by the Inquiry

### Herbert Smith Freehills are engaged by the City of Perth to provide Dr Jemma Green with advice

5. On 24 October 2017, Dr Green was appointed Deputy Lord Mayor.
6. On her appointment to that role and owing to the absence from the City of the Lord Mayor, Dr Green was automatically empowered to perform the functions of the Lord Mayor pursuant to section 5.34 of the LG Act.
7. On or about 27 October 2017, Dr Green asked Mr Mileham who she could speak to about obtaining some advice on her roles and responsibilities as Deputy Lord Mayor.<sup>133</sup> Mr Mileham involved Mr Ridgwell, following which Dr Green and Mr Ridgwell liaised about the engagement of solicitors.<sup>134</sup>
8. In the course of that liaison, Dr Green and Mr Ridgwell exchanged emails, including one in which Mr Ridgwell recommended HSF, noting that *“They are expensive (hence deferring to others), but we are talking about a time limited advice”*.<sup>135</sup>

9. Dr Green treated the matter with a high level of sensitivity. She was concerned to use solicitors who did not have a current commercial relationship with the City and chose not to disclose to Mr Ridgwell the detail of the advice she would be seeking. This latter choice was made, because Mr Ridgwell's reporting line was directly to Mr Mileham, the person in relation to whom Dr Green was seeking advice.<sup>136</sup>
10. Mr Ridgwell was cognisant of the sensitivity with which Dr Green treated the matter and her desire to keep it confidential. Consistently with this, in an email to Dr Green dated 6 November 2017, Mr Ridgwell wrote (among other things):

*"I have stated that the contents of these discussions are highly confidential to both yourself and [HSF]. However a strictly confidential summary needs to be provided to the City of Perth for record keeping purposes. The contents of this advice will be limited to myself alone, should you wish for it to be an alternate (Robert Mianich) then please advise".*
11. In that same email, Mr Ridgwell asked Dr Green to keep him *"in the loop as to what stage of the advice you are at so that Purchase Orders and Payment etc. can be arranged"*.<sup>137</sup>
12. Dr Green responded a few minutes later to say *"Thanks Mark I will keep you posted"*. In examination, Dr Green accepted that by this comment she was telling Mr Ridgwell that she agreed to the process set out in his email and was agreeing to keep him in the loop.<sup>138</sup>
13. On 8 November 2017, a purchase order in favour of HSF was raised. It described the services purchased as *"discussions with DLM"* and was for an amount of \$2,000.00 inclusive of GST.

#### **Dr Jemma Green meets with Herbert Smith Freehills**

14. On 9 November 2017,<sup>139</sup> Dr Green had her first meeting with representatives from HSF.
15. There are no contemporaneous notes of what happened at that meeting and at least three slightly differing accounts exist.
16. The first account is described by HSF under the heading *"Background"* in a document called an *"Investigation Plan"*, dated 14 November 2017 (First HSF Account):

*"Herbert Smith Freehills (HSF) met with the City of Perth's Acting Lord Mayor Jemma Green on 9 November 2017. Cr Green instructed HSF that she has received information from Adrian Fini, Director of FJM Property, about the City's Chief Executive Officer, Martin Mileham. In short, Mr Fini, a property developer, alleges that Mr Mileham attempted to bribe him.*

*Cr Green has instructed HSF to investigate Mr Fini's allegations and to advise the City about its response to the allegations"*.<sup>140</sup>

17. The second account is the description given under the heading “*Introduction and scope*” by HSF in the written advice delivered by HSF to the City on 29 January 2018 (Second HSF Account):
 

*“On 9 November 2017, HSF met with the City of Perth’s (then) Acting Lord Mayor Jemma Green. Cr Green instructed HSF that Mr Adrian Fini, Director of FJM Property, had provided information to her about alleged possible misconduct by the City’s CEO, Martin Mileham, arising out of an alleged meeting between Mr Fini and Mr Mileham. Cr Green requested HSF’s advice about how to respond to the receipt of this information”.*<sup>141</sup>
18. The Second HSF Account is somewhat different from the First HSF Account, because it does not refer to Dr Green instructing HSF to investigate Mr Adrian Fini’s allegation.
19. The third account is Dr Green’s (Dr Green’s Account), given orally at a public hearing of the Inquiry. Dr Green’s Account was to the following effect:
  - Dr Green and HSF “*certainly discussed the issue that I brought to their attention and they said that they needed information to provide any initial views or a considered view*”.
  - Dr Green undertook to obtain that information.
  - HSF said that they would write something up for Dr Green to help her to obtain that information, which was to be obtained by Dr Green having a conversation with Mr Fini.
  - HSF did not, to Dr Green’s recollection, provide her at that meeting any indication at all, or a general summary, of her reporting obligations.
  - HSF told Dr Green that she should not be frivolous in making reports to the CCC and that she should exercise care and diligence in ascertaining whether that was an appropriate course of action.
  - HSF told Dr Green that HSF would like to speak to people within the administration at the City to find out more information about the matter.
  - A shared view was reached that someone from Human Resources, rather than Mr Ridgwell (whose reporting line was to Mr Mileham) was, given the sensitivity and need for confidentiality, the more appropriate contact for HSF within the administration.
  - HSF asked Dr Green to put HSF in touch with Human Resources.<sup>142</sup>
20. When asked whether she considered that would constitute being involved in the administration of the City, Dr Green said “*I did not think that facilitating an introduction between someone in Administration and a third party would constitute adding to the administrative burden in the sense defined in the [LG] Act, no*”.<sup>143</sup>

21. When asked whether she considered HSF's request that she obtain further information, including by speaking to Mr Fini, to be a request beyond the scope of the *"time limited advice"* arranged for her by Mr Ridgwell, Dr Green, who had never seen the purchase order, said she did consider that, but did not consider it beyond scope as she *"took it as given that to be able to provide me any advice on this, that they may need some information"*.<sup>144</sup>
22. Dr Green was also taken to the First HSF Account in the course of her examination. She said she did not, as at November 2017, have an understanding of what the phrase *"instructed"* meant in a legal context. She also said she did not respond to HSF to quibble with any of the language in the Investigation Plan, because she did not think there was anything with which to quibble.<sup>145</sup>
23. In view of this evidence, the First HSF Account, the Second HSF Account and Dr Green's Account can be reconciled if HSF's reference to being *"instructed"* to investigate Mr Fini's allegation is understood as Dr Green agreeing with, or acquiescing or acting in reliance on, a course of action proposed by HSF about how to deal with Mr Fini's allegation.

#### **Mr Mark Ridgwell follows up with Herbert Smith Freehills, and is avoided**

24. At 9:06 am on 13 November 2017, Mr Ridgwell emailed HSF to say that he had spoken with Dr Green who had advised him that HSF had *"provided the necessary advice on Friday"*. Consistently with what Mr Ridgwell had told Dr Green was the City's usual process, Mr Ridgwell requested from HSF a summary of the advice for the City's record-keeping.<sup>146</sup>
25. On this point, Mr Ridgwell's evidence before the Inquiry was consistent. In respect of any communication had with Dr Green following her meeting with HSF, Mr Ridgwell said that he *"potentially"* had a call with Dr Green following that meeting and that he recalled her seeming *"very happy, very pleased, seemed very positive and reassuring to me"*.
26. When asked whether Dr Green had indicated to him that the matter had been resolved, Mr Ridgwell said:  
*"I got the impression that was it and that was the conclusion of it, because that was all that we had agreed to being the case, one meeting plus a phone call. So I just said, 'Has that happened' and the answer was, 'Yes.' At that part, I would have expected if there was some further thing, that I would be asked, 'Well, I need to liaise – put more requests in for more advice', I would have thought to would come through here"*.<sup>147</sup>
27. Dr Green, when asked, said she recalled speaking to Mr Ridgwell at the City's Christmas Party (which in that year was held on 15 December) and telling him that she had not yet received the advice she was seeking from HSF. She denied telling Mr Ridgwell that she had received the advice and was happy with it. She said she did not receive any advice until the Report was provided to her in February 2018.<sup>148</sup>



28. In view of Mr Ridgwell's near contemporaneous email dated 13 November 2017, the Inquiry finds that Mr Ridgwell and Dr Green had at least one conversation between when Dr Green met with HSF on 9 November 2017 and when he sent the email to HSF. The Inquiry also finds that Mr Ridgwell formed the view, based on that conversation, that Dr Green had received advice from HSF and was happy with it. The Inquiry is unable, however, to make any finding as to precisely what was conveyed to Mr Ridgwell by Dr Green.
29. Despite numerous attempts, and despite Mr Ridgwell being the officer within the administration of the City who engaged HSF, Mr Ridgwell did not receive a response to:
  - his email to HSF dated 13 November 2017;<sup>149</sup>
  - a phone call he made to HSF in the week commencing 20 November 2017;<sup>150</sup>
  - his follow up email to HSF on 27 November 2017;<sup>151</sup>
  - his further follow up email to HSF on 29 November 2017 (and possibly an additional call made about this time);<sup>152</sup> or
  - a further follow up email he sent to HSF on 13 December 2017.<sup>153</sup>
30. Mr Ridgwell also instructed another law firm to contact HSF on behalf of the City on 14 December 2017,<sup>154</sup> which it did,<sup>155</sup> but to which it received no response that day to its call or email (though one was received the following afternoon).<sup>156</sup>
31. HSF contacted Mr Ridgwell on 15 December 2017.<sup>157</sup>
32. Mr Ridgwell's diary for that day records three relevant events.<sup>158</sup>
33. First, that at about noon, he had an in-person meeting with Ms Alison Egan, Human Resources Manager. Mr Ridgwell's notes of that meeting record:
  - Ms Egan and Ms Barbara Moyser had been liaising with HSF and Dr Green, including at a meeting earlier that day which was attended by "*all parties*";
  - the allegations being considered were allegations of bribery;
  - Mr Ridgwell had not been included in discussions due to his "*close role with*" Mr Mileham; and
  - Ms Egan and Ms Moyser were not comfortable and that the matter was being re-assigned to Mr Ridgwell.
34. Secondly, at about 1.45 pm, Mr Ridgwell told Mr Mileham that he had spoken with someone regarding the "*Freehills/DLM advice*", that he was undertaking responsibilities relevant to his role and for Mr Mileham to leave the matter with him to handle. He did this he said, because Mr Mileham had asked him to follow up on the status of the advice.<sup>159</sup> Mr Mileham's evidence on this point was that he did not want to see the advice, he just wanted to know that it had been given.<sup>160</sup>
35. Thirdly, at about 2.15 pm, Mr Ridgwell received a call from HSF, during which representatives from HSF conceded that they had been avoiding him (a fact confirmed by HSF's internal records), but that they had realised that Mr Ridgwell was required for the process in which they were engaged.<sup>161</sup> A meeting was then held between HSF and Mr Ridgwell, at HSF's offices, on 19 December 2017.<sup>162</sup>

### Investigation plan is prepared and issued

36. In the meantime, while Mr Ridgwell was attempting to obtain an update from HSF, a number of things happened.
37. First, on 14 November 2017, HSF issued to Dr Green (to a private, non-City email address)<sup>163</sup> an “*Investigation Plan*”.<sup>164</sup> Dr Green was asked about the use of non-City email accounts in connection with Project Percy. She said it was adopted because she had concerns that City emails were being monitored.<sup>165</sup>
38. The Investigation Plan is a short document setting out the steps HSF proposed to take, or have Dr Green or others within the City take, in conducting an investigation into Mr Fini’s allegation.
39. Consistently with Dr Green’s Account, the plan contains, among other things:
  - as an attachment, a script for a telephone call between Dr Green and Mr Fini;
  - a note that Dr Green would explore the possibility of engaging with the Human Resources Manager in order to form a team to coordinate the investigation;
  - advice to the effect that whilst a City based team would need to be assembled to coordinate the investigation, “*the team should also not include anyone who has a close relationship with the CEO*”; and
  - commentary to the effect that HSF had not yet formed a view about whether or not Dr Green had a reporting obligation.<sup>166</sup>
40. HSF’s advice that the team should not include anyone with a close relationship to Mr Mileham, in effect if not in its terms, implied the exclusion from the team of both Mr Ridgwell and Mr Robert Mianich (the alternate contact proposed by Mr Ridgwell in his email to Dr Green on 6 November 2017), both of whom reported to Mr Mileham.
41. That advice placed Dr Green in an unenviable position. On the one hand, she had told Mr Ridgwell that she would “*keep him in the loop*” about the matter, while on the other she was being advised by HSF to, in effect, not do so.
42. In those circumstances, the Inquiry asks, rhetorically, *what was Dr Green to do?*
43. One view may be that Dr Green should have simply reported the allegation of misconduct to the CCC and left it to that agency to consider. There is merit in that view. It would have been an appropriate way for Dr Green to proceed at the time she became aware of the allegation. It was an avenue that, as the City of Perth Council (Council) Policy Manual makes clear, was open to her.
44. However, there is nothing unreasonable about Dr Green seeking legal advice on her obligations before reporting the matter to an external agency like the CCC, particularly when it is remembered that she had only recently assumed the functions of Deputy Lord Mayor and Lord Mayor at the Council Meeting on 24 October 2017. Indeed, the Inquiry finds it was a reasonable and prudent thing for her to do.
45. Having taken that step, and received the advice, it was reasonable for her follow it. That does not constitute, in the Inquiry’s view, a breach of Dr Green’s obligations under the LG Act or the Conduct Regulations.

### Did Dr Jemma Green involve herself in the Administration of the City of Perth, or direct its staff?

46. The second thing which happened while Mr Ridgwell was trying to get an update on the matter from HSF, was that Dr Green, consistently with Dr Green's Account and the Investigation Plan, took steps to introduce Human Resources staff to HSF.
47. Ms Moyser, Senior Employee Relations Advisor, was the primary contact for HSF. As recorded in a file note prepared by Ms Moyser on 13 February 2018, that contact was facilitated through Dr Green and the City's Human Resources Manager, Ms Kelly Pember. According to Ms Moyser's file note, she became involved, because Ms Pember was at about that time leaving the City. Ms Moyser then, with Dr Green's knowledge, later involved Ms Egan.<sup>167</sup>
48. The facilitation of that introduction by Dr Green raises for the Inquiry's consideration whether Dr Green involved herself in the administration of the City, or directed employees of the City, contrary to the LG Act and Conduct Regulations.
49. In this respect, regulation 9(1) of the Conduct Regulations provides:

*"A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task".*

50. As to directing employees, regulation 10(1)(a) provides:

*"(1) A person who is a council member must not –  
 (a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; ... "*

51. On 28 November 2017, following a conversation with a partner at the firm, Dr Green wrote to HSF in terms including the following:  
*"Good to chat just now. I would like to introduce you to Barbara Moyser, Senior Employee Relations Advisor at the City of Perth. I have included her personal email here and will leave it to her discretion to determine how best to communicate with you going forward. Barbara is keen to talk with you. Her personal mobile number is [redacted]. Barbara is looking into whether the City has the capability to image text messages. She will revert. You can also liaise with Barbara going forward regarding the contract between the City of Perth and HSF".*<sup>168</sup>
52. As noted, Dr Green did not consider this introduction contravened her obligations under the LG Act or Conduct Regulations.

53. The Inquiry agrees. Having received advice from HSF that someone within the City, preferably within Human Resources, should be HSF's point of contact, it was inevitable that Dr Green would have to take *some* step to introduce the two. In the Inquiry's view, taking that step does not constitute the undertaking of "*a task that contributes to the administration of the local government*".<sup>169</sup> On the contrary, it appears to the Inquiry that it was a step taken by Dr Green to avoid her having to undertake administrative tasks such as arranging for emails to be reviewed, instructing information technology officers, or authorising payments.
54. As to whether Dr Green directed Ms Moyser, contrary to regulation 10(1)(a) of the Conduct Regulations, the Inquiry finds Dr Green did not contravene that provision.
55. Ms Moyser's file note indicates that she was asked by Ms Pember to speak with Dr Green, and she was happy to do so.<sup>170</sup> Ms Moyser's note then records:

*"Approximately a week later, I was contacted by Ms Green and I recall we spoke about the following:*

  - *Ms Green had engaged a legal firm to investigate a matter that had been brought to her attention involving Ms Lisa Scaffidi, Lord Mayor.*
  - *Ms Green indicated that the legal firm needed to contact someone within the City of Perth to assist in providing information as part of the investigation.*
  - *Ms Green also indicated the law firm would require authorisation from the City of Perth in terms of payment for legal costs.*
  - *Ms Green asked if she could provide my details to the law firm".*
56. Nothing in that excerpt indicates that Dr Green directed Ms Moyser to do anything.
57. Dr Green was examined on whether, in her view, she had directed Ms Moyser or whether she considered Ms Moyser might have interpreted their interaction as including a direction. Dr Green denied both suggestions, indicating instead (consistently with Ms Moyser's file note) that she had asked Ms Moyser whether she would speak with HSF and Ms Moyser indicated she would.<sup>171</sup>

#### **Did Dr Jemma Green instruct Herbert Smith Freehills to investigate Lord Mayor Ms Lisa Scaffidi?**

58. The third thing that happened during the period in which Mr Ridgwell was attempting to obtain an update from HSF was that the Project Percy investigation expanded.
59. While, initially, it had been focussed on an allegation concerning Mr Mileham, on about 28 November 2017 the ambit widened to include an allegation concerning the Lord Mayor.
60. In the Report, HSF explain:

*"On 28 November 2017, Cr Green instructed HSF about a further conversation between herself and Mr Fini. In that conversation, Mr Fini provided further information about alleged possible misconduct by the Lord Mayor, Lisa Scaffidi, arising out of a meeting between Mr Fini and the Lord Mayor on 29 August 2017".*<sup>172</sup>

61. Dr Green was examined about this. When questioned if she asked HSF to consider whether or not the further information conveyed to her by Mr Fini would constitute misconduct, Dr Green said, “*I did not*”. When asked whether, to her recollection, HSF said they were also going to look into this allegation, Dr Green said no. Dr Green confirmed that her recollection was that she only requested advice in relation to Mr Mileham.<sup>173</sup>
62. There are no contemporaneous records of Dr Green’s “*instruction*” to HSF on 28 November 2017, although there is a short note of a conversation between HSF and Dr Green on that date which records a reference to the Lord Mayor.<sup>174</sup> Furthermore, there is a file note of a conversation between Dr Green and HSF from 5 December 2017, in which the involvement of the Lord Mayor is addressed.<sup>175</sup>
63. In view of the state of the evidence, the Inquiry finds that while Dr Green was aware that, at 5 December 2017, HSF was considering the allegation in respect of the Lord Mayor, and took no steps to prevent that, there is no evidence to indicate that she instructed, in the sense of an active direction or request, HSF to investigate that allegation.

**Should Mr Mark Ridgwell have confirmed and extended Herbert Smith Freehills’s engagement?**

64. Following his meeting with Ms Egan and his separate telephone call with HSF on 15 December 2017, Mr Ridgwell was brought into the fold.
65. On 19 December 2017, Mr Ridgwell met with HSF. An action arising from the meeting was that Mr Ridgwell was to provide Ms Scaffidi and Mr Mileham’s emails to HSF, a task previously slated to be completed by Human Resources staff.<sup>176</sup> It is implicit that in undertaking to carry out that task, Mr Ridgwell approved of HSF’s ongoing involvement.
66. On 21 December 2017, that approval was formalised in an exchange of emails, including where HSF indicated to Mr Ridgwell that their accrued work in progress stood at \$22,000.00, that a certain additional sum was required for document management processes and where Mr Ridgwell indicated he was happy to proceed.<sup>177</sup> On 28 December 2017, Mr Ridgwell returned to HSF a signed terms of engagement.<sup>178</sup>
67. In a private examination, Mr Mileham suggested that Mr Ridgwell had displayed poor judgement in continuing to engage HSF in relation to this matter. Mr Mileham’s view was that Mr Ridgwell should have, or could have, terminated the engagement and sought other advice or referred the matter to the CCC or the Public Sector Commission.
68. Mr Mileham did not accept, when it was suggested to him, that another option available to Mr Ridgwell was that it would only be fair to him (Mr Mileham) and to Dr Green to see the investigation through to its conclusion so that everybody could see that a process was followed.<sup>179</sup>
69. Mr Ridgwell was examined about this. He said that the options that he considered at the time were either to continue the engagement of HSF “*to close out the investigation*”, or alternatively to immediately “*close out this investigation*” on the basis of HSF’s preliminary view that the allegation did not rise to the level of “*reasonable suspicion*” required to trigger a reporting obligation.

70. Mr Ridgwell explained that he determined that the alternative:
- “was not the best approach because of the fact there were two elements to it all and when someone gets accused of something, the matter should be concluded so that they can be either – it could go to the next escalation to an agency or it is that the matters are actually resolved and considered”.*
71. Mr Ridgwell added:
- “In respect to Deputy Lord Mayor Green if I had stopped the investigation at this point in time, that would not have been appropriate either. I felt in a compromised position”.*
72. When asked to clarify this comment, Mr Ridgwell explained:
- “Because there were reservations that I understood from the discussions with HSF, was that I was close to the Chief Executive Officer. So to close off an investigation before its conclusion just simply wasn’t appropriate”.*
73. Mr Ridgwell also explained that the advice he received from HSF was to continue with and close out the investigation, which is why he did so.<sup>180</sup>
74. The Inquiry does not fault Mr Ridgwell. He was placed in a difficult position of having to take conduct on behalf of the City, and make decisions about the future, of a half completed investigation into serious allegations concerning the City’s CEO and Lord Mayor. Mr Ridgwell was plainly alive to the difficult position in which he found himself. He acted in the best interests of the City and sought to facilitate rather than impede the investigation which had been commenced. It was proper for him to do so.

**Did Dr Gemma Green seek advice for any reason other than to understand her obligations?**

75. In his examination, Mr Mileham said that he felt surprised, dismayed, betrayed and sick when he learned of the Report. Mr Mileham was asked whether he felt undermined or attacked, but he did not adopt that language. Rather, Mr Mileham said he could not understand the motivation for the investigation, particularly because shortly after Dr Green was elevated to Deputy Lord Mayor (and Acting Lord Mayor) they spoke and agreed to *“work closely to make things happen”*.<sup>181</sup> The Inquiry accepts that the delivery of the Report had an impact on Mr Mileham, that he considered it a breakdown in his relationship with Dr Green and that it was a factor in his taking of medical leave in mid-February 2018.
76. The apparent disjunct between Dr Green’s and Mr Mileham’s mutual representations of co-operation, and the investigation that led to the Report, was a theme explored in examination of Dr Green by Mr Mileham’s counsel. Dr Green agreed that following her appointment as Deputy Lord Mayor she:
- “... as the newly minted Deputy Lord Mayor shook [Mr Mileham’s] hand and said words to the effect that although you’ve had your differences, you looked forward to working cooperatively with him in the best interests of the City”.*<sup>182</sup>

77. Dr Green was then asked how she thought this could be achieved after the Report had been delivered.
78. Dr Green plainly perceived an implied suggestion in that question that she took part in Project Percy in order to “go after” Mr Mileham, because in response Dr Green said, among other things:
- “What I said to Mr Mileham on that day, and I think it was even reiterated in the meeting that I had with him on the 6th that was documented in a file note by Mr Ridgwell where I said that I wanted to work collaboratively with Mr Mileham, was my true intention. So what happened with the Project Percy, I wasn’t going after Mr Mileham in relation to that report, I just was genuinely trying to get advice about the reporting obligations that I had to discharge”.*<sup>183</sup>
79. To the extent that there is a suggestion that Dr Green was involved in Project Percy to undermine, attack or “go after” Mr Mileham, or for some other improper purpose, the Inquiry accepts Dr Green’s evidence to the contrary and accepts that Dr Green was seeking advice for proper reasons. Independent and contemporaneous (albeit hearsay) support for that finding is found in a file note of a meeting with Dr Green (and Ms Egan) taken by a solicitor at HSF on 15 December 2017. In that file note, Dr Green is recorded as commenting “don’t want to go to CCC if I don’t have to”.<sup>184</sup> That would be an odd thing indeed for Dr Green to have remarked were she looking to undermine or otherwise damage Mr Mileham in his office.

### Cost to the City of Perth

80. The HSF Report, and the work that led to it, cost the City \$32,586.41.
81. Following the delivery of the Report, the City engaged Mr Neil Douglas of McLeods, Barristers and Solicitors to undertake a desktop review of “the processes that resulted in the HSF investigation and its report”. The primary focus of the review was “on lessons for the future that can be taken from the way that this matter has been handled”.<sup>185</sup>
82. Mr Douglas delivered his report (Douglas Report)<sup>186</sup> to the City on 27 February 2018, which was, coincidentally, the day that the Executive Leadership Group enacted the Crisis Management Plan and the Council appointed Ms Annaliese Battista to the role of Acting CEO.
83. Essentially, the Douglas Report concluded that Dr Green did not have the authority or power to engage HSF to undertake the investigation, and the investigation was unnecessary as Dr Green should have reported the allegations to the CCC.
84. As explained in the Douglas Report, the engagement and ongoing instruction of McLeods was undertaken by Mr Mianich and Mr Ridgwell at Mr Mileham’s request, shortly after the receipt by the City of the HSF Report.



85. In full, Mr Mileham's request, made by email with the subject line "Project Percy", was as follows:  
  
*"I confirm our discussion re the above and my advice to you that, pursuant to a discussion I have had with Neil Douglas of McLeod's, I ask that you take carriage of liaising with Neil in respect to 'getting to the bottom of' what went on here and advising me so that I may appropriately advise Council. I ask this as I wish to preserve my separation from the matter until such time as I have received further advice from Neil and/or yourself as to next steps".<sup>187</sup>*
86. While it might at first blush seem odd that Mr Mileham, who had been the subject of the Report, requested a review of the processes that led to it, the Inquiry has not received any evidence that the request was anything but proper. It is apparent from the email above that Mr Mileham made that request having taken advice from Mr Douglas. Further, when the matter is viewed from the perspective of Mr Mileham, Mr Mianich and Mr Ridgwell as at 12 February 2018, in circumstances where from the initial engagement of HSF until 15 December 2017 Mr Ridgwell was deliberately excluded from the process, and in circumstances where it appeared from the Report that Dr Green may have instructed (as that term is understood by lawyers) HSF, it is understandable that a review was considered appropriate.
87. The Douglas Report, and the work that led to it, cost the City \$33,071.09.
88. On 14 February 2018, Mr Mileham notified the City that he considered the Project Percy investigation constituted a breach of his employment contract. The City, prudently, took advice on that question. That advice cost the City \$7,636.75.
89. The City also incurred a small cost when, Mr Ridgwell engaged a law firm to contact HSF after his repeated attempts were met with silence.
90. All told, Project Percy and its aftermath cost the City approximately \$74,000.00 in direct legal fees. The indirect costs, including for example, the cost of the time spent on the project and its aftermath by Mr Ridgwell and Mr Mianich, have not been quantified. Other unspecified costs were also incurred by the City, Dr Green and Mr Mileham in engaging lawyers to deal with aspects of, and matters relating to, Project Percy and the Douglas Report. For example, Mr Mileham and the City incurred costs in dealing with a workers compensation claim brought by Mr Mileham in connection with Project Percy,<sup>188</sup> and Dr Green incurred costs in engaging lawyers to correspond with Mr Douglas in respect of the Douglas Report.
91. The level of expenditure on the matter is regrettable. In hindsight, had the allegations been immediately referred to the CCC, the amount of funds expended on the issues raised by and arising from the Report would have been much lower. However, having regard to the evidence, the Inquiry makes no negative findings about the steps taken by any of the persons involved in procuring the HSF Report, the Douglas Report or the advice which followed. While reasonable minds may differ, none of the steps were inherently unreasonable.

## Relationships

92. In addition to the direct financial costs, Project Percy and the Douglas Report had a tangible impact on relationships at the City.
93. As described above, Mr Mileham felt betrayed by the process and considered that his employment contract had been breached. That in turn led, in part, to council member Reece Harley forming the view that Mr Mileham was out to “*blow up*” the Council, which was a factor in Mr Harley supporting the motion moved and passed at the Special Council Meeting on 27 February 2018 to amend Council Policy 12.6 and appoint Ms Battista to the role of Acting CEO.<sup>189</sup>
94. Dr Green and the Lord Mayor’s relationship also continued to sour, including as a consequence of a turbulent CEO Performance Review Committee Meeting held on 16 February 2018. Dr Green told the Inquiry she felt ambushed at that meeting and that allegations were made against her by the Lord Mayor and Mr Douglas to the effect that she had conducted an “*unauthorised*” investigation and had been instructing HSF. She felt that the Report was used at that meeting to attack her.<sup>190</sup> The Lord Mayor in turn considered that Dr Green should have declared a conflict of interest at that meeting in respect of a matter (not Project Percy) on the agenda which potentially involved HSF.<sup>191</sup>
95. Dr Green too was aggrieved by the broad circulation of the Report to council members (and others, including Mr Douglas), because she felt that Mr Ridgwell had retreated from the indication in his email of 6 November 2017<sup>192</sup> that the matter would be kept confidential between them (plus, in due course, Mr Mileham).<sup>193</sup>
96. As a consequence of the engagement by the City of McLeods, and as a consequence of Dr Green’s sense of ambush at the meeting on 16 February 2018 and the allegations made against her, Dr Green engaged solicitors. Part of the reason for doing so was to respond to the Douglas Report<sup>194</sup> and also because she was of the view that in order for the Douglas Report to tell the full story of her involvement with HSF, the City and McLeods should view the HSF file. Her solicitors wrote to Mr Douglas asking him to confirm that he would contact HSF to enquire as to for whom they acted.<sup>195</sup> That was not done, presumably because, as the Douglas Report states, a desktop review based on the material supplied to McLeods by the City was considered sufficient for the lessons learned focus of the Douglas Report.<sup>196</sup>
97. At about the same, starting on 17 February 2018<sup>197</sup>, but continuing until after the Council was suspended by the Minister for Local Government, Dr Green requested the City, meet her legal costs of engaging solicitors to deal with matters arising from Project Percy and the Douglas Report.<sup>198</sup> Ultimately, that request was declined, although not before some spirited emails were exchanged by Dr Green and Mr Mianich, which evidence a breakdown in their relationship.<sup>199</sup>
98. With hindsight, much if not all of the time, anguish and cost that resulted from Project Percy and the Douglas Report may have been avoided had the matter been referred to the CCC before HSF were engaged, or had there been a clear process in place for dealing with, including communicating internally about, misconduct allegations relating to the CEO and the engagement of lawyers to provide advice.

## Findings

### Finding 2.4.1 – 6

The Inquiry makes the following findings:

- i. In early November 2017, HSF was engaged by the City, through Mr Ridgwell.
- ii. On 21 December 2017, Mr Ridgwell extended and confirmed that engagement.
- iii. While Mr Ridgwell could theoretically have brought HSF's engagement to an end instead of extending and confirming it, that was not in the circumstances an option realistically available to him and he acted reasonably in reaching the decision he did.
- iv. Dr Green:
  - relied on advice provided to her by HSF;
  - did not, through her involvement in Project Percy, breach the LG Act or the Conduct Regulations;
  - did not seek advice from HSF for any reason other than to understand her roles and responsibilities, including in particular her reporting obligations.
- v. Certain relationships within the City became further frayed in the aftermath of Project Percy in that:
  - the delivery of the Report was a factor in Mr Mileham taking medical leave from the City in mid-February 2018 and he considered it reflective of a breakdown in his relationship with Dr Green;
  - Mr Mileham took the view that the process leading to the Report constituted a breach of his employment contract, prompting to him to engage solicitors to make that claim, which in turn led Mr Harley at least to form the view that Mr Mileham was hostile to the Council;
  - Dr Green felt aggrieved by the manner in which a review into the Report was conducted by an external law firm and felt aggrieved by what she saw as a breach of her confidence by Mr Ridgwell when the Report was circulated to council members; and
  - the relationship between the Lord Mayor and Dr Green soured as a result of events happening at a meeting on 16 February 2018, as did the relationship between Dr Green and Mr Mianich over the course of the next few days as questions about what was said at that meeting and whether certain legal costs of Dr Green's should be met by the City were considered.

## Endnotes

- 1 Transcript, L Scaffidi, public hearing, 19 September 2019, p 98-99.
- 2 Transcript, R Harley, public hearing, 18 September 2019, p 107. Transcript, R Harley, public hearing, 19 September 2019, p 15.
- 3 Transcript, A Barton, public hearing, 19 September 2019, p 55-57.
- 4 Plan, City of Perth, Business Continuity Plan.
- 5 Plan, City of Perth, Crisis Management Plan.
- 6 Document, City of Perth, Crisis and Business Continuity Management Framework.
- 7 Plan, City of Perth, Business Continuity Plan.
- 8 Plan, City of Perth, Business Continuity Plan.
- 9 Transcript, M Mileham, public hearing, 16 September 2019, p 7-8.
- 10 Email, M Mileham to M Ridgwell, 3.59 pm 8 February 2018.
- 11 Transcript, M Mileham, public hearing, 16 September 2019, p 17.
- 12 Transcript, P Crosetta, public hearing, 23 September 2019, p 53-54; Transcript, M Ridgwell, public hearing, 26 September 2019, p 7-8; Transcript, A Battista, private hearing, 28 June 2019, p 26.
- 13 Transcript, E Barrenger, public hearing 18 September 2019, p 9-10.
- 14 Transcript, J Green, public hearing, 20 September 2019, p 85; Transcript, A Battista, private hearing, 28 June 2019, p 26; Transcript, A Battista, private hearing, 4 October 2019, p 17-18.
- 15 Email, M Mileham to L Scaffidi, 8.01 am 14 February 2018.
- 16 Email, R Mianich to J Green, 6.33 pm 23 February 2018.
- 17 Transcript, J Green, public hearing, 23 September 2019, p 17; Transcript, S Hasluck, public hearing, 18 September 2019, p 48; Transcript, R Harley, public hearing, 18 September 2019, p 116; Transcript, A Barton, public hearing, 19 September 2019, p 44.
- 18 Transcript, S Hasluck, public hearing, 18 September 2019, p 74.
- 19 Transcript, S Hasluck, public hearing, 18 September 2019, p 74-75.
- 20 Transcript, R Harley, public hearing, 19 September 2019, p 7.
- 21 Transcript, S Hasluck, public hearing, 18 September 2019, p 63.
- 22 Audio recording, Special Council Meeting, 27 February 2018.
- 23 Transcript, R Mianich, private hearing, 19 July 2019, p 43-44.
- 24 Email, R Mianich to N Douglas, 1.39 pm 25 February 2018.
- 25 Transcript, R Mianich, private hearing, 19 July 2019, p 45, 47.
- 26 Email, M Ridgwell to R Murphy, 9.14 am 26 February 2018.
- 27 Email, M Ridgwell to R Murphy, 3.12 pm 27 February 2018.
- 28 Transcript, M Ridgwell, public hearing, 26 September 2019, p 89-90, 96-97.
- 29 Document, Administration advice RE: motion to change Policy 12.6, 27 February 2018; Transcript, R Harley, public hearing, 19 September 2019, p 11; Transcript, A Barton, public hearing, 19 September 2019, p 58-59.
- 30 Transcript, J Green, public hearing, 23 September 2019, p 14.
- 31 Transcript, J Limnios, private hearing, 1 August 2019, p 43.
- 32 Transcript, J Green, public hearing, 23 September 2019, p 14.
- 33 Transcript, R Harley, public hearing, 18 September 2019, p 98, 110.
- 34 Transcript, J Limnios, private hearing, 1 August 2019, p 41, 45.
- 35 Transcript, R Harley, public hearing, 19 September 2019, p 112.
- 36 Transcript, J Green, public hearing, 23 September 2019, p 16.
- 37 Transcript, J Limnios, private hearing, 1 August 2019, p 53.
- 38 Transcript, A Barton, public hearing, 19 September 2019, p 45.
- 39 Transcript, J Green, public hearing, 23 September 2019, p 19.
- 40 Transcript, S Hasluck, public hearing, 18 September 2019, p 55-56.
- 41 Transcript, S Hasluck, public hearing, 19 September 2019, p 85.
- 42 Transcript, J Green, public hearing, 23 September 2019, p 18.
- 43 Email, R Harley to R Mianich, 12.22 pm 23 February 2018; Email, R Harley to J Limnios J Green A Barton and S Hasluck, 12.25 pm 23 February 2018.
- 44 Email, S Hasluck to R Harley, J Green, J Limnios and A Barton, 9.26 am 24 February 2018.
- 45 Audio recording, Special Council Meeting, 27 February 2018.
- 46 Transcript, S Hasluck, public hearing, 18 September 2019, p 79; Transcript, R Harley, public hearing, 19 September 2019, p 18.
- 47 Transcript, S Hasluck, public hearing, 18 September 2019, p 73, 83.
- 48 Transcript, R Mianich, private hearing, 19 July 2019, p 47, 49.
- 49 Transcript, A Battista, private hearing, 25 June 2019, p 79-80.
- 50 Transcript, R Mianich, private hearing, 19 July 2019, p 47-48.
- 51 Transcript, R Mianich, private hearing, 19 July 2019, p 49.

#### 2.4.1 Events leading to suspension of the Council

- 52 Personal communication, R Mianich to L Scaffidi, 4.45 pm 26 February 2018; forwarded by the Lord Mayor to the council members at 5.24 pm that afternoon; Email, L Scaffidi to councillors, 5.24 pm 26 February 2018.
- 53 Transcript, R Mianich, private hearing, 19 July 2019, p 49.
- 54 Transcript, M Ridgwell, public hearing, 26 September 2019, p 18.
- 55 Transcript, A Battista, private hearing, 25 June 2019, p 75.
- 56 Transcript, A Battista, private hearing, 25 June 2019, p 75.
- 57 Transcript, M Ridgwell, public hearing, 26 September 2019, p 21.
- 58 Transcript, R Moore, private hearing, 22 March 2019, p 26-27.
- 59 Transcript, P Crosetta, public hearing, 23 September 2019, p 60.
- 60 File note (handwritten), E Barrenger, 27 February 2018.
- 61 File note (typed), E Barrenger, 27-28 February 2018.
- 62 Transcript, E Barrenger, public hearing, 16 September 2019, p 74.
- 63 Transcript, M Ridgwell, public hearing, 26 September 2019, p 3.
- 64 Transcript, A Battista, private hearing, 25 June 2019, p 75-76.
- 65 Transcript, A Battista, private hearing, 25 June 2019, p 76; Transcript, E Barrenger, public hearing, 18 September 2019, p 5-6; Transcript, P Crosetta, public hearing, 23 September 2019, p 63; File note, P Crosetta, 7 March 2018; File note, E Barrenger, 27 February 2018.
- 66 Personal communication, A Battista to M Ridgwell, 27 February 2018.
- 67 Transcript, A Battista, private hearing, 25 June 2019, p 77.
- 68 File note (handwritten), E Barrenger, 27 February 2018.
- 69 File note (typed), E Barrenger, 27-28 February 2018.
- 70 File note, R Moore, 27 February 2018; File note, P Crosetta, 7 March 2018 for 26-28 February 2018.
- 71 File note, R Moore, 26 February 2018 – 1 March 2018.
- 72 Transcript, N Douglas, private hearing, 28 March 2019, p 9, 12.
- 73 Transcript, R Moore, private hearing, 22 March 2019, p 28.
- 74 Transcript, M Ridgwell, public hearing, 26 September 2019, p 25.
- 75 File note, R Moore, 26 February 2018 – 1 March 2018.
- 76 Transcript, E Barrenger, public hearing, 16 September 2019, p 73.
- 77 Transcript, P Gale, private hearing, 28 March 2019, p 26-27.
- 78 Transcript, D Ngara, private hearing, 25 March 2019, p 89.
- 79 File note, E Barrenger, 27 February 2018.
- 80 Incident Log, P Gale, 27 February 2018.
- 81 Transcript, E Barrenger, public hearing, 18 September 2019, p 33.
- 82 Transcript, E Barrenger, public hearing, 18 September 2019, p 30, 31.
- 83 Transcript, N Douglas, private hearing, 28 March 2019, p 8, 18-19.
- 84 Email, R Moore to Executive Leadership Group and Ors, 11.04 am 27 February 2018.
- 85 Transcript, P Crosetta, public hearing, 23 September 2019, p 72-73; Transcript, E Barrenger, public hearing, 16 September 2019, p 67-68, 80.
- 86 Transcript, E Barrenger, public hearing, 18 September 2019, p 11.
- 87 File note, R Moore, 27 February 2018.
- 88 File note, R Moore, 26 February 2018 – 1 March 2018.
- 89 Email, R Moore to D Ngara, 1.08 pm 6 March 2018.
- 90 Transcript, R Moore, private hearing, 25 March 2019, p 51.
- 91 Transcript, R Moore, private hearing, 25 March 2019, p 53.
- 92 Transcript, R Moore, private hearing, 25 March 2019, p 57-58.
- 93 Transcript, R Moore, private hearing, 25 March 2019, p 61-62.
- 94 File note, E Barrenger, 27–28 February 2018.
- 95 File note, P Crosetta, 7 March 2018 for 26-28 February 2018.
- 96 Transcript, R Moore, private hearing, 22 March 2019, p 34.
- 97 File note, R Moore, 26 February 2018 – 1 March 2018.
- 98 Transcript, R Moore, private hearing, 22 March 2019, p 36.
- 99 Transcript, R Moore, private hearing, 22 March 2019, p 40.
- 100 Transcript, P Crosetta, public hearing, 23 September 2019, p 81.
- 101 Transcript, M Holland, private hearing, 28 March 2019, p 72-73.
- 102 Report, City of Perth Crisis Communications Team Report, 27 February 2018 at 4pm.
- 103 Transcript, P Crosetta, public hearing, 23 September 2019, p 75-79, 86-87.
- 104 Transcript, M Ridgwell, public hearing, 26 September 2019, p 19, 26.

- 105 Report, Riskwest, Post-incident Desktop Review of Crisis Management Plan Activation, 16 April 2018.
- 106 Transcript, K Seow, private hearing, 26 March 2019, p 103.
- 107 Email, T Obern to all employees, 12.22 pm 27 February 2018.
- 108 Minutes, Crisis Management Team/CICT Meeting/Conference Call, 11.15 am 27 February 2018.
- 109 Minutes, Crisis Management Team/CICT Meeting/Conference Call, 11.15 am 27 February 2018.
- 110 Transcript, P Crosetta, public hearing, 23 September 2019, p 87.
- 111 Email, M Mileham to M Ridgwell and R Moore, 12.59 pm 27 February 2018; Email, R Moore to L Scaffidi and council members, 3.25 pm 27 February 2018.
- 112 Personal communication, R Mianich to various people, 28 February 2018.
- 113 Document, Administration advice RE: motion to change Policy 12.6, 27 February 2018; Memo, R Moore, P Crosetta and E Barranger to L Scaffidi and council members, Enacted Business Continuity Framework, 27 February 2018.
- 114 Minutes, City of Perth, Special Council Meeting, 27 February 2018.
- 115 Transcript, R Moore, private hearing, 22 March 2019, p 50-52.
- 116 Minutes, City of Perth, Special Council Meeting, 27 February 2018.
- 117 Document, Request of the CEO to schedule a Special Council Meeting – Motion, 24 February 2018.
- 118 Email, R Harley to J Limnios and Ors, 1.00 pm on 27 February 2018.
- 119 Email, R Harley to R Moore and Ors, 12.32 pm 27 February 2018.
- 120 Email, R Harley to J Limnios and Ors, 1.00 pm 27 February 2018.
- 121 Document, Request of the CEO to schedule a Special Council Meeting – Motion, 24 February 2018; Email, Amended motion – Acting CEO, S Hasluck to R Moore 3.23 pm 27 February 2018.
- 122 Email, R Harley to R Murphy and J Murphy, 1.23 pm 27 February 2018; Email, R Harley to M Ridgwell, 1.38 pm 27 February 2018.
- 123 Transcript, R Harley, public hearing, 19 September 2019, p 1519.
- 124 Audio recording, Special Council Meeting, 27 February 2018.
- 125 Transcript, A Battista, private hearing, 28 June 2019, p 28.
- 126 Transcript, S Hasluck, public hearing, 18 September 2019, p 54-55, 59.
- 127 Transcript, A Barton, public hearing, 19 September 2019, p 49.
- 128 Report, City of Perth, Crisis Communications Team Report, 9.30 am 28 February 2018.
- 129 Email, J Green to R Murphy, 9.55 am 28 February 2018.
- 130 Transcript, M Ridgwell, public hearing, 26 September 2019, p 11.
- 131 By way of further example: Email, A Battista to J Green, 2.15 pm 27 February 2018.
- 132 Email, Herbert Smith Freehills to M Ridgwell, 9.21 am 29 January 2018 attaching Project Percy Advice.
- 133 Transcript, J Green, public hearing, 20 September 2019, p 35; Transcript, M Ridgwell, private hearing, 25 July 2019, p 75.
- 134 Transcript, J Green, public hearing, 20 September 2019, p 36-37; Email, J Green and M Ridgwell, 27 October 2017.
- 135 Email, M Ridgwell to J Green, 12.08 am 27 October 2017.
- 136 Transcript, J Green, public hearing, 20 September 2019, p 37.
- 137 Email, M Ridgwell to J Green, 2.24 pm 6 November 2017.
- 138 Transcript, J Green, public hearing, 20 September 2019, p 41.
- 139 Report, Herbert Smith Freehills, Project Percy Advice, 29 January 2018.
- 140 Plan, Herbert Smith Freehills, City of Perth Project Percy Investigation plan, 14 November 2017.
- 141 Report, Herbert Smith Freehills, Project Percy Advice, 29 January 2018.
- 142 Transcript, J Green, public hearing, 20 September 2019, p 42, 44-45, 49-52.
- 143 Transcript, J Green, public hearing, 20 September 2019, p 52.
- 144 Transcript, J Green, public hearing, 20 September 2019, p 43, 53.
- 145 Transcript, J Green, public hearing, 20 September 2019, p 70-71.
- 146 Email, M Ridgwell to Herbert Smith Freehills, 9.06 am 13 November 2017, 12.0489.
- 147 Transcript, M Ridgwell, private hearing, 25 July 2019, p 78-79.
- 148 Transcript, J Green, public hearing, 20 September 2019, p 41-42.
- 149 Email, M Ridgwell to Herbert Smith Freehills, 9.06 am 13 November 2017.
- 150 Email, M Ridgwell to Herbert Smith Freehills, 1.59 pm 27 November 2017.
- 151 Email, M Ridgwell to Herbert Smith Freehills, 1.59 pm 27 November 2017.
- 152 Email, M Ridgwell to Herbert Smith Freehills, 12.03 pm 29 November 2017.
- 153 Email, M Ridgwell to Herbert Smith Freehills, 1.14 pm 13 December 2017.
- 154 Email, M Ridgwell to M Reid, 10.33 am 14 December 2017.
- 155 Email, M Reid to Herbert Smith Freehills, 12.20 pm 14 December 2017.
- 156 Email, M Reid to M Ridgwell, 2.30 pm 15 December 2017.
- 157 Diary, M Ridgwell, 15 December 2017.
- 158 Diary, M Ridgwell, 15 December 2017.

## 2.4.1 Events leading to suspension of the Council

- 159 Emails, M Ridgwell and M Mileham, 12–14 December 2017.
- 160 Transcript, M Mileham, private hearing, 30 July 2019, p 50-51.
- 161 Diary, M Ridgwell, 15 December 2017.
- 162 File Note, M Ridgwell, 19 December 2017.
- 163 Email, Herbert Smith Freehills to J Green, 9.46 pm 14 November 2017.
- 164 Plan, Herbert Smith Freehills, City of Perth Project Percy Investigation plan, 14 November 2017.
- 165 Transcript, J Green, public hearing, 20 September 2019, p 58-60.
- 166 Plan, Herbert Smith Freehills, City of Perth Project Percy Investigation plan, 14 November 2017.
- 167 File note, B Moyser, 13 February 2018; Email, B Moyser to A Egan, 7.52 am 7 December 2017.
- 168 Email, J Green to Herbert Smith Freehills, 28 November 2017.
- 169 The conduct of the councillor in Yates and Local Government Standards Panel [2012] WASAT 52 (Deputy President Judge Sharp). See also the “*elements*” of a breach of reg 9(1) as set out by the Local Government Standards Panel in Burnett and Councillor McKay, SP 11 of 2013, [10.17].
- 170 File note, B Moyser, 13 February 2018.
- 171 Transcript, J Green, public hearing, 20 September 2019, p 57-58.
- 172 Report, Herbert Smith Freehills, Project Percy Advice, 29 January 2018.
- 173 Transcript, J Green, public hearing, 20 September 2019, p 72-73.
- 174 File note, Herbert Smith Freehills, 28 November 2017.
- 175 File note, Herbert Smith Freehills, 5 December 2017.
- 176 File note, M Ridgwell, 19 December 2017.
- 177 Email, M Ridgwell and Herbert Smith Freehills, 21 December 2017.
- 178 Email, M Ridgwell to Herbert Smith Freehills, 3.17 pm 28 December 2017, with attached signed Terms of Engagement.
- 179 Transcript, M Mileham, private hearing, 30 July 2019, p 54-55.
- 180 Transcript, M Ridgwell, private hearing, 25 July 2019, p 89-90.
- 181 Transcript, M Mileham, private hearing, 30 July 2019, p 55.
- 182 Transcript, J Green, public hearing, 23 September 2019, p 46.
- 183 Transcript, J Green, public hearing, 23 September 2019, p 47.
- 184 File note, Herbert Smith Freehills, 15 December 2017.
- 185 Report, N Douglas McLeods, Report to the CEO concerning ‘Project Percy’, 27 February 2018.
- 186 Report, N Douglas McLeods, Report to the CEO concerning ‘Project Percy’, 27 February 2018.
- 187 Email, M Mileham to R Mianich, 3.33 pm 12 February 2018.
- 188 Document, WorkCover WA, Certificate of Outcome, 13 March 2019.
- 189 Transcript, R Harley, public hearing, 19 September 2019, p 9.
- 190 Transcript, J Green, public hearing, 20 September 2019, p 74-75, 78.
- 191 Transcript, L Scaffidi, public hearing, 19 September 2019, p 78.
- 192 Email, M Ridgwell to J Green, 2.24 pm 6 November 2017.
- 193 Transcript, J Green, public hearing, 20 September 2019, p 78.
- 194 Letter, J Green to R Mianich, 17 February 2018.
- 195 Transcript, J Green, public hearing, 20 September 2019, p 80; Letter, Bennett + Co to McLeods, 21 February 2019.
- 196 Letter, McLeods to Bennett + Co, 22 February 2019; Report, N Douglas, McLeods, Report to the CEO concerning ‘Project Percy’, 27 February 2018.
- 197 Email, J Green to R Mianich, 9.36 pm 17 February 2018.
- 198 Emails, J Green, R Mianich, A Battista, 17 February 2018 – 9 March 2018.
- 199 Emails, J Green, R Mianich, 17–19 February 2018.



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