



PUBLIC INQUIRY INTO LIVERPOOL CITY COUNCIL

**COMMISSIONED UNDER S 438U OF THE LOCAL
GOVERNMENT ACT 1993 (NSW)**

**PUBLIC HEARING
SYDNEY**

**FRIDAY, 05 SEPTEMBER 2025
AT 10.16 AM**

DAY 28

APPEARANCES

**T McDonald SC, Senior Counsel Assisting
Ms B Anniwell, Counsel Assisting
Mr E McGinness, Counsel Assisting
Mr D Parish and Mr N Andrews, Counsel for the Liverpool City Council
Ms K Richardson SC, Counsel for Mayor N Mannoun
Ms C Hamilton-Jewell, Counsel for Mr P Ristevski
Mr D Tynan, Counsel for Mr J Breton
Mr T Boyle, Counsel for Mr J Ajaka**

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<THE HEARING COMMENCED AT 10.16 AM

COMMISSIONER: Yes.

- 5 **MS McDONALD:** Commissioner, before resuming Dr Green's evidence, can I deal with an administrative matter.

COMMISSIONER: Yes.

- 10 **MS McDONALD:** And may I hand up a new index to TB8 as at 4 September, at 6.10 pm, and a list of documents to be tendered.

COMMISSIONER: Thank you. The updated TB8 index as of 4 September, at 6.10 pm, will be MFI23.

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<MFI #23 UPDATED INDEX TO TB8 AS AT 6.10 PM ON 04/09/2025 AND LIST OF DOCUMENTS

- 20 **MS McDONALD:** And, Commissioner, repeating the procedure that we've adopted, in the second document under Councillor Fiona Macnaught's evidence and then Councillor Dr Betty Green's evidence, we have a cross-reference to the item in TB8, or I think there's something in TB11, and then a proposed exhibit number starting at exhibit 174 and going through to exhibit 186. And we note that proposed exhibits 185 and 186 were the subject of evidence in the private session.

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COMMISSIONER: Yes. The documents in that list will have the exhibit numbers attributed to them.

MS McDONALD: Thank you.

30

<BETTY GREEN, ON FORMER OATH

COMMISSIONER: Councillor, you're on the oath that you took yesterday.

- 35 **DR GREEN:** Yes.

COMMISSIONER: Yes, Ms Hamilton-Jewell.

- 40 **MS HAMILTON-JEWELL:** Thank you, Commissioner. Dr Green, I have a few short questions for you this morning. Commissioner, the first topic that I propose to go to relates to evidence that was given in closed session yesterday.

- 45 **COMMISSIONER:** All right. Pursuant to section 12B of the Royal Commissions Act, I direct that the next passage of the hearing take place in private, that - everyone in the hearing room can remain, I take it? Yes. That those who are currently in the hearing room can remain in the hearing room, and the passage of this portion of the

hearing not be published otherwise than in accordance with the usual direction. And we'll just pause until we get the nod.

<THE HEARING ADJOURNED TO PRIVATE SESSION AT 10.18 AM

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<THE HEARING RESUMED AT 10.21 AM

COMMISSIONER: Yes, we're back in public. Thank you.

10 **MS HAMILTON-JEWELL:** Dr Green, you gave some evidence yesterday in relation to the CEO recruitment meeting that took place on 20 February 2025.

DR GREEN: Yes.

15 **MS HAMILTON-JEWELL:** And after that 20 February recruitment meeting, the recruitment panel for the CEO changed; is that correct?

DR GREEN: That's correct.

20 **MS HAMILTON-JEWELL:** And the new panel had the following members on it. It was yourself?

DR GREEN: Yes.

25 **MS HAMILTON-JEWELL:** It was Mayor Mannoun?

MS GREEN: Yes.

MS HAMILTON-JEWELL: It was Councillor Ristevski?

30

DR GREEN: Yes.

MS HAMILTON-JEWELL: Councillor Macnaught?

35 **DR GREEN:** Yes.

MS HAMILTON-JEWELL: Deputy Mayor Harle?

DR GREEN: Yes.

40

MS HAMILTON-JEWELL: And Councillor Karnib?

DR GREEN: That's correct.

45 **MS HAMILTON-JEWELL:** And the panel was able to work together?

DR GREEN: Yes.

MS HAMILTON-JEWELL: And they were able to work together, ultimately resulting in the recruitment of a new CEO?

5 **DR GREEN:** That's correct.

MS HAMILTON-JEWELL: Now, moving to a slightly different topic. You also gave some evidence in relation to the question of conflicts of interest.

10 **DR GREEN:** Yeah.

MS HAMILTON-JEWELL: And you were asked in particular about the procedure which requires a member of the recruitment panel to declare a conflict of interest. And, Commissioner, that was at transcript, it-2163, lines 19 to 45. And you were
15 asked about a procedure - if you're a member of the panel and you perceived there to be a conflict of interest, that that has to be declared. Do you remember answering that question?

DR GREEN: Yes.
20

MS HAMILTON-JEWELL: And you were asked some questions about if the applicant had a prior association with a member of the recruitment panel, whether that should also be declared or let known.

25 **DR GREEN:** Yes.

MS HAMILTON-JEWELL: And you may have heard the evidence in this Commission about a prior association between Jason Breton and Mayor Mannoun. Have you heard evidence about Jason Breton doing volunteer work -
30

DR GREEN: Yes.

MS HAMILTON-JEWELL: - for Mayor Mannoun's campaign?

35 **DR GREEN:** Yes.

MS HAMILTON-JEWELL: And about his ticket?

DR GREEN: Yes, I did.
40

MS HAMILTON-JEWELL: And about campaign donations?

DR GREEN: Yes, I did.

45 **MS HAMILTON-JEWELL:** And is it your view that Mr Breton should have disclosed that prior association to the interview panel?

DR GREEN: I would say that that would probably have been the better course of action to have taken.

5 **MS HAMILTON-JEWELL:** And those matters were not disclosed to you by Mr Breton?

DR GREEN: No.

10 **MS HAMILTON-JEWELL:** And they were not disclosed to you by Mayor Mannoun?

DR GREEN: No.

15 **MS HAMILTON-JEWELL:** Just moving now to the last topic. You were asked some questions yesterday about the conduct of Mayor Mannoun towards you in council meetings.

DR GREEN: Yes.

20 **MS HAMILTON-JEWELL:** I want to ask you some questions about seating arrangements in the council chamber. During the previous term - that is, the 2021 term - who decided where each councillor was to sit in the chamber?

25 **DR GREEN:** I'm not entirely sure who made those arrangements.

MS HAMILTON-JEWELL: Do you know if the mayor usually determines where councillors are to sit in the chamber?

30 **DR GREEN:** I don't know.

MS HAMILTON-JEWELL: And did Mayor Mannoun, in about November 2024, seek to determine where the councillors and where you would sit in the chamber for this current term or for particular meetings?

35 **DR GREEN:** Yes.

MS HAMILTON-JEWELL: And how did that make you feel?

40 **DR GREEN:** I wasn't happy about it.

MS HAMILTON-JEWELL: And did you raise the issue with Jason Breton?

DR GREEN: I did raise it with Mr Breton.

45 **MS HAMILTON-JEWELL:** And did you raise with Mr Breton that you felt that this was bullying?

DR GREEN: I can't recall those words in particular, I'm sorry.

MS HAMILTON-JEWELL: Thank you. Those are my questions, Commissioner.

5 **COMMISSIONER:** Thank you. Anything arising?

MS McDONALD: Yes, if I can just - two topics. The first one, just on that question of seating -

10 **DR GREEN:** Yeah.

MS McDONALD: We have watched excerpts from a number of meetings. It would appear that at least the councillors sit as part of either North Ward or South Ward. Is that correct?

15 **DR GREEN:** That's correct.

MS McDONALD: And that's kind of the - is that a tradition that's always - since your being a councillor, has been maintained?

20 **DR GREEN:** I think so. Yes.

MS McDONALD: The evidence that you just gave about - I think since November '24 the mayor determined where you would sit, does that mean within the group of
25 councillors who represent North Ward there was a determination which seat you would have at that table?

DR GREEN: I recall that we received an email from the director Tina Bono, alert - setting out that the mayor had determined the seating for where we would sit.

30 **MS McDONALD:** So that was a particular seat?

DR GREEN: That was a particular seating. That was the first that I had - yep.

35 **MS McDONALD:** All right. And, Commissioner, this may not be re-examination but it's a very short point, if I can have that -

COMMISSIONER: All right. Well, if anyone needs leave to take it up again that can be raised.

40 **MS McDONALD:** I had asked you in your examination-in-chief about training when you first became a councillor.

DR GREEN: Yes.

45 **MS McDONALD:** Can I just ask - this second time as a councillor where you were elected September last year, have you received either refresher training as - you

know, refresher training to the training that you received when you joined council back in '21?

5 **DR GREEN:** I attend the same induction training as all new councillors. It's for new and returning councillors.

MS McDONALD: And when did that take place?

10 **DR GREEN:** This term - I don't have the dates clear in my mind, but they were after we had taken our oath, and they're ongoing. We actually have a workplace health and safety one coming up next week.

MS McDONALD: The - on that, the - we've heard some evidence that there is a professional development program for each councillor.

15 **DR GREEN:** Yes.

MS McDONALD: So in addition to, for example, the refresher induction training where you all attend -

20 **DR GREEN:** Yes.

MS McDONALD: - this potentially is training which is, in a sense, earmarked for a particular councillor and may involve - if there's an area where a councillor would like training or development of skills, that can be pursued?

25 **DR GREEN:** Yes.

MS McDONALD: To your knowledge, have you got a professional development program?

30 **DR GREEN:** No, I have not.

MS McDONALD: Right. Has it ever been raised with you in -

35 **DR GREEN:** In - sorry.

MS McDONALD: No, no. Go.

40 **DR GREEN:** In the previous term, Mr George Georgakis, who oversaw the Councillor Support - I'm not quite sure what - in terms of his job - role title, but he - we were in the process of developing such a program from the Local Government New South Wales calendar. And then he left that position, so it's something that I've - I've taken responsibility for my - or training myself. So I have a look through the calendar and I've chosen particular courses that then I have attended.

MS McDONALD: All right. And is that in procedure of informing you of - either giving you the calendar or informing you of potential courses that are coming up, has that continued in this term?

5 **DR GREEN:** Not to my knowledge.

MS McDONALD: All right. But is it your position that if you learn of an upcoming course that you're interested in that you could apply -

10 **DR GREEN:** I could apply.

MS McDONALD: - to attend that?

15 **DR GREEN:** Yes. I would contact Councillor Support and indicate that I was - would like to attend a particular training, and then that would be arranged.

MS McDONALD: Nothing further.

20 **COMMISSIONER:** All right. Councillor, that completes your evidence for the moment. I'm asked, as you might have seen, from time to time, not to release anybody from their summons, but for the moment that completes your evidence. If in the unlikely event we need to get you back someone will let you know. But as soon as I'm asked to release you, that will be communicated to you.

25 **DR GREEN:** Thank you.

COMMISSIONER: Thank you for your attendance and your assistance over yesterday and coming back this morning. I'm very grateful. And you're free to go.

30 **DR GREEN:** Thank you, Commissioner.

<THE WITNESS WITHDREW

35 **MS McDONALD:** Excuse me for a minute. The next witness is Peter Harle. We're just trying to find where he is.

COMMISSIONER: Okay. Yes. It's a tight squeeze. Councillor, would you like to take an oath or an affirmation?

40 **MR HARLE:** An oath.

<PETER HARLE, SWORN

45 **COMMISSIONER:** Yes, Ms McDonald.

MS McDONALD: Please state your full name.

MR HARLE: Heinz Peter Harle.

MS McDONALD: You're currently a councillor and also the deputy mayor of Liverpool City Council?

5

MR HARLE: Yes, I am.

MS McDONALD: Mr Harle, putting to one side your service as a councillor, what was your occupation outside Council?

10

MR HARLE: I was a TAFE teacher for 36-odd years. I - in the electrical engineering field. Electronics, robotics. Those sorts of things. And after that, when I retired I became a - I ran an election campaign to get elected as an independent, representing the Liverpool Community Independents Team on Council.

15

MS McDONALD: Right. We'll now move to that. How many years have you been a councillor?

MR HARLE: This is my 17th year.

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MS McDONALD: The inquiry really has been concentrating on the 2012-2016, 2016 to 2021, 2021 to '24 and then the current one. With a 17-year - years of experience, you were elected, was it, the term before the 2016?

25

MR HARLE: Yes. I was elected in September 2008, directly after the administrator had been appointed.

MS McDONALD: So an administrator had been appointed to the Council, and then when the administration was ending they held council elections?

30

MR HARLE: Yes.

MS McDONALD: And so that was around September 2008 you stood, and you were successful?

35

MR HARLE: Yes.

MS McDONALD: And I take it you've represented the same ward throughout?

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MR HARLE: Yes. Yes.

MS McDONALD: Which ward is that?

MR HARLE: North Ward.

45

MS McDONALD: You're described as an independent in evidence before the inquiry.

MR HARLE: Yes.

5 **MS McDONALD:** But at some time, did you join a party consisting of other independents?

MR HARLE: Yes. That's actually how I started. I started as a member of the Liverpool Community Independents Team in 2008.

10 **MS McDONALD:** The Liverpool -

MR HARLE: Community Independents Team. They call it LCIT.

15 **MS McDONALD:** And has - are you still a member of LCIT?

MR HARLE: Yes. Yes.

20 **MS McDONALD:** Going back to September 2008, that first council that you were a member of, did a particular party have - dominate that council?

MR HARLE: No - that - the - actually, the Independents - the LCIT team basically had the balance of power at council.

25 **MS McDONALD:** Who was the mayor during that council?

MR HARLE: Wendy Waller. Ms Wendy Waller.

MS McDONALD: And was she representing the Labor Party?

30 **MR HARLE:** Yes. Yes.

MS McDONALD: But you and your fellow LCIT councillors held the balance of power?

35 **MR HARLE:** Yes. There were actually three - three independents and they basically held the balance of power.

MS McDONALD: So in that term of council you have Wendy Waller as the mayor.

40 **MR HARLE:** Yes.

MS McDONALD: Who was the deputy mayor?

45 **MR HARLE:** I was the deputy mayor.

MS McDONALD: And then in 2012 a new council is elected, but you have a change in the mayor. Sorry. The mayor is Mr Mannoun?

MR HARLE: Yes.

5 **MS McDONALD:** And I'm just having a quick look. At that point, did the
councillors representing the Liberal Party have the majority of -

MR HARLE: Yes, they did.

10 **MS McDONALD:** All right. And also as a councillor but representing the Liberal
Party was Peter Ristevski?

MR HARLE: Yes.

15 **MS McDONALD:** Then from 2016 to 2021, Wendy Waller was - became mayor
again?

MR HARLE: Yes.

20 **MS McDONALD:** Both Mr Mannoun and Mr Ristevski were not councillors again?

MR HARLE: Correct.

25 **MS McDONALD:** And at that point, did the Labor Party councillors have the
majority or was it dependent on -

MR HARLE: No, the Liberal Party.

MS McDONALD: - an independent?

30 **MR HARLE:** The Liberal Party had the majority.

MS McDONALD: In 2016 to 2021?

35 **MR HARLE:** No. Sorry, I thought you meant '12 to '16.

MS McDONALD: Sorry, I jumped ahead.

MR HARLE: No, you're all right. Yes. The - sorry, 2016 to 2021?

40 **MS McDONALD:** '16 to '21. You've got - Wendy Waller is the mayor again?

MR HARLE: Yes.

45 **MS McDONALD:** Mr Mannoun and Mr Ristevski are not councillors?

MR HARLE: Yes.

MS McDONALD: And - I'm sorry, I'm just having - I think with Wendy Waller, you've got five members of the Labor Party. You've got four Liberal and then two independents.

5 **MR HARLE:** Yes. Correct.

MS McDONALD: And you also - that the independent at that point, in addition to you, is Karress Rhodes?

10 **MR HARLE:** Yes.

MS McDONALD: And at that point she was a member of the LCIT?

15 **MR HARLE:** Yes, she was.

MS McDONALD: Then in 2021 to '24, so the next council term, again a different mayor. We've got Mr Mannoun as mayor at that time?

20 **MR HARLE:** Yes.

MS McDONALD: And the Liberals with Mr Mayor have five councillors?

MR HARLE: Yes.

25 **MS McDONALD:** Labor has four, and then again there is yourself and Ms Rhodes.

MR HARLE: Yes.

30 **MS McDONALD:** Did Ms Rhodes - you identified that she originally was a member of the LCIT.

MR HARLE: Yes.

35 **MS McDONALD:** Did that change during that council?

MR HARLE: Yes.

MS McDONALD: And again, roughly, when did that change?

40 **MR HARLE:** At the beginning of that term.

MS McDONALD: Was she elected deputy mayor at some point?

45 **MR HARLE:** Yes. At the - the first term - first year of that term she was elected as deputy mayor. Yes.

MS McDONALD: Right. And was it some time in that first year of that term that she remained an independent but not a member of the LCIT?

MR HARLE: She resigned from LCIT.

5

MS McDONALD: Some time in the first year?

MR HARLE: Yes. Actually, at the first meeting when Councillor Rhodes was appointed deputy mayor - directly after that, she resigned.

10

MS McDONALD: And then if we can move to the current council, which was elected around September of last year, 2024.

MR HARLE: Yes.

15

MS McDONALD: And we've been through this previously, but Mr Mannoun's the mayor, you've been elected deputy mayor?

MR HARLE: This term, yes.

20

MS McDONALD: You have another independent councillor, being Peter Ristevski.

MR HARLE: Yes.

25

MS McDONALD: But he is not a member of the LCIT?

MR HARLE: No.

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MS McDONALD: And then with the mayor you have four councillors members of the Liberal Party, and then four councillors representing the Labor Party.

MR HARLE: Yes.

35

MS McDONALD: All right. Can I - I want to ask you some questions about your considerable experience as a councillor for about 17 years. In those - the various councils that you have participated in, looking back at different councils and your current experience, is there a particular council that either stands out or you think was a very good council?

40

MR HARLE: Yes. Yes.

MS McDONALD: Which one was that?

45

MR HARLE: I would say the - there's actually two terms, and that is - the first term, 2008 to 2012. That was an outstanding term of council. Council achieved a lot of good things. The next best term is the term that - again, Wendy Waller was the

mayor. This is 2016 to 2021. That, as far as my judgment is, was probably the best term of council that I've been on.

5 **MS McDONALD:** We'll probably return to this, but at the moment your description of that council being the best term of council that you've been involved in, what do you base that on?

10 **MR HARLE:** That council, in terms of achievement for the community, did more for the community than any other term of council. That term, I believe, generated around \$400 million worth of community work. That has never been achieved in any of the previous terms or the current term.

15 **MS McDONALD:** And when you refer to community work, specifically what type of work are you referring to?

MR HARLE: Community facilities, parks, recreational facilities, those sorts of things.

20 **MS McDONALD:** What about the operation of the council as a governing body? So put broadly, the ability of the governing body to conduct efficient meetings, operate efficiently and appropriately. Do you have any view on, in those terms - assessing it according to those terms, which council was either the best or a standout in your mind?

25 **MR HARLE:** Again, the five-year term which included the COVID issue. And that term, as I said, achieved enormous community facilities, and I think the reason for that was the mayor was one of the best chairpersons that I have had in my time. Her attitude, I guess, and her way of governing was to let senior staff of council do what they needed to do, and they did. There was no, can I say, interference. It was an
30 amiable council. All of the councillors got along with each other very well. There were no issues that I remember of.

MS McDONALD: The inquiry has heard evidence about the demarcation between the governing body, its decisions and then operational matters. That demarcation
35 between, broadly, those two roles - in your experience with that 2016 to 2021 council, was that observed?

MR HARLE: Yes.

40 **MS McDONALD:** And your view on it being observed, did that have beneficial repercussions or flow-on effects?

45 **MR HARLE:** Yes. It allowed council, particularly the operational staff - operational part of council - to do what was needed, and they did. And as I said, \$400 million worth of community works were done and without challenges. It was - most of the council decisions were unanimous, and that's obviously - councillors got along with each other very well.

MS McDONALD: Could you just excuse me. I want to now turn to some specific topics, and one topic is chief executive officers and the termination of their employment.

5

MR HARLE: Yes.

MS McDONALD: Given your 17 years' experience, you have been a witness to a number of termination of chief executive officers?

10

MR HARLE: Yes.

MS McDONALD: I think very early on in the inquiry we heard evidence - I think we started with the termination of Mr Portelli's -

15

MR HARLE: Yes.

MS McDONALD: - contract in either 2014 or 2015.

20

MR HARLE: Around there, yes.

MS McDONALD: I think at that - but I wanted to ask you particularly about Dr Eddie Jackson.

25

MR HARLE: Yes.

MS McDONALD: Now - and I've put it generally, "termination of employment". I think, strictly, Mr Portelli actually resigned.

30

MR HARLE: Yes, he did.

MS McDONALD: But -

COMMISSIONER: The process had been started.

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MS McDONALD: Yes. And I think if we were in an industrial tribunal it might have been seen as a constructive termination. But strictly, he did resign?

MR HARLE: Yes.

40

MS McDONALD: I want to ask you about Dr Jackson. Now, Dr Jackson was the CEO in the, kind of, second part of the 2014 - sorry. The 2016 to 2021 term.

MR HARLE: Yes.

45

MS McDONALD: What was your view of Dr Jackson as the CEO?

5 **MR HARLE:** I thought Dr Jackson did an excellent job. He was very good at what he did. And in particular, the - we had the COVID issue at the time and I thought he - you know, that was a really tough time - not just for Liverpool Council but all councils - and I thought during that period he did an excellent job. I was on the interview panel and we rated him very highly.

10 **MS McDONALD:** Now - excuse me for a minute. Also towards - sorry, withdraw that. Do you recall that in 2021, Dr Jackson's performance - there was a performance review undertaken?

MR HARLE: Yes.

MS McDONALD: You were part of that?

15 **MR HARLE:** Yes.

MS McDONALD: And that review was facilitated by a Mark Anderson from Local Government New South Wales Management Solutions?

20 **MR HARLE:** Yes. Yes.

MS McDONALD: Could we bring up, please, LCC.014.002.0511. Yes, please. Now, that document, as you can see, is the CEO Annual Performance Review November 2021, Final Summary Report.

25 **MR HARLE:** Yes.

MS McDONALD: And if it - sorry. And if we - yes. You can see it's a summary at the beginning that the review panel assessed his annual performance review as
30 "More than Satisfactory":

" . With an average rating over three sections of the performance agreement of 8.3/10."

35 **MR HARLE:** Yes.

MS McDONALD: And then in the next paragraph, the - in the next paragraph, you can see a reference to the committee, which consisted of the mayor, Councillors Hagarty, Rhodes and also you?

40 **MR HARLE:** Yes.

MS McDONALD: And then if we could go to the minutes of the council meeting held on 24 November 2021. INQ.001.001.0949. And this can be live streamed. And
45 if we can go - as you can see, that's the minutes. And can we go to page 4, please. This was a mayoral minute, which referred to the annual performance

review - giving details about it. And then if we can move down that document a little bit. You can see the paragraph:

5 "Using this information and meeting the criteria for awarding an increase, the review panel all agreed and recommended a performance-based increase to the CEO's total remuneration package of two per cent."

MR HARLE: Yes.

10 **MS McDONALD:** And also that the next performance review will be in May 2022, and the recommendation is that the council receive and note the report, which was carried. I know this was a couple of years ago, but when this mayoral minute was put to council and the recommendation was put, can you recall any dissent by any of the councillors?

15 **MR HARLE:** No. No. No. On the contrary, the CEO was actually being paid less than he should have been in comparison to other CEOs in our LGA. And that was noted and was - was - I'm sure it was unanimous to increase his remuneration.

20 **MS McDONALD:** Putting to one side the salary increase that he obtained, the assessment, which was "More than Satisfactory" -

MR HARLE: Yes.

25 **MS McDONALD:** And I think we've heard evidence - well, it's described in the mayoral minute as "very positive", "working well", "responding positively under his leadership". Can you recall, when this was put to council, whether any of the other councillors dissented from that assessment of his -

30 **MR HARLE:** Absolutely not. All councillors were in agreeance with that mayoral minute.

MS McDONALD: All right. If we can, in this chronology, then move to - we've got the election - I think it was in December 2021.

35 **MR HARLE:** Yes.

MS McDONALD: And as you've given evidence, a new council came in.

40 **MR HARLE:** Yes.

MS McDONALD: And January - no council meetings are held in that month?

MR HARLE: No.
45

MS McDONALD: From the governing body's perspective, I'll describe it as a quiet month. You're not - it's not that you're not doing anything, but you don't have the pressure of meetings, et cetera.

5 **MR HARLE:** True.

MS McDONALD: But in the lead-up to the first meeting, which I think was going to be held on 2 February, did you attend some kind of meeting or interview, if I can describe it in - I'm sorry. I withdraw that. In the lead-up to the council meeting on 2
10 February, did you attend some kind of meeting with the mayor and other Liberal councillors about leadership positions within the council?

MR HARLE: Yes, I did.

15 **MS McDONALD:** Who attended that meeting?

MR HARLE: Primarily the Liberal Party members. Councillor Rhodes. And I was asked an hour before the actual council meeting - might have been an hour and a half. This is around about 4 o'clock. I was asked if I would come in and have a
20 discussion on - on the council meeting to follow. And primarily it was to ask me if I had any preferences in committees and which committees I wanted to be on. And I said, "Yes, I'm happy to come in and give my preferences," which I did do. And that was the meeting.

25 At the end of that meeting, I - this is just before the council meeting at 6 o'clock - I walked out and I was informed that, "And by the way, Councillor, we are terminating the CEO." And that was a big shock to me, and I turned around and basically said, "There is absolutely no way that I will agree to that, considering not long ago that we gave him an outstanding review. I can't understand why you're doing this," and I was
30 angry and I walked out.

MS McDONALD: So this meeting, I think as you said, it was - started or was either - after 4 o'clock -

35 **MR HARLE:** Yes.

MS McDONALD: - on 2 February.

MR HARLE: Yes.
40

MS McDONALD: And your recollection is the council meeting was -

MR HARLE: Directly after that.

45 **MS McDONALD:** And, ostensibly, it was to get some feedback from you about which committees you would like to sit on? Was the deputy mayor position raised with you?

MR HARLE: Yes, it was.

MS McDONALD: What - how - what was raised with you about that?

5

MR HARLE: I had a - I had previously, with Councillor Rhodes - because we had the balance of power at council, it would have been that one of us would be elected as the deputy mayor. That - that hadn't -

10 **MS McDONALD:** Is that the usual procedure of -

MR HARLE: That's the usual practice and you need to contact both parties to see what their preferences were, and that was discussed. And I was then informed, "And by the way, Councillor, Councillor Rhodes is going to be the deputy mayor." And we
15 had had discussions prior to that where we were deciding as to who - which one of us would be the deputy mayor.

MS McDONALD: Can I just stop there. When you said, "We had had discussions beforehand about who would be the deputy mayor" -

20

MR HARLE: Councillor Rhodes and I, yes. And our team - the Community Independents Team - knew that one of us at some time during that period would be the deputy mayor. So it - our team had decided that, seeing as I was the senior - I had been 17-odd - more than that - years, that I should - if there is a deputy mayor, I
25 should be the first one, and then we would decide - my attitude was that every representative team on council should get - get a chance to be the deputy mayor.

In other words, I suggested that it be one of the independents, then one of the Liberals, then one of the Labors. And then in the fourth term, I thought, to be fair, we
30 would toss a coin and decide who amongst us would be that. And we had basically agreed to that, and then when it came to the meeting, no.

MS McDONALD: And again, can I just clarify, when you said, "We had agreed to that," that was you and Councillor Rhodes?

35

MR HARLE: Councillor Rhodes and I initially, yes.

MS McDONALD: Just on the proposal of alternating the deputy mayor in the way that you've described, have you ever experienced a council where it's been done in
40 that way?

MR HARLE: No. When I say no, I don't recollect.

MS McDONALD: All right.

45

COMMISSIONER: Do you mean a council other than Liverpool or within previous terms of Liverpool Council?

5 **MS McDONALD:** Sorry, I should clarify that. Within Liverpool, did you ever experience where it would have been an independent deputy mayor for a year, then a Liberal deputy mayor for a year, then a Labor - this is assuming that the Liberal Party had the majority - so that every year alternating the, in a sense, political persuasion of the deputy mayor. To your knowledge, has that ever been done at Liverpool?

10 **MR HARLE:** It was done in that term, and it had been done in the very first term after 2008 - my first term. That occurred then too. Again, because the independents basically had the balance of power and they, to be fair, said, "I think, to be fair, we all need to share this," and that's what happened. So that happened in the 2008 term and it again happened in the - well, to put it simply, it did not happen under Mayor Mannoun's terms because they had - you know, they had the power, they had - and, 15 sadly, they decided that they would have that deputy mayor position in each of the four years, which they did do.

MS McDONALD: All right. But this is the commencement of the term from the December '21, but in those circumstances the deputy mayor was going to - was voted 20 in as the independent - that had -

MR HARLE: Yes.

25 **MS McDONALD:** - been Councillor Rhodes.

MR HARLE: Yes.

MS McDONALD: But that rotation to, for example, the Labor Party, et cetera, didn't occur during that term? 30

MR HARLE: No. No.

MS McDONALD: All right. Sorry. So getting back to this meeting. As you've given evidence, it was towards the end of the meeting - and you've got the upcoming 35 council meeting - you're informed that the employment of the CEO - there was going to be a resolution to terminate his employment during that meeting.

MR HARLE: Yes. Yes.

40 **MS McDONALD:** And you've given evidence that you were angry?

MR HARLE: Yes.

MS McDONALD: And informed them of your view - 45

MR HARLE: Yes.

MS McDONALD: - of that proposal?

MR HARLE: Yes.

5 **MS McDONALD:** In that meeting, when it was raised with you what the proposal was going to be at the meeting, was anything said to you about - to justify that termination?

MR HARLE: None at all.

10 **MS McDONALD:** And if - sorry, could we bring up, please, the minutes of the meeting. INQ.001.001.0953. And it can be live streamed. You can see there minutes of that meeting. And can we go through to page 55, please. Councillor Harle, you can see from that page the way that the matter has been brought before the council is
15 via a mayoral minute?

MR HARLE: Yes.

MS McDONALD: And the council would have moved into a closed session to
20 discuss this?

MR HARLE: Yes.

MS McDONALD: And you can see - I won't go into all the detail of the resolution,
25 but clearly paragraph 3 is terminating Dr Jackson's contract under a particular clause of the employment contract.

MR HARLE: Yes.

30 **MS McDONALD:** And was it your understanding that that particular clause in the contract allowed termination without cause?

MR HARLE: Yes.

35 **MS McDONALD:** But at a minimum, 38 weeks of -

MR HARLE: Weeks, yes.

MS McDONALD: - pay would result?
40

MR HARLE: Yes.

MS McDONALD: And - again, I know it's a number of years ago. Do you have a recollection, when you moved into the closed session and this was debated or
45 discussed -

MR HARLE: Yes.

MS McDONALD: Was a justification or reasons put forward by those who - or by the mayor, who brought this resolution, and anybody else who supported it?

5 **MR HARLE:** It was - it was actually a fairly - not heated, but it was a discussion that I had - and I raised the issue - that I suggested that this was totally illegal. A mayoral minute should not be able to decide on the termination of a CEO. I thought that was a significant process, that that's not what mayoral minutes were for, and I actually challenged the legality of it and I was told that it was illegal.

10

MS McDONALD: It was, sorry?

MR HARLE: Yes. I was told by the then legal officer - and I forget the lady's name. I had asked her specifically, "Is this legal?" And she said to me -

15

MR PARISH: Excuse me. This may be about to disclose legal professional privilege, Commissioner. I'm not sure where it's going precisely, but the councillor may be about to disclose information that (indistinct).

20 **COMMISSIONER:** I think I have the import of Councillor Harle's view as -

MR PARISH: Yes.

25 **COMMISSIONER:** - to the process that was adopted. Do we need to go - when you say - I don't want you to tell me what you were told by the general counsel or whomever you spoke to, but when you say "illegal", do you mean contrary to the code of meeting practice?

30 **MR HARLE:** Yes.

COMMISSIONER: Is that what you mean?

MR HARLE: Yes.

35 **COMMISSIONER:** Yes.

MS McDONALD: Sorry, I - just have a thought about whose privilege it is, given that it's an individual.

40 **COMMISSIONER:** That's - well, yes, it's complicated. But I think -

MS McDONALD: I think I can -

45 **COMMISSIONER:** - I understand where Councillor Harle's coming from and his position as to the process, based on what he's told me so far.

MS McDONALD: All right. Just backtracking, Councillor Harle. As you have given evidence, the vehicle for this resolution was a mayoral minute?

MR HARLE: Yes.

5

MS McDONALD: When the council moved into closed session, you raised, in a sense, the vehicle by which this resolution was being pursued, and you've given evidence about you had an issue about legality.

10 **MR HARLE:** Yes.

MS McDONALD: You were told - you were provided with some advice from a general counsel. Was that before the meeting?

15 **MR HARLE:** No, this was after the meeting.

MS McDONALD: All right. But at the meeting, you did raise your concerns with the legality -

20 **MR HARLE:** Yes. Yes, I did.

MS McDONALD: - of this process? And also what about the substance of the proposal to terminate Dr Jackson's employment? You gave evidence that at the end of that pre-council meeting - meeting with the Liberals - no justification or basis was put forward. Was anything put forward to justify the proposed termination during that closed session?

25

MR HARLE: Not that I recollect.

30 **MS McDONALD:** And if we can go back to the screen. After the - if we can move down a little bit, please. Yes, we've got it there. You can see the motion was declared carried. And on one level, the votes for are the Liberal representatives plus Councillor Rhodes, and then the votes against were the Labor councillors, with you in addition.

35

MR HARLE: Yes.

MS McDONALD: In the meeting, the closed-session meeting, was anything raised - I'm sorry, I'll start again. Looking at the councillors - this was the first meeting of the new -

40

MR HARLE: Yes.

MS McDONALD: - council term?

45

MR HARLE: Yes.

MS McDONALD: Looking at that list, several of those councillors were new councillors?

MR HARLE: Yes.

5

MS McDONALD: In that they weren't there for the 2016 to 2021 term?

MR HARLE: That's correct.

10 **MS McDONALD:** Indeed, some of them were just new to council?

MR HARLE: Yes.

15 **MS McDONALD:** Others - for example, the mayor - had the prior experience from at least from 2012 to 2016 but wasn't a councillor during the period 2016 to 2021, where Dr Jackson was performing as the CEO?

MR HARLE: Yes.

20 **MS McDONALD:** During the confidential meeting, was anything raised about the fact that many of those new councillors had no experience of working with Dr Jackson?

25 **MR HARLE:** Actually, I raised that during that discussion. I had suggested that it's unfair that we make - that some of these councillors make a decision when they have absolutely no experience of working with Dr Jackson.

MS McDONALD: And do you recall was there any response to that?

30 **MR HARLE:** No, I don't think anybody - yes, nobody - I don't think anybody really wanted to argue with me on that issue.

35 **MS McDONALD:** All right. All right. Excuse me for a minute. Can I go back to the process or procedure by which this was pursued in council - that is, a mayoral minute.

MR HARLE: Yes.

40 **MS McDONALD:** And you've given evidence of your concern that that procedure was illegal.

MR HARLE: Yes.

45 **MS McDONALD:** Without asking you questions about what you were told by the general counsel - I'll put it generally, to begin with. Over the number of council terms where you've been a counsellor, have you been concerned at times with the employment of mayoral minutes?

MR HARLE: Absolutely.

5 **MS McDONALD:** And again at a general level to begin with, what are those concerns?

10 **MR HARLE:** I believe the mayoral minutes are abused. They are being used where I think the process should be different. It should - instead of using a mayoral minute, they should have been notices of motions that councillors would at least get one
15 week's prior notice, and they would have an understanding of the implications of those notice of motions. But when you have a mayoral minute that is so significant, you really don't have the time to think it through. You've got maybe half an hour, 10 minutes. How can you make a decision on a complex issue such as this? And so I was - I had raised that concern with the OLG several times, and the response I wasn't
15 very happy with.

COMMISSIONER: Yes, I just want to clarify. The use of the phrase "illegal" is intended to convey contrary to the code of meeting practice in effect at the time? That's how -
20

MS McDONALD: Yes.

COMMISSIONER: The basis on which I understand that evidence. Is that - that's right, Councillor?
25

MR HARLE: Yes. Yes.

MS McDONALD: Excuse me for a minute.

30 **COMMISSIONER:** What's your observation been about the use of mayoral minutes in the current term?

35 **MR HARLE:** They have not been as intense as before. My personal view - and the OLG's guidelines suggest that the mayoral minutes should be used for ceremonial things, issues that come up that need to be sorted before the next council meeting, but they're not - not significant issue. In terms of monetary values, less than \$10,000, that kind of thing. But - and that has been observed, although I do have issues with the new OLG guidelines and I -

40 **MS McDONALD:** Which we were -

COMMISSIONER: And you're coming to.

MS McDONALD: - just going to take him to.
45

COMMISSIONER: All right.

MS McDONALD: If we can bring up LCC.030.004.0001. While it's being brought up, this is the new model code of meeting practice that I think - it was maybe last week?

5 **MR HARLE:** Yes.

MS McDONALD: It can be live streamed. And if we can go through to page 18. 9.7, please. And looking at paragraphs 9.7 down to 9.9, you - our description of it is that any of the restrictions that were contained in the prior code of meeting
10 practice - that is, if - you've given evidence - and I'm putting it generally - if it was complex or if it involved finances, et cetera, mayoral minutes should not be utilised for that purpose?

MR HARLE: Exactly.
15

MS McDONALD: This seems to have removed any of those restrictions.

MR HARLE: Yes.

20 **MS McDONALD:** It can be given - well, as it was before - without notice?

MR HARLE: Yes.

MS McDONALD: As long as the mayor determines that it should be considered at
25 the meeting. When put to a meeting, it takes precedent over any other business. He may - sorry, I withdraw that. The mayor may move the adoption of a mayoral minute without the motion being seconded, and:

30 "A recommendation made in a mayoral put by the mayor is, so far as it is adopted by council, a resolution of council."

MR HARLE: Yes.

MS McDONALD: So any restrictions or guidance as to their use in this new model
35 code of meeting practice has been removed?

MR HARLE: Yes.

MS McDONALD: What is your view or opinion of these new provisions?
40

MR HARLE: I think this is dangerous. I think it's going to waste a lot of time. What I think will happen - particularly in a balanced council, councillors will say, "This is new. I need more information." So what will happen is they will get deferred, and that is a waste of time. Had that been - that - whatever that mayoral minute may have
45 been, had that been done as a notice of motion, that would be different. Councillors would be given the time to read through and assess that. May even get a briefing session - and that's another issue, but I believe that the mayoral minutes, as they

were, restricted, should have continued. I do not believe that giving that much power to a person, the mayor, is - I think that's going to lead into a lot more time delays and frustration, in my opinion.

5 **COMMISSIONER:** That's in a balanced council -

MR HARLE: Yes.

10 **COMMISSIONER:** - where there might be a motion to defer.

MR HARLE: Yes.

15 **COMMISSIONER:** What about if there's a - majority numbers one way or the other?

MR HARLE: Well, then that will - then, of course, that will go through. That'll be approved and there's not much you can do about - I mean, it may cause a rescission motion, and I'm - I think that would, and that will delay it further. So I think this - I personally think this is the wrong way to go. I do not - I think what we had before was better.

20 **COMMISSIONER:** If the - I'm sorry.

25 **MS McDONALD:** No, no.

COMMISSIONER: If the restriction as to content is removed, would you be in favour of at least there being a minimum notice requirement?

30 **MR HARLE:** Yes. But the problem is the mayoral minute is - first you get to know about it is at the meeting.

35 **COMMISSIONER:** Well, that's why I raise it, to prevent your - I withdraw that. To go some way to responding to your concern about complex matters coming before you either at the meeting or very shortly before - would a minimum notice requirement before mayoral minutes can be put before a meeting go some way to addressing that, even if the content restriction has been removed?

40 **MR HARLE:** It could, although I believe that - just use the normal procedure. Use a notice of motion, which then gives the normal delay. You can ask questions about it, which - you won't even be able to ask questions unless it's on the floor of the council.

45 **MS McDONALD:** As part of your answer, you distinguish between where - a council where there was a balance of power and then a council where one of the established parties has a majority. In those circumstances, the result may be inevitable.

MR HARLE: Yes.

5 **MS McDONALD:** But is an important issue that if a matter is pursued via a notice of motion, it allows other councillors to do research to consider it, to generate a proper debate on the floor of council so it becomes more transparent, and for members of the community - they can hear the debate, hear points both for and against, which may ultimately influence their views on their elected officials in the future?

10 **MR HARLE:** Exactly. Yes. It allows the public to look at that, if you - a mayoral minute, which they can't at the moment. But in that instance, if that were a notice of motion, it would have to go out to the public. The public would see it. They could come at a public forum, raise their concerns, which you won't be able to do like this.

15 **MS McDONALD:** And that last procedure you referred to, I take it the agenda - so not a confidential agenda - is it's put on the website beforehand?

MR HARLE: Yes. Yes.

20 **MS McDONALD:** So as a member of public, I can look at that?

MR HARLE: Yes.

MS McDONALD: And I can also apply to speak within the public forum -

25 **MR HARLE:** Yes.

MS McDONALD: - section of the council meeting?

30 **MR HARLE:** Yes.

MS McDONALD: And that procedure and possible engagement and involvement by the public is denied if you pursue mayoral minute?

35 **MR HARLE:** Yes.

MS McDONALD: In one of your answers, you referred to briefing sessions and then said something along the lines of, "That's another matter." Are you referring to the changes in this new model code?

40 **MR HARLE:** Yes.

MS McDONALD: Could we bring up within the code section 3.31, please. Page 8. Was - were these the provisions that you were referring to when you made that comment?

45 **MR HARLE:** Yes.

MS McDONALD: 3.31:

"Briefing sessions must not be held to brief councillors on business listed on the agenda for meetings of the council or committees of the council."

5

That's a change?

MR HARLE: Yes.

10 **MS McDONALD:** And what is your view of that change?

MR HARLE: Cancelling or stopping briefing sessions, I think, is negative. Quite often, with projects that are presented to council, you may get two or three hundred pages on that project. Now, we can all read, but whether or not we comprehend fully
15 what you've read is a different matter. And so at the briefing sessions you have the experts, the engineers, the planners and so on, and you can ask them questions and then they can elucidate on those issues.

By getting rid of briefing sessions and then making them part of the council meeting,
20 what that will do is make the council meetings extraordinarily long, and I would suggest that we are going to have - councils that are going to have to adopt this will invariably need to have more council meetings. The minimum number of meetings at the moment is 12 a year. I would suggest that if this happens, we're going to have to double the number or find additional time to do this. I know the briefing sessions
25 currently take around about three hours on average, and that's - you're going to have to add that somewhere. Someone has to make that time available. That's if you want to come up with decisions that are meaningful. Otherwise, I have some issues.

MS McDONALD: All right. Can I move back to another subtopic under termination
30 of CEO's contracts of employment, and this time to Mr Ajaka.

MR HARLE: Yes.

MS McDONALD: And we've heard evidence about - excuse me - broadly, the
35 chronology with Mr Ajaka - that it appears to arise first in April 2024 as a result of a meeting that the mayor, the deputy mayor, Mr Ajaka and Mr Portelli attended, which dealt with an aspect of the budget, and then led to again a mayoral minute being presented at the council meeting, I think, in April. Can I just ask you, in the lead-up to that meeting in April, had you heard what had gone on or what allegedly had gone
40 on at that meeting which was held on about, I think, 16 April?

MR HARLE: I don't remember the dates exactly, but I did receive a phone call from Mr Ajaka the - I believe the day after the - what would you call it - the swearing
45 session.

MS McDONALD: I think that's what we've been describing it as.

COMMISSIONER: It's had a few labels, but we'll understand that one.

MR HARLE: And I was - I got a phone call early in the morning the next day, and the CEO asked me could I come in. And I think his words were could I come in,
5 "There's an urgent issue, and you can guess what it was about." And I did not know what it was about. So I drove in and Councillor Betty Green - Dr Betty Green was asked to come in as well. And we both came in and spoke to the CEO, who then said something along the lines, "I have an issue that you need to know about." And he then told us about the incident the day before, where he had said, "Shut the, if up."
10 And that was - and I thought that was unusual or - yes, I could say more, but - sorry.

MS McDONALD: No, if you want to -

MR HARLE: I think, from my personal perspective, at various council meetings I
15 thought the - that that initial amiable relationship between the mayor and the CEO had deteriorated over time. That was my view, and this was a culmination of the frustration I believe the CEO had.

COMMISSIONER: What led you to that view over the -
20

MR HARLE: Body language when we were in meetings. Usually what happens - it's a very large table and the mayor and the CEO sit at one end, and they usually chat and talk to each other. But prior to that, they would sit apart and not communicate the same way as they normally did. I thought there was - wasn't
25 normal.

MS McDONALD: The swearing meeting was in April. Are you able to give an indication of when you started observing that change in behaviour between the two gentlemen which suggested a deterioration in the relationship?
30

MR HARLE: Not really. It probably happened over a number of months. It - yes, I'm sure it happened over a number of months. I didn't take particular note. I just thought it was unusual. I didn't raise the issue. It's just something I observed.

MS McDONALD: During this meeting with Mr Ajaka where he informed you about what had occurred at the swearing meeting -
35

MR HARLE: Yes.

MS McDONALD: - and he rang you and said something along the lines of, "I have an issue" -
40

MR HARLE: Yes.

MS McDONALD: During the meeting, was, like, a resolution or a - or what he was going to do about it, if anything, raised?
45

MR HARLE: I don't recollect exactly what was said. I was asked my opinion and I don't even remember exactly what I said, but along the lines, "Maybe you need to apologise and bury the hatchet," or words to that effect, which tends to be what I say.

5 **MS McDONALD:** And do you recall, when you proposed something along those lines, what his reaction was?

MR HARLE: I believe he was going to do that. He indicated that he isn't normally like that, he - that he had lost his temper. Basically, it - it - he's more or less
10 apologised for - for what he had said and that we should know about it.

MS McDONALD: Sorry, that he was going to apologise or had apologised?

MR HARLE: No, for his words - his choice of words at the meeting. He apologised
15 for that and he said, "It's not" - "Normally that's not me." And I believe it isn't him. It's just - it must have been frustration and - and I don't know - well, I have my own opinions - what drove him to that.

MS McDONALD: All right.
20

COMMISSIONER: So he expressed his apology to you and Councillor Green -

MR HARLE: Yes. Yes.

25 **COMMISSIONER:** - in that meeting and had indicated to you that he intended to apologise to the mayor?

MR HARLE: Yes. I believe he did, yes.

30 **MS McDONALD:** I was going to move to a different part of this.

COMMISSIONER: Yes.

MS McDONALD: Could I just raise two matters.
35

COMMISSIONER: Yes.

MS McDONALD: Is the first matter is if that's an appropriate time for our break.

40 **COMMISSIONER:** Yes.

MS McDONALD: Assuming it is - and I apologise, I don't think we've had - we have spoken to Mr Harle? No, we haven't. Sorry. Can you just excuse me.

45 **COMMISSIONER:** Yes.

MS McDONALD: And I do apologise to Mr Harle, I haven't had a chance to discuss with him programming today.

COMMISSIONER: All right. All right. You can do that in the break.

5

MS McDONALD: But I understand, fingers crossed, Mr Breton and his representatives should be back here at 12.

COMMISSIONER: I see.

10

MS McDONALD: I'm sorry?

COMMISSIONER: I see. I just said, "I see."

15

MS McDONALD: What I was going to propose is if we interpose Mr Breton to finish his evidence.

COMMISSIONER: Yes.

20

MS McDONALD: And then I'm hoping we can then continue Mr Harle's evidence this afternoon.

COMMISSIONER: Yes. And get as close as you can.

25

MS McDONALD: Yes. I will have to say I had high hopes, but I don't think Mr Harle will be finished today.

COMMISSIONER: Okay.

30

MS McDONALD: But -

COMMISSIONER: We'll take it as far as we can.

MS McDONALD: Yes.

35

COMMISSIONER: And do we - all that's fine. Do we have any sense of how long Mr Breton's next passage might take?

MS McDONALD: Mr Boyle on the last occasion indicated about half an hour.

40

COMMISSIONER: Yes.

MS McDONALD: I've got a couple of questions for him.

45

COMMISSIONER: Yes.

MS McDONALD: And I'm not too sure about Mr Tynan, whether -

COMMISSIONER: Of course.

MS McDONALD: So if -

5

COMMISSIONER: All right.

MS McDONALD: - we operate roughly on about an hour.

10 **COMMISSIONER:** Okay. All right. Well, why don't we take 15 minutes now, and then we can continue with Councillor Harle until a convenient -

MS McDONALD: Yes.

15 **COMMISSIONER:** - break point. Mr - Councillor, we're just going to take a short morning tea break. Feel free to stretch your legs for 15 minutes. I'll resume at 10 to 12. So if you wouldn't mind being back here, ready to go then, I'd be grateful.

MR HARLE: Yes.

20

COMMISSIONER: Mr Parish, in interest of efficiency, there's one issue of clarification I wish to ask Mr Breton about concerning his report that was produced.

MR PARISH: Yes.

25

COMMISSIONER: It's on page 37.

MR PARISH: Yes.

30 **COMMISSIONER:** It's the first line of the sentence that says:

"There is evidence council may".

35 I won't go any further than that because I don't know whether that's caught by any confidentiality concern.

MR PARISH: Yes.

40 **COMMISSIONER:** So I just want to ask him a couple of quick clarifications about what he had in mind when writing that paragraph.

MR PARISH: Yes.

45 **COMMISSIONER:** Just giving you a heads up, in case you need to consider whether that should be done in private or not before we get there.

MR PARISH: Thank you, Commissioner. I was going to suggest, given the length of that report and the various topics it covers in various ways -

COMMISSIONER: Yes.

5

MR PARISH: - that the session in general be closed, because I was not sure what topics you might cover.

COMMISSIONER: That's the only one.

10

MR PARISH: And then if it was uncontroversial, I would - we would take the usual approach of then -

COMMISSIONER: All right.

15

MR PARISH: - either redacting or not redacting it in due course. That was my approach, but I - thank you for your foreshadowing.

COMMISSIONER: Okay. 10 to 12. Thank you.

20

<THE WITNESS WITHDREW

<THE HEARING ADJOURNED AT 11.36 AM

25 **<THE HEARING RESUMED AT 12.03 PM**

MS McDONALD: Commissioner, a slight change in the program.

COMMISSIONER: Okay.

30

MS McDONALD: Mr Breton is here.

COMMISSIONER: Okay.

35 **MS McDONALD:** And as you can see, Mr Boyle.

COMMISSIONER: Everyone's back.

MS McDONALD: We're going to commence with Mr Breton.

40

COMMISSIONER: Yes.

MS McDONALD: Unusually, I'm going - I will seek leave just to put some additional documents that have recently come to the counsel assisting team to Mr Breton.

45

COMMISSIONER: Yes.

MS McDONALD: When I have completed that, if we can then - either - if somebody else has a question, or just move to Mr Boyle.

5 **COMMISSIONER:** Yes.

MS McDONALD: I - we have had a communication from Mr Breton's legal representatives that they would seek a break before asking him questions. Depending on the timing, it may be we take a slightly earlier lunch break, come back, finish Mr
10 Breton and then continue with Mr Harle.

COMMISSIONER: And Councillor Harle's been told something?

MS McDONALD: Yes.
15

COMMISSIONER: Has he been given a time - a notional marking of when he - just so he doesn't have to sit around unnecessarily, if he wants to get some fresh air or something?

20 **MS McDONALD:** We suggested to him 2 o'clock.

COMMISSIONER: Okay.

MS McDONALD: At the moment, I think he's sitting in one of the other rooms.
25

COMMISSIONER: All right.

MS McDONALD: But we have his mobile number and we informed him, "Go out, get some fresh air if you want to," et cetera.
30

COMMISSIONER: Yes. All right. Well, if he's listening, he doesn't need to be back for - until 2 o'clock.

MS McDONALD: Yes.
35

COMMISSIONER: All right. Let's have Mr Breton back. Come forward, Mr Breton. We'll just have you resworn, given that it's been a couple of days since you were here last.

40 **MR BRETON:** Okay.

<JASON BRETON, SWORN

<THE HEARING ADJOURNED TO PRIVATE SESSION AT 12.06 PM

<THE HEARING RESUMED AT 12.39 PM

COMMISSIONER: Yes. Yes, Mr Boyle.

5 **MR BOYLE:** Yes. So we're back in -

COMMISSIONER: We're back in public session.

10 **MR BOYLE:** Very good. Associate, could you please bring up document LCC.008.001.0014.

ASSOCIATE: Do you want this document on the live stream?

15 **MR BOYLE:** Yes, that's fine. And if you can just scroll down to show that email at the bottom. Mr Breton, do you see the email on the screen is an email to Craig Knappick at Liverpool Council and Margot Kindley? Can you see that?

MR BRETON: Yes.

20 **MR BOYLE:** This is 9 May 2024. Do you see that's the date on this?

MR BRETON: Yes.

25 **MR BOYLE:** And this is in relation to the Weir investigation to be conducted by Peter Harvey. You can see that from the content of the email?

MR BRETON: Yes.

30 **MR BOYLE:** And then if we just scroll up to the email at the top of the page, please. You see there it refers to this having been approved by the acting CEO. And that was you, wasn't it, Mr Breton?

MR BRETON: It was.

35 **MR BOYLE:** Yes. If we could then - so in other words, it's right, isn't it, that you were aware - and you, effectively, approved an investigation by Weir into the events surrounding Mr Ajaka. Is that right?

MR BRETON: Yes.

40 **MR BOYLE:** If we could go, please, to LCC.008.001.0033. And again, that document can go on the live stream. And if you could scroll down, please, Associate. So you see the document on the screen, Mr Breton, is an email from Mr Peter Harvey of Weir Consulting providing an update in relation to his investigation?

45

MR BRETON: Yes.

MR BOYLE: And that's an update that's provided on 22 May 2024. Do you see that?

MR BRETON: Yes.

5

MR BOYLE: Were you informed as to this update around the time? Or you can't recall?

MR BRETON: I can't recall. It's the first time I've seen the email.

10

MR BOYLE: If we could just go to the email at the top of the chain for a moment. Yes. You're obviously not copied there, but - and you don't recall?

MR BRETON: I just don't recall. Obviously I know the issue, yeah.

15

MR BOYLE: Yes. If we could then, please, Operator, go to document LCC.008.001.0029. And again, that can go on the live stream. Yes. And then if you could just go down, please, to page 3 of this document. Do you see there - and I think, actually, if you could just go down to the email at the foot of the page. You see, Mr Breton, there's an email from Craig Knappick on 24 May to Peter Harvey and Margot Kindley, in which he says:

20

"Hi, Peter. I know you are preparing an interim report for us to provide to council next week."

25

Do you see that?

MR BRETON: Yes.

30

MR BOYLE: And he refers there to the need for that report to include some commentary around preliminary findings. Do you see that?

MR BRETON: Yes.

35

MR BOYLE: Do you recall having any input into what this interim report ought to contain and in relation to its provision to the council?

MR BRETON: Can you just break that question down? Did I know what - did I have any input?

40

MR BOYLE: Sorry. Did you have any input into, in effect, the desire that is expressed in this email for there to be something beyond a procedural update? In other words, did you ask that there be preliminary findings contained in an interim report that was going to be provided to the council?

45

MR BRETON: No. No. There - this email appears to me to be in line with our printing requirements. If a council meeting was next week, there'd be some threshold

times and dates where - if a paper was going up, it looks like Craig needs the paper to prepare the report.

5 **MR BOYLE:** Well, what I want to suggest to you is it's saying that the report from Mr Weir will be provided to the council. Do you accept that?

MR BRETON: Yes.

10 **MR BOYLE:** That that's what the email says?

MR BRETON: Yes. And this - yeah. Okay.

15 **MR BOYLE:** And so, in that context, what I want to suggest to you is that Mr Knappick - if that's how you pronounce it -

MR BRETON: Yes.

20 **MR BOYLE:** - is seeking that that report do more than simply say, "I've interviewed a series of people." And in that way, you're seeking some preliminary findings and something more than just a procedural update.

MR BRETON: I don't know how to answer that question.

25 **MR BOYLE:** Well -

MR BRETON: I just - I - I've got the exhibit in front of us. I don't know what was in Craig Knappick's mind when he wrote that email.

30 **MR BOYLE:** Right. So you say you don't know what's in his mind. Does that mean - did you have any conversations with him that you can recall at or around that time?

35 **MR BRETON:** I would have been speaking to Craig every single day around that time.

MR BOYLE: And in relation to the matters that were being investigated by Weir consulting?

40 **MR BRETON:** Around the matters relating to Mr Ajaka, yes.

45 **MR BOYLE:** If we could go, please, Operator, to LCC.002.004.0361. And that document can go on the live stream. This is the interim report which Weir Consulting prepared. If you scroll down just so that we can see the date. See that it's dated 27 May 2024? Do you see that at the foot of the page -

MR BRETON: I do.

MR BOYLE: - on the screen?

MR BRETON: I do.

5 **MR BOYLE:** Do you recall seeing this document before, Mr Breton?

MR BRETON: Could you help me with the date of that email exchange between Knappick and -

10 **MR BOYLE:** Yes. So that was on 24 May.

MR BRETON: 24th? And then this arrives on the 27th?

MR BOYLE: Yes.

15

MR BRETON: Okay.

MR BOYLE: With a view to there being a meeting of council coming up and the idea being that this report was to be provided to the council.

20

MR BRETON: Yes. Yep. Understood. Yes. I probably would have seen it when it was delivered to us.

25 **MR BOYLE:** Yes. And you don't recall - I mean, it bears the date 27 May 2024, but you don't - you can't - sitting here today, you can't recall when you received it, but you know - but you can effectively assume that you would have got it at or around the time it was provided?

30 **MR BRETON:** I have no independent memory of the exact -

MR BOYLE: Right.

35 **MR BRETON:** - time or date, but it was the biggest discussion in town and I was - obviously we were waiting for the report, yes.

MR BOYLE: Yes. And then if you could scroll down, please, Operator. I'm sorry, I don't have the page number, but at 1.9 is the relevant - see Mr Harvey - I mean, I'm not going to - I don't really need to put this to you, but what I was going to say of this report, Mr Breton, is that notwithstanding the exchange that we went to about it being more than a procedural update, with respect, it doesn't really do much beyond being a procedural update. The only - well, if we scroll up and allow Mr Breton to have a read of the document. I'm sorry, if you could go up to -

45 **MR BRETON:** Yeah, that's fine.

MR TYNAN: Can I just make sure Mr Breton's had a chance to read this document -

COMMISSIONER: Yes.

MR TYNAN: - before he's asked questions about the contents of it?

5 **COMMISSIONER:** Yes. As I've said before, Mr Breton, if at any time you're shown a document and you need more time to look at it -

MR BRETON: No, I'm -

10 **COMMISSIONER:** - you feel free to sing out .

MR BRETON: I'm okay with the general principles of where the questions are going. We're not foreign to an interim report, Commissioner.

15 **COMMISSIONER:** All right. Yes, Mr Boyle.

MR BOYLE: May it please. If you could go, then, back, please, Operator, to 1.9. All I was going to say of this report, Mr Breton, is that you see at 1.9 the recommendation that Peter Harvey makes is that the council wait for the outcome of the final fact-finding report. Do you see that?

20

MR BRETON: Yes.

MR BOYLE: And in terms of waiting for the outcome of that report, what do you understand, reading that, council is invited to wait to do? Make a decision with respect to Mr Ajaka's employment?

25

MR BRETON: That's my assumption, yes. I think that came off the floor of the council meeting, either through Councillor Kaliyanda or Karress Rhodes, that we should wait for the outcome of a report. Yes. That's consistent.

30

MR BOYLE: And then if we could go, please, Operator, to document INQ.001.001.1105. Now, you can see, Mr Breton, these are the minutes of an ordinary meeting of the council held on 29 May 2024. You see that?

35

MR BRETON: Yes.

MR BOYLE: And you're listed at about .7 on the page as being present at the meeting. You see that?

40

MR BRETON: Yes.

MR BOYLE: And you recall being present at that meeting?

45 **MR BRETON:** Yes.

MR BOYLE: If we could move forward to _0051, please, Associate. And just take a moment, Mr Breton, to read. And, Operator, if you could just scroll down slightly so that we can see - yes.

5 **MR BRETON:** Yes.

MR BOYLE: And if we can then - so I'm just allowing you to have a moment to read what transpired in respect of this agenda item, being - subject, "Staffing matter", and item number Mayor 01. You can see the recommendation is made that Council
10 terminate Mr Ajaka's employment?

MR BRETON: Yes.

MR BOYLE: And then it says - council decision - the recommendation be adopted.
15 The motion was carried and it was carried on the mayor's casting vote. See that?

MR BRETON: Correct.

MR BOYLE: And then if we just scroll down, please, to the motion of dissent.
20 There's a motion of dissent moved by Councillor Kaliyanda. Do you see that?

MR BRETON: Yes.

MR BOYLE: And seconded by Councillor Green.
25

MR BRETON: Yes.

MR BOYLE: And that motion says:

30 "A decision should not be made until the current investigation findings are available."

Do you see that?

35 **MR BRETON:** Yes.

MR BOYLE: Do you recall whether the interim report was provided to the council prior to this meeting?

40 **MR BRETON:** I assume so.

MR BOYLE: But you don't have a recollection as to whether it was?

MR BRETON: No, I don't have a recollection.
45

MR BOYLE: And do you -

MR BRETON: Not given the tenure of point 1. It makes it even more ambiguous.

MR BOYLE: Yes. Yes. Particularly in view of what 1.9 on the document that I just took you to a moment ago indicates.

5

MR BRETON: Yes.

MR BOYLE: Sitting here today and not - in light of the answer that you've just given, do you accept that it would have been an appropriate course that that interim report be provided to the council prior to voting on these motions?

10

MR BRETON: That's interesting because, again, it's an interim report and I think, if we go back to the Knappick email - maybe the head of People was looking to respond to the council without the report, if that was his intent, but that's - that can't be my evidence. But I just can't recall whether the interim report was provided - it certainly was - I don't think it was an annexure to the mayoral minute.

15

MR BOYLE: Are you familiar with section 335 of the Local Government Act -

MR BRETON: Yes.

20

MR BOYLE: - in your position as the chief executive officer, Mr Breton?

MR BRETON: Yes.

25

MR BOYLE: And are you familiar with the obligation on a general manager, effectively being the same as a CEO of a council, to ensure that the mayor and other councillors are given timely information and advice and administrative and professional support necessary to effectively discharge their functions?

30

MR BRETON: Yes.

MR BOYLE: So cognisant of that, then, do you accept that it would have been an appropriate course to provide the interim report to the council prior to voting on these motions?

35

MR BRETON: Well, I can't accept that because it's not my evidence. But the - I accept the - my requirement under 335, but I - that's not my evidence today - that the report was or wasn't provided.

40

COMMISSIONER: I think what's being explored with you is - and it's difficult because some of the documents are a little unclear, but let's just assume for the moment that this rises or falls on the basis of the assumption. But make the assumption that the interim report was received on the 27th.

45

MR BRETON: Yes.

COMMISSIONER: And that you received it on the 27th. I think what Mr Boyle is exploring with you is, on that assumption, do you think it was - would have been prudent, in those circumstances, to provide the interim report to the governing body? Have I got the right end of it?

5

MR BOYLE: Yes, Commissioner.

MR BRETON: Yeah. To give them the best opportunity to make the best decision on the best available evidence at the most appropriate time. Yes.

10

COMMISSIONER: So on the assumptions that I've asked you to make, the answer is yes?

MR BRETON: Yes.

15

MR BOYLE: Thank you, Commissioner. If we could then go, please, to document INQ.001.001.1101. You see from the document on the screen, Mr Breton, this is the ordinary meeting of the council that was held on 26 June 2024?

20

MR BRETON: Yes.

MR BOYLE: And what I want to suggest to you is that this was the next ordinary meeting of the council after the one that I just had on the screen a moment ago.

25

MR BRETON: It was.

MR BOYLE: And again, you're listed as being present as the acting chief executive officer. You see that?

30

MR BRETON: I was.

MR BOYLE: If we could go to page _0005, please. You see there there's a description of a motion of urgency in relation to, effectively, rescinding Mayor 01 staffing matter from the 29 May 2024 council meeting. Do you see that?

35

MR BRETON: Yes.

MR BOYLE: And if - just scroll down, please, Associate. Do you see there number 3:

40

"Consider the recently supplied findings from the independent investigation into the same matter."

MR BRETON: Yes.

45

MR BOYLE: And then it says:

"Consider the findings from the OLG investigation when they are made available."

MR BRETON: Yes.

5 **MR BOYLE:** And then do you see at the foot of the page:

"Due to the mayor's ruling, the motion above was not voted on."

MR BRETON: Correct.

10

MR BOYLE: If we could move forward in the document, then, to underscore - I think it's two pages down - 0007. There is a motion of rescission moved here in relation to the same motion from the 29 May 2024 meeting. Do you see that?

15 **MR BRETON:** Yes.

MR BOYLE: And having regard to the motion, it says:

20 "Should the rescission motion be adopted, we give notice that it is our intention to move the following motion."

And if you then just scroll down, please, Operator, so that Mr Breton can see this. Item 2, do you see it's at about .5 of the page on the screen:

25 "Take no further action until the final report is received and tabled to council."

MR BRETON: Yes.

30 **MR BOYLE:** Do you happen to know, then - or recall, Mr Breton, whether the final report had, in fact, been received from Peter Harvey of Weir at this time?

MR BRETON: No, I don't know. I - my assumption at point 2 is that it had not been.

35 **MR BOYLE:** Quite. That's - it reads as though it hasn't been provided to these councillors who have moved the motion. That's the inference one would draw, I think.

40 **MR BRETON:** That's the inference I would draw, in retrospect, looking at point 2.

MR BOYLE: Yes. And again, if we could just scroll down, please, to the next page, which I think shows the outcome of the decision on the motion. Again, the motion is lost and it says:

45 "The motion is lost on the mayor's casting vote."

Do you see that?

MR BRETON: Correct.

5 **MR BOYLE:** And then if we could bring up another document, please, Associate.
It's LCC.008.001.0036. And that - yes, I was about to say it can go to the live stream.
Thank you. And then if you move to _0004. My friend has just raised an issue about
the document potentially - could we just go back to the first page, please.

10 **MR TYNAN:** First time I've seen the document. I don't know if that raises any legal
issues in respect of privilege.

COMMISSIONER: Okay. We'll take it down off the stream for the moment.

15 **MR TYNAN:** Sorry, I'm told - I'm told it doesn't, but I just needed to be cautious
before I -

COMMISSIONER: Of course.

20 **MR TYNAN:** - (indistinct) those instructions, so -

COMMISSIONER: Yes, of course. Not a problem. And Mr Parish hasn't leapt to
his feet, so -

25 **MR PARISH:** That would be my privilege, probably, and we didn't make a claim
over it.

COMMISSIONER: Probably, although it gets a bit murky sometimes. All right. So
the document can go back up and can be live streamed.

30 **MR BOYLE:** And, sorry, if we could then go to page 4 of the document. And scroll
down, please, to - you see there, Mr Breton, this is an email from Margot Kindley on
11 June 2024?

35 **MR BRETON:** Yes.

MR BOYLE: And it refers there:

"Thank you for the report on the FFI into the incident involving John Ajaka."

40 I did work out what FFI stood for, but -

COMMISSIONER: Fact-finding investigation?

45 **MR BOYLE:** Yes. The Commissioner's on top of it. I'd forgotten what it was. So
that's what FFI's indicating. And what is apparent from that, then, I want to suggest
to you, is that Council had received on 11 June - or by 11 June 2024 a copy of Mr
Weir's report.

MR BRETON: Okay.

5 **MR BOYLE:** Which goes beyond, obviously, the version that we saw on 27 May, which was the interim report. Do you accept that?

MR BRETON: Yes.

10 **MR BOYLE:** And then if we could -

MR BRETON: I accept it infers that, yep.

15 **MR BOYLE:** If you could scroll up, please, to page 1 of the document. And then just - so this email chain effectively is forwarded to you. Do you see you're in the "to" line, "Jason Breton"?

MR BRETON: Yes.

20 **MR BOYLE:** On 13 June, by Mr Galpin.

MR BRETON: Yes.

25 **MR BOYLE:** So you're aware that there's a Weir report in the hands of Council, whether or not you've seen it, on or around 13 June. But certainly by 13 June it's in Council's possession?

MR BRETON: I accept that.

30 **MR BOYLE:** If we could then go, please, Operator, to document LCC.008.001.0002. I note the time, Commissioner. I've only got another couple of documents that I want to take Mr Breton to.

COMMISSIONER: Let's keep going.

35 **MR BOYLE:** If you're content -

COMMISSIONER: Yes, I am. Yes.

40 **ASSOCIATE:** Do you want this on the live stream?

MR BOYLE: Yes, I think - unless there's - yes, it can -

COMMISSIONER: Play on.

45 **MR BOYLE:** - go on the live stream. I'm being cautious now.

COMMISSIONER: No, we all should be.

MR BOYLE: The red "confidential" is a matter of some concern, perhaps, but anyway - and you can see it doesn't have an exact date, Mr Breton, but at the foot of the page as it's shown on the screen, you can see it says "June 2024"?

5

MR BRETON: Yes.

MR BOYLE: And in view of the emails that we were just looking at, what I want to suggest to you is that this version at least had been received by the Council on or around 11 June 2024. Do you accept that?

10

MR BRETON: Happy with that.

MR BOYLE: And then if we could -

15

COMMISSIONER: Just when you use "council", you're meaning the organisation, not the governing body?

MR BOYLE: Yes.

20

COMMISSIONER: You're still happy with that?

MR BRETON: Happy with that.

25

COMMISSIONER: Yes.

MR BOYLE: Yes. By council employees -

COMMISSIONER: Yes.

30

MR BOYLE: - because of the emails that I've taken you to.

COMMISSIONER: Yes. It's just that it can be used interchangeably. I just want to be clear about that.

35

MR BOYLE: Yes. And then if you could go, please, Operator, to _0057. And if you could scroll down, please. There are, in effect, here - at about .5 on the page, the paragraph beginning "overall". If you could just read that to yourself, Mr Breton.

40

MR BRETON: Yes.

MR BOYLE: Obviously, you could read this - well, I suppose, first question, have you ever seen this document prior to today?

45

MR BRETON: Yes.

MR BOYLE: And you've read it?

MR BRETON: Yes.

5 **MR BOYLE:** Is it fair to say that is effectively, then, to your recollection, a summary of the ultimate conclusion that Mr Weir reached in the report?

MR BRETON: Yes.

10 **MR BOYLE:** And then if we could go over to page 58, please. We see, as with the previous recommendation - sorry, the previous structure of the interim report, final section before Mr Harvey signs off on the report is a series of recommendations. And you can see what is there set out. And effectively, all that is contemplated and recommended by Mr Harvey is that there be consideration given to whether there was a breach of Council's code of conduct. You see that?

15

MR BRETON: Yes.

MR BOYLE: If we could go back - or, rather - then there's another version of this document. If we could go, please, to LCC.008.001.0003.

20

ASSOCIATE: (Indistinct).

25 **MR BOYLE:** Yes, this can go on the live stream. This is the - it's described as an amended facts-finding investigation report. But if you'd just scroll down a little, please, Operator. It's on the first page - you can see this version is dated 19 June 2024. You see that, Mr Breton?

MR BRETON: Yes.

30 **MR BOYLE:** So what I would suggest to you, then, is that it was received by the Council, being council employees, on or around 19 June 2024. Do you accept that?

MR BRETON: Yes.

35 **MR BOYLE:** And having regard to the meeting minutes that we looked at from the 26 June meeting, what I want to suggest to you is that this was not provided to the councillors prior to the meeting on 26 June.

40 **MR BRETON:** It would indicate from -

MR BOYLE: That rescission motion, so -

45 **MR BRETON:** The rescission motion and the - and Karress Rhodes' comments at point 2 that that is, in fact, true. Yes.

MR BOYLE: Yes.

MR BRETON: Or that she hadn't seen it. Yes. Or - yep.

MR BOYLE: Yes. And on the assumption that it hadn't been provided to them, you would accept, wouldn't you, that it ought to have been provided, having regard to,
5 amongst other things, 335(f) of the Local Government Act?

MR BRETON: Yes. It was central to the motion, yes.

MR BOYLE: Right. And what I want to suggest to you is - well, sorry, I withdraw
10 that. You didn't - you don't have a recollection of whether it was provided?

MR BRETON: No. But I - on face value, given Karress Rhodes' comments -

MR BOYLE: Yes, that it wasn't?
15

MR BRETON: - I accept that. Yes.

MR BOYLE: Nothing further.

COMMISSIONER: All right. We'll take the luncheon adjournment. That should
20 give you time to confer, Mr Tynan, over lunch.

MR TYNAN: Yes. Thank you.

COMMISSIONER: I know it's difficult, but do you have an estimate of time, just
25 so I can let Councillor Harle know?

MR TYNAN: Yes, I think -

COMMISSIONER: It's all right. You won't be shut off at the minute past -
30

MR TYNAN: No. We don't anticipate being too long. Maybe 15 minutes.

COMMISSIONER: All right. We can perhaps then tell Councillor Harle 2.30.
35

MS McDONALD: Yes.

COMMISSIONER: And I'll adjourn until 10 past 2. Thank you.

<THE HEARING ADJOURNED AT 1.10 PM
40

<THE HEARING RESUMED AT 2.12 PM

COMMISSIONER: Yes, Mr Tynan.
45

MR TYNAN: Thank you, Commissioner. Just a few topics, Commissioner. Can I just make sure we're in public session? We are?

COMMISSIONER: Yes, I think we returned to public before we adjourned. We're in public? Yes. Thank you.

5 **MR TYNAN:** Thank you. Mr Breton, you've given evidence during this inquiry about the processes for assessing and investigating code of conduct matters. Can you say anything further about how those processes might be improved?

10 **MR BRETON:** Yes. I think we had some discussion about the fast-track model, and I think there's clearly an opportunity to make - have the CEO or general manager make an assessment where we have no-brainer or fait accompli matters, where it is clear at the very first instance the matter will proceed to investigation. And I think in those instances, the triage by the Governance team or the internal ombudsman only delays the inevitable, and I think there's an opportunity there to - in those
15 circumstances, to allow the CEO - and write into policy that process.

MR TYNAN: And what policy would you envisage that be incorporated into?

20 **MR BRETON:** Well, I think obviously - ideally it would be part of a suggestion, perhaps, to the Minister around the model code of conduct procedures.

MR TYNAN: And you gave evidence this morning in response to questions about the tranche of code of conduct complaints that were shown to you. Any improvements you can suggest in relation to tracking progress of complaints?
25

MR BRETON: Yeah, I think even - even if I - I've thought about the contemporary nature of the document that I was shown and - and some of the gaps therein. And even our current risk database - I've mentioned CAMMS, C-A-M-M-S - has the ability to record each code of conduct as a risk or an issue. It has controls and
30 actions, it has escalations through Outlook. It has all the things you would need to derive the spreadsheet. So some kind of systems database which then allows us to do - not only govern the process and the timeliness. It would certainly solve issues like Dr Betty Green's, where quite quickly we could see what was actually done against the issue and provide a more appropriate response.

35 **MR TYNAN:** You've also given evidence during the inquiry, Mr Breton, about councillor requests - you know what I'm referring to when I say councillor requests?

40 **MR BRETON:** Yes.

MR TYNAN: And the time taken up - staff to respond to those requests. Are there any processes or procedures you can think of that would improve the management of councillor requests and the staff responses to them?

45 **MR BRETON:** Yeah. I think we have to have another look again at our recently applied staff interaction policy and make sure that councillor requests, again, are tracked in some kind of available database that's transparent to both the

complainant - that is, the councillor - or, sorry, the requester, sorry - the councillor and also for management to track timeliness. And this has come about because there's been a number of follow-ups from councillors saying, "Well, it's over the 30 days in the policy. Where's it up to with tracking?"

5

If we want something delivered by Amazon today, we know when it's packed, when it's sent, when it arrived at the post office and when you can pick it up. These are contemporary systems, and I just think there are plenty of commercial off-the-shelf products which allow - which will allow us to look at councillor requests, and that's something I'm very, very keen to do.

10

I've spent the last two days, Commissioner, at the AI conference for Local Government down in Melbourne, and certainly some of the Victorian councils are - have had this in place for a year at least in relation to how AI can help manage the request, record the request, set the prompts and guidelines for the request and return the request to the - the councillor. So these are the kind of initiatives I think that are important and something I'll deadset - look forward to having - exploring at Liverpool.

15

MR TYNAN: You mentioned during the course of the inquiry a concept of contemporary forensic purpose in respect of assessing councillor requests. Can you just explain that a little further for the Commissioner, please.

20

MR BRETON: Yes. Thanks. Commissioner, I did mention that. And again, they're my words, but what I'm trying to address there is "contemporary" would mean the term of the incumbent council. The genesis of my focus is to reduce the amount of requests that are historical in nature that don't, in my opinion, serve a forensic purpose for the councillor's current civic duties. And it would allow us to filter and respond to councillors in quick time as to their requirement.

25

30

Now, they may prove a case for that purpose, which, of course, is an open discussion, but we have to have some kind of filter available to the CEO to make sure we don't find ourselves in a situation where staff time and cost is taken and detracting staff from other things they might be able to do for the community.

35

COMMISSIONER: There might be some occasions where a look back at history of a proposal or an issue before Council that is still live in the current term might need a look back, but your point is unless there is that connection, your thought process looks at whether that's necessary for the councillor to perform their current civic duties.

40

MR BRETON: And -

COMMISSIONER: Have I got the right end of it?

45

MR BRETON: Yeah. And it wouldn't be a rejection, per se. It'd be, like, "Councillor, please validate" - "Please validate your request."

COMMISSIONER: I see.

5 **MR TYNAN:** Thank you. Mr Breton, you also gave evidence in response to questions from the Commissioner about how to improve meetings facilitated by councillors with constituents and staff members. Do you remember giving that evidence?

10 **MR BRETON:** I do, yes.

MR TYNAN: And it was in the - it arose in the context of the WhatsApp communications, et cetera.

15 **MR BRETON:** Correct.

MR TYNAN: Are there any further controls you would suggest to improve the transparency of those types of meetings?

20 **MR BRETON:** Yes. Again, I'm taking the benefit of my last two days in Victoria to see what some of the Victorian councils do about this very issue. And I think the recording and/or minute-taking of those kind of scenarios is essential. I think that the subject-matter expert that's been requested to the meeting - whatever level they perform in the organisation needs to be accompanied by a director or above, and that the councillor is in attendance with the constituent or applicant to the information at
25 that meeting.

There's a number of contemporary approaches by other councils that I've seen in relation to, again, artificial intelligence note-taking. So it doesn't have to be
30 videorecorded and we don't - all the set-up. These are easy, cheap if not free, available resources to us now, and that - that allows us an immediate, transparent, independent version of that meeting that is then kept under the Records Act and in control of Council, if and when it's required to be used in any other environment.

35 **COMMISSIONER:** From that, do I take it you've had some discussions or got some information from other councils at the conference about this type of issue?

MR BRETON: Yes. I've had the PA this morning download the Otter, Commissioner. And this - again, these tools are available. I think it's just reluctance
40 of councils and government departments in general around this big, scary idea of artificial intelligence, but this is - really is a fundamental piece of kit that - it doesn't - it doesn't expose us to any risk, so - but I just think the benefit of the record far outweighs the perception - firstly, the meeting occurred, but (b) what was discussed in the meeting, because the last thing I want is somebody - an applicant or a constituent to leave that meeting with a perception or an assumption that something
45 was done because the councillor had influenced it.

COMMISSIONER: Or the subject-matter expert on the other end of that, perhaps?

MR BRETON: Correct.

5 **MR TYNAN:** Mr Breton, you've also given evidence about direct appointments. In fact, given some evidence about that this morning. Does the Council have a policy in relation to direct appointments?

10 **MR BRETON:** So Mr Portelli and I discussed this last week and he has presented me with a four-page policy in relation to this, which I'm going to take forward. I think we have to get a policy in - only if to describe some of the challenges we have spoken about this morning in relation to transparency. And the criteria in which - whilst the Act informs the static details of what's required on a fixed-term appointment, what it really doesn't do is talk to local criteria.

15 So what I want to do is make sure that everybody's aware of what criteria must be in play before you envisage it. And it could be a bespoke position, it could be a deep SME, it could be something like that. It could be the market conditions we spoke about earlier in relation to senior planners. It could be anything, but the criteria need to be dealt with so that fixed-term appointments - we remove any suggestion of
20 influence or bias in relation to those appointments.

COMMISSIONER: Do you envisage that extending not only to criteria but processes and record keeping?

25 **MR BRETON:** Yeah. Processes and record keeping in relation to, again, a transparent result of why that - why the - a fixed-term appointment was applied - and that is the criteria and rationale, but then who was applied - applied, and - and the fact that we went through a procedure like conflicts of interest.

30 **MR TYNAN:** And does that involve - I think you raised this morning some kind of post-appointment information provided to Council about the appointment.

MR BRETON: I think Council and all staff. I think because - I think the actual challenge is actually more what the staff think about it, because you could argue
35 about the opportunity cost of why that person and not an expression of interest to the staff. And again, those kind of criteria are first in my mind that - how could you go for a fixed-term employment if you hadn't offered it for an EOI to incumbency? You don't know the skill set of all your staff. So I think you have to offer it within the organisation prior to it going out on a fixed-term appointment.

40 **COMMISSIONER:** Can you just explain that last bit again? What do you have in mind as being the optimal process through this?

45 **MR BRETON:** Yeah. So I guess what would happen is that we have an - let's say it's a - there's a role there that is - been put up and there's a person that's fantastic in the market and we would normally have just gone to fixed - just taken them off the market and appointed them. We may have somebody with the requisite skill set

within the organisation that didn't get the opportunity to compete. So that has to be expunged first - that first opportunity. And it might be that they're so deep in SME that we don't have anybody, but we also - I'm always fascinated about the skill set of the workforce and what we don't know about them.

5

MR TYNAN: SME means subject-matter expert?

MR BRETON: Subject-matter expertise, yes.

10 **MR TYNAN:** And is it fair to say that there's a policy position being worked up at the moment, is there?

MR BRETON: Correct.

15 **MR TYNAN:** And what's the anticipated timeframe of that? If I'm not locking you into something.

MR BRETON: No, no. You're not. I will have a look at that, and it'll probably go to November council meeting. And then it would go out for display after that. So by the
20 end of the year I think we will have something in play.

COMMISSIONER: I'm going to need a constant rolling policy register -

MR BRETON: Yes. Yes.
25

COMMISSIONER: - with the updates, to keep up with this.

MR TYNAN: New topic, Mr Breton. You provided a statement to the inquiry on 25th of the 8th this year in response to requests from the Commissioner; correct?
30

MR BRETON: Yes.

MR TYNAN: And attached to that statement was a number of documents. One of those documents is a document referred to as - entitled Becoming Better Tranche 2, Office of the CEO. You know what I'm talking about?
35

MR BRETON: I do.

MR TYNAN: Can I bring that document up, please. It's LCC.030.003.0001.
40

ASSOCIATE: Do you want that document on the live stream?

MR TYNAN: Yes. Thank you. That's the document, isn't it, Mr Breton?

45 **MR BRETON:** Yes.

MR TYNAN: What was the process for this - or what was the genesis on the process of this document being prepared?

5 **MR BRETON:** I guess the genesis was - well, the catalyst was six into four. The genesis was -

MR TYNAN: Can you just explain that before you -

10 **MR BRETON:** Well - sorry. The catalyst was, of course, we - we devolved two directorates and - from six into four.

MR TYNAN: Yes.

15 **MR BRETON:** The genesis was a strong belief from myself that we weren't set up to prosecute the strategic plan effectively, and that concepts which are rather uncouncil-like - like Project 26 and some of the initiatives that I've spoken about - need a different way of thinking in relation to how we actually deliver those opportunities to the - to our ratepayers. So that's the - that's really the catalyst and the genesis, and I'm the sole author of the document.

20 **MR TYNAN:** And so what was the process of preparing this document?

25 **MR BRETON:** So I met with the - obviously the executive leadership team and Craig Knappick - more so in relation to organisational redesign, but I also took a leaf out of, again, businesses that aren't councils and how they might apply a different approach. And then what was clear to me was that this process needed a much stronger interface with the ARIC, the Audit and Risk Improvement Committee. So that's a committee of highly skilled individuals that we use, but I don't know whether we sweat the asset, Commissioner, and we actually tie in all the parts of that
30 acronym into what we do in the business. And that's really where my head was with this - with this document. I think best described at pages 7, 10 and 11.

COMMISSIONER: When was this prepared?

35 **MR BRETON:** It's a - well, it's prepared now. It goes out to - the councillors have seen it only this morning. On Monday, I expect it to be released to all the staff, and it's got all the position descriptions with it, because there's - again, to my point, there's opportunities available to the incumbent staff to participate.

40 **COMMISSIONER:** This is part of, as it says there, the tranche 2 organisational design process that I've heard about before?

MR BRETON: It is.

45 **MR TYNAN:** And so it's going out for consultation. How long's that consultation?

MR BRETON: About 28 days.

MR TYNAN: And what happens after you receive, presumably, feedback from that process?

5 **MR BRETON:** Yeah, I expect to get some feedback. Then I'll - I'll just - I'll enact it and I'll put it - I'll put it up for council for noting.

MR TYNAN: Okay.

10 **MR BRETON:** Yep. Because there will be - there'll be significant budget opportunities as well that will follow tranche 2. This is part of it.

MR TYNAN: Just to unpack that budget opportunities, do you mean savings?

15 **MR BRETON:** Yes, savings. There will be savings, efficiencies. Most of the roles I expect to - in this tranche to be filled from current roles, as the - as the four directorates gets unfolded. I was reluctant to create a fifth directorate. That's not what I wanted here.

20 **MR TYNAN:** Yes.

MR BRETON: So that's - I haven't done that. It is a - it is a deliberately tactical and strategic approach to running the business, and I think I've got the model about right.

25 **MR TYNAN:** Can I - you mentioned page 7.

MR BRETON: Yes.

30 **MR TYNAN:** Can I have - Associate, would you mind bringing up page 7. What is it about this page that you want to describe?

35 **MR BRETON:** Yes. So again, it's only got two components. The Office of the CEO is the generic term for the office, but within it is a Strategic Projects team. And I can talk to that on page - later on. And the Performance and Innovation team. And the only potential change in the review period is to what extent the - in the performance perspective, can we have a look at where and how the - a potential internal ombudsman's connected.

40 **MR TYNAN:** You also mentioned page 10, I think. Can we have that turned up, please. It's headed Performance and Innovation Team.

45 **MR BRETON:** Yeah. So page 10 - it's got 9 on the thing, but it's page 10 in the document. So we've got the manager Performance Innovation, and they have a dotted line direct to the Audit and Risk Committee. And the reason that is is I - I want to use the skill set of the committee to drive performance, because in the end improvement's part of their acronym. And then there's a leader that interfaces with the audit, risk and improvement area.

One of the - one of the gaps probably is the extent to which we've really strategically enabled service reviews. So there will be a leader of service reviews. There's a leader of performance and data, and I've - I may have given some evidence in relation to
5 how poor our systems data is, and I think in Project 26 we were talking about the capitalisation of IT and equipment in performance. Performance is a major focus for this period.

And again, a leader of systems - we have no clear systems architecture. And again, I
10 suffer from coming from an engineering company in Downer, where systems architecture is your absolute non-negotiable guide into how your systems interface, and I think we can do that better. So this team here, again, will lead all the strategic initiatives to lift our performance and - again, by addressing audits, implementing the ARIC recommendations and embedding measurable improvements across all
15 activities.

COMMISSIONER: What's within the concept of service review?

MR BRETON: So the service review - under the ARIC guidelines I think there's
20 four service reviews per annum. But what I'm keen on, Commissioner, is making sure there's a value in that. They shouldn't be ad hoc. They need to be derived from a - from a problem statement or a use case in relation to - if we were doing a service review right now, I'd be starting to look at some of the themes that have come up during this inquiry rather than picking things that may be a little bit more generic.

25 They have to make a real difference to performance and improvement to become a service review, and that's why - and that's why it's linked and that's why, again, that manager is - has a direct interface with all the requirements. The audit committee - the ARIC report essentially drives the operational plan for this team for
30 the year rather than us going back and taking a report from ARIC and we all - it goes out and it comes back in in a document and ARIC tick and flick it. That's not what I want here. I actually want ARIC informing the direction, within their remit, of what we're doing.

35 **MR TYNAN:** The box on the bottom right-hand corner refers to Leader Systems, and I note that "systems" is referred to on the next page, if we can scroll down to that.

40 **MR BRETON:** Yes.

MR TYNAN: Can you just explain what you envisage "systems" to encompass? Is it all computer systems? Is it something narrower? What are you referring to?

45 **MR BRETON:** No, I just - I guess what I'm frustrated with - with our systems is they - the way the systems architecture has been built has not - it's now incapable of progressing our council. So we have a - disparate systems around a hub, where we - if we - even if we envisaged a hub of tech 1 and we took all the spokes out - so

we had a hub-and-spoke model - what I'm not seeing is value add. I've managed to gain some budget over the next four years to do this, but what I - what I'm really reluctant to see - because I don't think we're automatic experts.

5 We're a council, and I think these - this kind of thinking is above our current capacity. Sure, we have IT leads and chief information officers. There's people with product knowledge, but how the system interfaces and how it improves, that's a different skill set. And what this role will do is take our - take our current system, triage our current system, look at opportunities, but with emerging technologies and
10 all kinds - and I've only - you know, talking this morning about the concept of records - and I've still got records in boxes, at \$60 a box when they're requested to come over, and I haven't digitised - I mean, this is stuff that the big companies have done 20 years ago, okay?

15 So what's the system and how can I recover a document rather than call for a box from Grace Couriers? So that's what that person's there for. Just to - to take a little bit of a different lens - a different lens on how a business would do this - a big business of 1000 people with lots of different responsibilities, but maybe not rely on a traditional council approach.

20 **MR TYNAN:** You also mentioned - referred to the Strategic Projects team, which is addressed on the next page, if that can be turned up.

MR BRETON: Yes.

25 **MR TYNAN:** Did you want to say something about that?

MR BRETON: Yeah. Again - so what I have here is I've got - I've carved up the requirements of a - of the Strategic Projects team on the back of the fact that we don't
30 do it very well. And I've got so much evidence into - in relation to poor cost estimation, project management, bidding, economic development. They've all been separated and without a focus on the CSP or the - or the - a community strategic plan. So this team is focused on the - particularly on the concept involved in Project 26. So all of Project 26 will be - with the exception of the IT will be from this team.

35 And as we can see there, if I take it across, it's - it's head of Strategic Property. That is, what is our property portfolio? And I think I've given some evidence, Commissioner, in my Project 26 discussion in relation to eight or nine options in relation to property portfolio and assets. Head of Strategic Precincts, the community
40 strategic plan and - and much of our masterplanning has spoken to a precincts-driven project focus, and I think the best example of that is Parramatta. So - and obviously the first precinct I'm interested in is - is the one I've been speaking about during the inquiry in relation to Woodward Park and an entertainment precinct. So that needs a dedicated focus.

45 Head of Strategic Revenues - again, we spoke about that during these proceedings in relation to all our revenue streams. Everything that Council does has a revenue

stream, sans rates. Rates will remain in its current process, but everything that Council has - are we really getting the best value or are we really optimising our asset portfolio for our - for our revenue? And I want to increase revenue because there has to be other solutions of improvement other than rates and grants.

5

The next one across to the right is strategic procurement. Again, this is not about bog-standard procurement in section 55 of the Local Government Act, something that's been improved exponentially at Liverpool City Council in the last two years. This is really about - it is about strategic procurement options in relation to the things that all councils do. And I take my mind to topics like asphalt and things like shared surfaces. Two vastly different options, but our spend on asphalt would be - in above the - let's say it's 30 to 50 million dollars a year, somewhere in there. Yet for a \$5 million piece of equipment, we could probably self-perform - that is, take the asphalt up, store it, mill it and put it back down. Yet we - I'm not sure we're strategically procuring asphalt.

15

And then when I mentioned this at WSROC the other week - it's the Western Sydney Regional Organisation of Councils - it wasn't an epiphany. Everybody's talking about how we can get together on asphalt. Kerry Robinson of Blacktown was very keen because of our proximities, because it really surrounds the site of the milling - to make it efficient to distribute. And then self-performance in things like shared surfaces. It fascinates me in procurement about - about going to - about why we are not looking at shared surface arrangements with other councils or other organisations around some generic functions that we do.

25

COMMISSIONER: Can you give me an example of -

MR BRETON: Payroll is a classic one. And again - I know this is being live streamed - there's no threat to payroll staff, Commissioner. It's one of the - it's one that automatically comes to me about - about some of the things that councils do and what big business don't. And again, I'm taking a lead from other organisations where they've outsourced or insourced certain things. And to all the payroll staff listening, that's not a fait accompli. I just mention payroll because it was one that - at - during my Downer times, that was consolidated across the Downer Group.

35

COMMISSIONER: Earlier, you mentioned - and you made an observation that you didn't think that council - I'm going to mangle your words, but did strategic projects well and you - and you referred to costing and the like. Is an example the - what I've heard - something I've heard about the Carnes Hill pool example. Is that - is that within that area?

40

MR BRETON: Yeah, that not the best one, Commissioner. I mean -

COMMISSIONER: All right. Well, what's a better example?

45

MR BRETON: I think the Governor Macquarie - early Governor Macquarie Drive, and I mentioned that it was six co-funders. So six and six equals 12.

COMMISSIONER: Yes.

MR BRETON: The project cost was 20.

5

COMMISSIONER: Yes. What was the problem there that you've been able to identify that led to that?

MR BRETON: Poor estimation on both sides. So they're going for a grant and telling the government it's - it's that, and co-funding it. So that makes - that's too simplistic without - without a strong bill of materials or a QS, and you've heard some evidence from me that we don't - we can't proceed with a QS over six months old.

10
15 But the one that got me at the start, when I first took over was the director of Operations - I looked at Basin 6, and there was \$4 million allocated for Basin 6, and I saw it on a - on a report - so the project had finished - and it said project finished - was the first one on page 1. \$4 million cost, green tick. Finished. Total cost, \$6.5 million. And the operational response in relation to the basin, because it's a wet basin, was to hand-pull the weeds in perpetuity as a maintenance proposition.

20

And when I looked at that I said, "I think I need a deeper look," and then I started looking at some other projects and we - and that's why the DMF. That's why we knew we had to bring the delivery management framework in and start - put some gates in around projects, and - and we are getting better - that's our word for the period. We're getting better, but we have a long way to go, but I'm very, very confident with the gates - that there's nowhere - there's nowhere to go now to make those kind of problem - challenges.

25

COMMISSIONER: With those gateways in place, would that address the scenario where - say the State Government rolls out another Western Sydney-type program and there's an application for a grant - this is designed to address the scenario where an application is put in for 12, but very quickly it becomes evident that 20 is needed. Is that - I know that's really simplistic, but is that - some of those measures go to addressing that type issue?

30
35

MR BRETON: Correct.

COMMISSIONER: Which I've heard a little bit about.

40 **MR BRETON:** Correct, Commissioner. And that's exactly what's happening now with WSIG or WestInvest.

COMMISSIONER: Yes.

45 **MR BRETON:** That Liverpool aren't alone on this. And the reason is you might - we might have applied for WestInvest in '22, '23, and delivering three to four, five years later. Obviously it's cyclic and deliberately cyclic, so - but what

happens then is not only do you - if you're poor at front-end estimating - the grant people will only ask you to validate your assumptions. But if you're poor at that, you get the assumption wrong, then the grant funding's wrong. And then you're - you've got to - so you go - you rush out and tell the councillors and you rush out and tell the community and everybody's excited about a 50-metre pool, and then you do the numbers and you can't build one for the number.

And it's not about finger-pointing, it's really about - get the - what I think has to happen with grants is - let's say it's 45 million granted and then there needs to be a revalidation within - just before the grant period or it could go off the table. That is, "I'm not going to give you the 45 because you haven't proven to me that you can actually build it within, say, 10 per cent variance of that." So that would be a really good opportunity.

And I think the WSIG team, who I've spoken to only a couple of weeks ago, are well aware of that and doing a remarkable job on project contingency about how to model that. And in this scenario they give you the 45. They might give you another 20, but you'd have to prove your contingent requirement on the 20, not the 45. So if it did blow or escalation got the better of you, yeah, you could draw down on that because you - you forecast it. So there's no surprises. Community are okay, Council are okay.

MR TYNAN: There are two more boxes in that organisational chart.

MR BRETON: Yeah. So one is the head of Economic Development and Strategy. Again, that's just transferring the whole ED team from the old City Futures - that's what naturally would fit hand in glove here - and to keep the functions of economic development in play, albeit if - my interpretation of economic development is a little bit more strategically aligned than what it may have been in City Future, where I need - if we're talking about precincts and properties, the ED person really needs to work hand in hand and - and partner around these things. And I'm - the - my - the easiest example of that is universities.

We have four universities in Liverpool and those universities are desperate for great properties. So obviously the ED person and the property person would be - would be linked. And then if that was the education precinct, of course, the Precincts head is now - is now in the picture. So now we're starting to work a little bit more strategically and along a stream deliberately to prosecute a strategy.

And the last one on the right-hand side is the head of Strategic Communications. Okay. Jury's out a little bit with this one. At the moment, I've just coupled it in with the whole Communications team, so the - there's no change at the moment. Where I was focused with Strategic Communication is exactly the same as Economic Development. If I'm - if I am asking a Minister for some more funds, for example, how does this role help me pitch it at the right time for the right purpose at the right political cycle and strategically across a number of platforms?

This is not a day-to-day comms person. This a person that says, "What are my communication tools that can allow this team to succeed? What are the triggers I need to pull strategically from a communications perspective? Where does the message come from? What's the narrative? How is it linked?" It's a much
5 more - again, the biggest word in this whole title of this role is "strategic". I don't need a comms person, I need a strategic comms person to start giving this team advice about how they pre-position, and then pre-positioning for optimal success. And I think we've had some evidence today - this - in the last couple of weeks in relation to how we've needed to pre-position a certain project.

10 **MR TYNAN:** Final topic, Mr Breton.

MR BRETON: Yep.

15 **MR TYNAN:** You've given evidence, including some today, about funding for projects and some of the difficulties of achieving costs estimates. What suggestions do you have for better achieving value for money for the Council?

MR BRETON: Yeah. So I hate section 55 of the Local Government Act,
20 Commissioner. So I need a complete rewrite. No, where I'm challenged -

COMMISSIONER: You can give me the text and -

MR BRETON: Where I'm challenged - there's a couple of - there's a couple of
25 challenges I have with 55, and I know why 55 essentially was -

MR TYNAN: Can I get that up?

MR BRETON: Was -

30 **MR TYNAN:** Mr Breton, I'll just get -

MR BRETON: Okay.

35 **MR TYNAN:** - the document up. That might assist everybody. I think it's INQ.012.001.0005.

COMMISSIONER: This is the one with the more exceptions than the primary
40 clause, isn't it? That goes to (q) or something.

MR TYNAN: Thanks. Sorry, Mr Breton. Please go on.

MR BRETON: Yeah. So I - so I guess, Commissioner, my comment's really about what it doesn't say. And where I've had a real challenge is it seems to be that the
45 market knows section 55 well and they know that councils have money to spend, it's pretty clear, because most of that money's recorded in the public - in the public

domain, to some extent. There is no - there is no availability for myself to create an opportunity for a BAFO - that's a best and final offer.

5 Colloquially, I can't sharpen anybody's pencil. So I go to a - I go to a tender and I have three tenderers and they're all good-quality tenderers, so that's not in the criteria, but the criteria is weighted, say, 60 per cent financial, but they're all falling within a certain financial band. So all like-like, three good suppliers. What I want to be able to do is go back to those suppliers and say, "Okay, team, you've been selected in the last" - "you're the last three, give me your best and final offer to create value for money in" - "for my council."

15 Now, in any other business in Sydney I can do that. In government procurement I can do that. Happens in major rail tenders all the time - that a BAFO is part of your tender. The only way I can do that is to reject the tender and take it back to Council and ask to go into direct negotiations with a supplier, and that takes time. What councils need to be able to do - or CEOs need to be able to do is look at the commercial response and ask those successful tenderers to give us their best and final offer prior to the other - the only other way, again, is via rejection. So that's one of the key challenges for councils.

20 And the other way - the other issue, again, is around where - where the price is known. The most classic example for Liverpool is when the - we had a co-funding, state and federal, \$1 billion for 15th Avenue, but the day - or the same morning, at the same press conference, every supplier in Sydney knew how much money we had to spend. So what you'd get - you get a billion and one dollars worth of tendering, okay? So I want - you know, I want to make sure that we're getting better value. And it is - and again, I know - I know why - the intent of this part of the Act was in and around some procurement that went a bit south pretty close to here, so - so I understand that. But I think this part of the Act needs to take a little bit more of an agile, contemporary approach to the way we actually buy things.

COMMISSIONER: But what you have in mind - tell me if I've -

35 **MR BRETON:** Yep.

COMMISSIONER: - got this wrong - is still go through the tender process. You still go through the evaluation process.

40 **MR BRETON:** Yep.

COMMISSIONER: There might be one clear winner. There might be three who are all acceptable, all within a -

45 **MR BRETON:** Yep.

COMMISSIONER: Plus or minus one or two points, whatever it might be. You're talking about ability, whether it be one, whether it be three, whether it be 10, to go, "Okay, we're all in the running, what's your best price?"

5 **MR BRETON:** Best - yep, that's exactly what I'm offer. And -

COMMISSIONER: And then that would, if there's more than one, still require a consideration as to - it's not just a matter, as in any tendering process, of just taking the cheapest price.

10

MR BRETON: Yep.

COMMISSIONER: But it would go back to be considered in the mix of the selection of the successful party. Have I got that right?

15

MR BRETON: You've got that right. Yeah. And there's a couple of other little things. I mean, there's - in any procurement procedure, there's this concept of weightings. And then you say to yourself - and I'm fascinated by artificial football pitches because I'm soccer-mad and Liverpool had none - and now we have two, Commissioner, right - but on my first tender - and I know the product pretty well - the best product supplier in Australia didn't win.

20

Now, if I'd have weighted quality above price, I would have got - I think the others supplier would have won the procurement. I was a relative novice. I was just going, "What's the right" - "I want to get the best value," and we always think of value in relation to the raw price, but that didn't take, in effect, the ongoing maintenance, the quality of the surface, the brand or the after sales service, all those things which - and that's kind of tricky. But again, this is more local procedures rather than - and approach rather than the Act, but the BAFO thing is something that I've long thought about and - and it wouldn't be that hard to write in under the scenario you just presented.

25

30

COMMISSIONER: And did I understand you correctly earlier that you had experience where that process has been within state and federal government tendering processes?

35

MR BRETON: Yeah, the Waratah train. We had to present a best and final on the Waratah, on the high-capacity Metro train, Sydney light rail - were all BAFOs, and that's when they - they - because they've got quality tenderers. So there's a good standard and - and the government know that. It's a long, long process, but in the end they're going to ask you to sharpen the pencil.

40

MR TYNAN: I have no further questions, Commissioner.

45 **COMMISSIONER:** I've heard a lot during your many days here about either changes that have been recently made or changes that you are actively considering as

this process goes on. I take it that as those changes are implemented there will need to be a bit of a bedding-down process. Is that fair?

MR BRETON: Yes.

5

COMMISSIONER: And a process of monitoring those changes to see whether they return the performance or system improvements that you have in mind. Would you agree with that?

10 **MR BRETON:** Yes.

COMMISSIONER: And to ensure that the intent of those changes is realised, that needs some pretty close attention over the next 12 to 24 months. Would you agree with that?

15

MR BRETON: I'd agree with that.

COMMISSIONER: All right. Anything arising?

20 **MS McDONALD:** You were asked some questions about the - sorry. You were asked some questions about the procedure which is now included in a revised councillor/staff interaction policy.

MR BRETON: Yes.

25

MS McDONALD: And I think my learned friend referred to your concept of the contemporary forensic purpose.

MR BRETON: Yes.

30

MS McDONALD: Those words don't appear in the new policy, but you've given evidence that that's going to be one of the, I suppose, factors which will guide the exercise of your discretion.

35 **MR BRETON:** Yes.

MS McDONALD: Now, what is anticipated by the strategy - that if a councillor makes a request and you exercise your discretion - I think it's under clause 5.12 to reject that request. If it - if the councillor does not want to accept that decision by you, what are the avenues for the councillor to seek a review of your exercise of your discretion?

40 **MR BRETON:** That's a good question. So again, at this stage we haven't had that scenario present. Most of the - I think one of the - there was one example where a councillor wasn't happy with the response and asked that it be reviewed by the general counsel. So the mechanism for this contemporary forensic purpose will have to have some - it can't be solely arbitrary, but the process would be that I would state

45

my case - sorry, ask the councillor to validate the original request and how it meets this threshold in his or her civic duties.

COMMISSIONER: Before making a decision to reject it?

5

MR BRETON: Before making the final - so I'm not happy with it, send it back, ask them to validate how - the how rather than the original request. And then I guess I would send it to the general counsel for a legal advice.

10 **MS McDONALD:** All right. So what you're anticipating is a request is made - in a sense, your interim decision is it doesn't come within 5.12 -

MR BRETON: Yes.

15 **MS McDONALD:** - and you can exercise your discretion to reject it, but you would write back to the councillor, saying, "This, in a sense, is my preliminary view."

MR BRETON: Yes.

20 **MS McDONALD:** "Do you want to provide further justification or grounds as to why, in substance, it's a valid request?" If the councillor doesn't do that or does provide you with a response which is not - doesn't, again, meet the requirements in your mind for the exercise of your discretion - if there is a dispute, your view is it would then be referred to the general counsel?

25

MR BRETON: Probably for a quick piece of external advice, yes.

MS McDONALD: And, sorry - so it goes to the general counsel and you'd anticipate it would then be sent outside, to somebody on your legal panel for an opinion?

30

MR BRETON: David would - David would typically probably, in that scenario, send it out for a quick piece of advice from the panel. Yes. That's - again, this is - yeah, if it's material, he may make a call, in which case I guess it goes back to the council and we repeat.

35

MS McDONALD: And this process that you've just set out, is that in any kind of policy or -

MR BRETON: No. No, it's not.

40

MS McDONALD: All right.

MR BRETON: No, it's something - again - again, this has been driven by volume and - and the quality of said requests. So it's something that's emerging and I'm trying to treat now, but no, it's not in a written policy as of today. And you'll remember that we've only just updated that policy and we've had two versions. So it would be a further update to that policy.

45

MS McDONALD: It's just the area that you're entering into with this raises democratically elected councillors who - from their perspective, there may be a request from a constituent that they think is genuine that they want to pursue. So it's
5 a - to use one of your words from your last evidence, it's one of those difficult interfaces between a democratically elected councillor, on its face, seeking further information which may be - which is necessary to pursue the councillor's role with, kind of, the efficiency and business considerations you have for the operations of the Council, and it's just the tension in that interaction that led to my asking about do you
10 have review processes or, if there are going to be challenges to the exercise of your discretion, how you're going to deal with it.

MR BRETON: Yep. I concede it's not perfect and, again, driven by volume, and I'm a very optimistic person - that perhaps next year I won't have these scenarios of
15 volume present in - in the amounts. We are - we are driven by circumstance at Liverpool. And again, my underlying principle was - was the - protecting the staff in relation to the undue burden. But I guess it's not perfect and, yes, it would have to go through policy, which would have to go through council again.

MS McDONALD: Yes. Excuse me for a minute. You gave some evidence about the interim report - the 430 report by Office of Local Government, and you spoke about the perception by the USU and Labor members of Council about Liberal Party appointments.

MR BRETON: Yes.

MS McDONALD: That perception was not limited to the USU and Labor councillors. In the 430 report there was evidence of staff members and their perception that there were appointments being made which weren't being determined
30 by merit.

MR BRETON: True.

MS McDONALD: And encompassed by not being determined by merit, was part of
35 that - one aspect of it was that perception that it was people who were members of the Liberal Party or who had a link with the Liberal Party.

MR BRETON: Yes.

MS McDONALD: So the concerns that were addressed in the 430 report, although
40 as - in your response, as you've advocated, "flawed with procedure", it did indicate perceived unhappiness or disgruntlement amongst some staff members about a lack of merit of appointment?

MR BRETON: That's very true.

MS McDONALD: Now, some of your last evidence about the "being better" -

MR BRETON: Yes.

5 **MS McDONALD:** I just want to pick up one aspect of it. Excuse me for a minute. I'm sorry. LCC.030.003.0001. And page 10. This, in a sense, organisational structure, includes the audit and the ARIC?

MR BRETON: Yes.

10 **MS McDONALD:** Audit Risk and Improvement Committee. You have a dotted line from the manager Performance and Innovation.

MR BRETON: Yes.

15 **MS McDONALD:** Do you see that? So the indication of the dotted line is it's not a direct report, but what kind of relationship is it?

MR BRETON: Complementary.

20 **MS McDONALD:** What do you mean by that?

25 **MR BRETON:** Okay. So I think - I thought I'd given some evidence about this, but what I - what I'm not seeing - I don't think we get true value out of the ARIC - that is, the three-member panel - by meeting them four times a year and responding in that fashion. So when I say complementary, I want all the actions - if we're really talking about performance, innovation, improvement, et cetera, I want the ARIC to participate more in the - how that's transacted.

30 So that relationship is a single person dealing with the ARIC report at the time and looking through - whether it - it could be a service delivery requirement, it could be an audit requirement, it could be the risk register, it could be an improvement practice, it could be something that committees picked up. They're very, very articulate in their specific areas of expertise, and I just want to exploit the ARIC more and have a much, much closer relationship with the ARIC so we get real value from that committee.

40 **COMMISSIONER:** So this is one role interfacing with the Audit and Risk Committee, rather than going to the meeting, "Okay, we're going to deal with procurement now, so" - I don't know whether it's Mr Portelli's responsibility or not, but I'm -

MR BRETON: Yeah, it was. Yeah. Yeah.

45 **COMMISSIONER:** - going to use him for the moment. "Mr Portelli's team, go away and sort that out. Okay. Now we're moving to a legal. Mr Galpin, you need to sort that out." This role would be responsible for picking up those issues and then

coordinating across the rest of the Council organisation what's to happen, gathering it all up, feeding it back to the Audit and Risk Committee. Is that the general idea?

5 **MR BRETON:** Much more strategic. And I see that diagram as any one day of operations, not four times a year. So I see this person who wins this job as - as picking up, talking to the chair - talking to Robert or Sheridan and saying, "What do you think about this?" And actually getting their intent driven into some of the - the areas below. So much stronger interface, much more respect for the process of ARIC and a heightened - I think a heightened response to the intent of ARIC.

10 **MS McDONALD:** Could we bring up, please, INQ.001.001.1256, please. Yes, please. This is the ARIC charter. If you just go to and page 2, Purpose and Objectives. It emphasises that it's to provide independent assistance to Liverpool City Council?

15 **MR BRETON:** Yes.

MS McDONALD: And if we go through the document - again, for example, 4.1, under Composition and Tenure, again - on page 3, sorry. Again, we've got an
20 emphasis on independent members.

MR BRETON: Yes.

MS McDONALD: And we go through - page 7. We've got reporting lines, where
25 the ARIC appears to report directly to Council. Or it doesn't appear - that's what it provides. That's right?

MR BRETON: Well, that's not a very helpful diagram. I don't think they report to Council.
30

MS McDONALD: Well, don't they? Because -

MR BRETON: The audit report? Sorry.

35 **MS McDONALD:** Yes.

MR BRETON: Yes, the ARIC report goes to Council. So transactionally, they report to - yes.

40 **MS McDONALD:** Yes. What I'm raising with you is have you considered, in the context of the evidence that you've given and the "be better" - of ARIC being - participating and a closer relationship - whether that's consistent with its charter and consistent with its independence. Have you actually considered that?

45 **MR BRETON:** Yes. I understand that - both those concepts. I think this enhances - the new model enhances this. Again, when we talk about ARIC, we are talking about the - where is the real interface? You only see them for 16 hours a year,

okay? And one of the challenges of that is that we tend to respond sequentially and periodically, and I think this model allows that independence to remain, and that's why it's a dotted line.

5 **MS McDONALD:** But I think my point is more have you sought some advice about the current charter and what it provides for and what you have proposed in the better - whatever it is, Being Better -

MR BRETON: Yep, yep.

10

MS McDONALD: - document, because my very quick reading of the charter and what you propose is that it may raise issues of the independence of the committee, and I'm just more interested in whether advice has been sought.

15 **MR BRETON:** That - well, that's a fantastic opportunity in the next 28 days, when it's released on Monday, for all these concepts and themes to be raised.

MS McDONALD: So you haven't -

20 **MR BRETON:** So it'll be out for consultation.

MS McDONALD: So you haven't sought advice on that yet?

MR BRETON: No.

25

MS McDONALD: When it - the 28 days for consultation, who is that with? Is that with staff or -

30 **MR BRETON:** All staff. And I - yeah, all staff. And given the interface with ARIC, I wouldn't be shy about sending them a copy as well and showing them.

MS McDONALD: So ARIC at the moment don't - haven't been told about this proposed increased participation by them?

35 **MR BRETON:** Yeah, I think in the last meeting I forecast something in the minutes in relation to a closer relationship.

MS McDONALD: All right. That was in the July meeting?

40 **MR BRETON:** Yep.

MS McDONALD: But you didn't put to them in the July meeting your "better business" with that - whatever the diagram is on page 10?

45 **MR BRETON:** No. No.

COMMISSIONER: It would be valuable, wouldn't it, to get their input to make sure they're - they see it as consistent with their role and function?

5 **MR BRETON:** Yes. Valuable. I know they're - they have been, in my conversations with them, very encouraged about the - my concept - are we getting real value out of the ARIC.

MS McDONALD: Can you excuse me for a minute. There's no further questions.

10 **COMMISSIONER:** Mr Breton, thank you. I'm sorry.

MR PARISH: There's one issue which arose out of re-examination there which, from my point of view, is worth clarification, and will only take three questions -

15 **COMMISSIONER:** All right.

MR PARISH: - that would assist.

20 **COMMISSIONER:** I jumped the gun, Mr Breton. I thought we thought we were there.

MR BRETON: Okay.

25 **COMMISSIONER:** Yes.

MR PARISH: Thank you, Commissioner. You were asked some questions about exercising a discretion to deny access to information (indistinct) councillors based on a discretion you might have. Do you recall that a few minutes ago?

30 **MR BRETON:** Yes.

MR PARISH: And questions about whether or not that might conflict with the obligations of democratically elected councillors. Do you recall that?

35 **MR BRETON:** Yes.

40 **MR PARISH:** From your recollection or knowledge, is there any obligation under section 232 of the Local Government Act for the councillors to represent the interests of individual constituents?

MR BRETON: I - not from my recollection. If you'd point me to a specific section? But -

45 **MR PARISH:** Well, we can bring it up just very quickly. Section 232 of the -

COMMISSIONER: Requires them to be representatives of all.

MR PARISH: Of all.

COMMISSIONER: Yes.

5 **MR PARISH:** Yes. Right. I'll let you have a look at it before I ask any further questions.

MR BRETON: All right. Okay.

10 **MR PARISH:** You've got 232 in front you now, hopefully.

MR BRETON: Yes.

MR PARISH: And you'll see subsections (a) to (g).
15

MR BRETON: Yes.

MR PARISH: Those are the obligations or roles of the councillor. Do you see that?

20 **MR BRETON:** Yes.

MR PARISH: And subsection (d) is to represent collective interests of residents, ratepayers of the local community, which was the subsection that the Commissioner just referred to.
25

MR BRETON: Yes.

MR PARISH: There is no obligation due to your role in any of these for a councillor to make representations or in any way approach council on behalf of individual constituents, is there?
30

MR BRETON: No, it doesn't say individual constituents.

MR PARISH: And are there other procedures available to constituents to obtain information from council if they wished?
35

MR BRETON: Yes.

MR PARISH: Is GIPA an example of that?
40

MR BRETON: That's one, yes.

MR PARISH: Thank you. That's all I wished to clarify.

45 **MS McDONALD:** The tension that I referred to in my questions - the tension, if you describe it as representing the collective interests of residents, ratepayers and local community, could still potentially arise?

MR BRETON: Yes.

MS McDONALD: And I failed to ask one -

5

COMMISSIONER: Okay.

MS McDONALD: - question. You were asked some questions about - I think I can do this in open session - about Councillor Dr Betty Green and that complaint?

10

MR BRETON: Yes.

MS McDONALD: And I think my learned friend put to you what type of complaint - whether it was against staff or councillors. Do you remember that?

15

MR BRETON: Yes.

MS McDONALD: Regardless of whether it was a complaint against a councillor or a staff member, the complaint should, to the best of the council's ability, be dealt with as quickly as possible?

20

MR BRETON: Yes.

MS McDONALD: And there should be reporting back to the complainant, informing him or her of where it's up to, what's happening with it?

25

MR BRETON: Correct.

MR TYNAN: I think that's it, Commissioner.

30

COMMISSIONER: All silent. All done. Mr Breton, that completes your evidence for the moment. As you would be well aware, I'm asked not to excuse anyone. But for the moment, that's your evidence. I'm very grateful for your attendance and assistance over multiple days, and you're free to go for the moment.

35

MR BRETON: Thank you.

COMMISSIONER: Thank you.

40

<THE WITNESS WITHDREW

COMMISSIONER: We'll get Councillor Harle back. Ms McDonald, we're being evicted from this building today, so we'll need to finish so that the infrastructure can be removed at about 10 to or quarter to 4.

45

MS McDONALD: Yes.

COMMISSIONER: Thanks, Councillor. Just come forward.

<PETER HARLE, ON FORMER OATH

5 **COMMISSIONER:** Yes, Ms McDonald.

10 **MS McDONALD:** Councillor Harle, before lunch I was asking you a series of questions and we'd come to - it was under the umbrella of termination of CEOs of the Council, and we were looking at Mr Ajaka. I had asked you some questions about, in April, you learning about - I think we described it as the swearing meeting - and you gave - I think you just had given evidence about being contacted by Mr Ajaka and attending a meeting with him and Councillor Dr Betty Green. Was that held in Mr Ajaka's office?

15 **MR HARLE:** Yes.

MS McDONALD: You gave an account of what was discussed in that meeting. Was your view that Mr Ajaka contacted you and the other councillor just to explain what was going on?

20 **MR HARLE:** Yes.

MS McDONALD: Did he ask you or the other councillor to do anything?

25 **MR HARLE:** No.

MS McDONALD: So it was purely - and I'm just - something along the lines of, "You might have heard rumours," or something like that. I think your answer was no, you hadn't. And he then, I assume, gave an explanation of his account.

30 **MR HARLE:** Yes.

MS McDONALD: All right. After that - excuse me for a minute. After that meeting with Mr Ajaka, there is the council meeting towards the end of April?

35 **MR HARLE:** Yes.

MS McDONALD: I think 24 April. In the lead-up to that meeting, did you have any further conversations or communications with Mr Ajaka?

40 **MR HARLE:** Not that I can recall, no.

MS McDONALD: What about from the mayor about the particular issue that arose from the swearing meeting?

45 **MR HARLE:** I don't recall. I don't believe I did.

MS McDONALD: So did that then lead to the council meeting of 24 April?

MR HARLE: You're talking about the dismissal? Yes.

5 **MS McDONALD:** The meeting of 24 April where there was a mayoral minute -

MR HARLE: Yes.

10 **MS McDONALD:** - put forward which dealt with - I'll put it broadly - Mr Ajaka's employment.

MR HARLE: Yes.

15 **MS McDONALD:** And do you recall at that meeting, at some point, there was - a mayoral minute was produced or raised and the meeting had to go into a closed session?

MR HARLE: Yes.

20 **MS McDONALD:** In - and maybe if we bring - excuse me for a minute. Right. Can we bring up, please, LCC.004.004.7403.

ASSOCIATE: (Indistinct).

25 **MS McDONALD:** INQ.001.001.1065. Sorry. And it can be live streamed. You can see that was the council agenda?

MR HARLE: Yes.

30 **MS McDONALD:** Can we move through, please, to page 4. Now, this is the order of business. Now, the order of business - it has the usual acknowledgment of country and prayer, national anthem, apologies. And then confirmation of minutes, declaration of interest. Then you've got public forum and then mayoral minutes. You can see that?

35

MR HARLE: Yes.

40 **MS McDONALD:** And the public forum, that is where members of the public, I think, who have registered an interest or -

MR HARLE: Yes.

45 **MS McDONALD:** Are allowed to get up and address the Council on a particular issue for a designated period of time?

MR HARLE: Yes.

MS McDONALD: In your experience as a councillor, where the order of business has been published beforehand, is it usual for the council to follow it?

MR HARLE: Yes.

5

MS McDONALD: If there are suddenly changes in it, that usually has to be moved from the floor, does it?

MR HARLE: Yes.

10

MS McDONALD: But it's your experience that the designated order of business as contained in the agenda should be the one that's followed?

MR HARLE: Yes.

15

MS McDONALD: Do you know who determines the order of business?

MR HARLE: That's a good question. I think the agenda is determined by, I think, procedures - that the CEO - the CEO sets - the agenda is - or follows specific guidelines and it's - it follows that procedure. So there's - very rarely is there a change to that. If you're asking what determines a change, councillors from the floor can ask to change the order of the meeting. You may move - for argument's sake, if we have a forum and you have people who are - or constituents who are specifically interested in subject matter - rather than have that at the end of the meeting, we move that to the beginning of the meeting, becomes a notice of motion and councillors generally agree.

20

25

MS McDONALD: All right. I'll bring up the minutes of this meeting. And that was INQ.001.001.1099. These are the minutes. If I can do it this way - if you can go through to page 10. And I'll ask you some more questions about this shortly. Can you see that's the closed session, the confidential mayoral minute?

30

MR HARLE: Yes.

35

MS McDONALD: And even just looking at the recommendation, you can see that it concerns Mr Ajaka's contract of employment?

MR HARLE: Yes.

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MS McDONALD: But if we go from that page to page 11, you can see you've still got that topic, in a sense, being -

MR HARLE: Yes.

45

MS McDONALD: - included in the minutes. Then can you see at the bottom - towards the bottom of that page, a recess was called at 5.17?

MR HARLE: Yes.

5 **MS McDONALD:** Then meeting resumed at 5.40. And then if we jump to the next page, you've got a recess. It then resumes at 6.05. And then you move to the public forum. So that - the public forum proceeded - was interrupted by the mayoral minute?

MR HARLE: Yes.

10 **MS McDONALD:** Do you recall how that, in a sense, change in the agenda occurred? Or is it because it was a mayoral minute it could just be introduced at any time?

15 **MR HARLE:** I don't recollect as to why that was done. I didn't challenge that. It - I assume that's how it happened.

MS McDONALD: All right. So because suddenly a mayoral minute was raised and you moved into a closed session, that, in a sense, trumps the order of business?

20 **MR HARLE:** Yes.

MS McDONALD: And if it is going to interrupt the order of business in that way - because it's via the introduction of a mayoral minute, that would be very much in the hands of the mayor?

25 **MR HARLE:** Yes.

MS McDONALD: All right. As you could see from the minutes, you move to a closed session to discuss a mayoral minute. I'll bring up this document, please.
30 LCC.002.004.0308. Yes, please. You can see from the first page it's entitled Mayoral Minute Confidential. And if we move to page 2, can you see there there is typed text entitled Mayoral Minute?

35 **MR HARLE:** Yes.

MS McDONALD: Subject, "Chief executive officer", et cetera.

MR HARLE: Yes.

40 **MS McDONALD:** But you'll see in handwriting on the left-hand side, "Mayor"?

MR HARLE: Yes.

45 **MS McDONALD:** And if we move through the document - if we move through to page 15 - can you see there the same typed text, but we've got "Harle" written in handwriting in the left-hand top?

MR HARLE: Yes.

MS McDONALD: Is it your recollection that when you moved into closed session, were typed copies of this mayoral minute distributed to the councillors?

5

MR HARLE: Yes.

MS McDONALD: And as a matter of security, are you required to write your name on the document?

10

MR HARLE: I did not write my name there. I - no, I - it was a matter of security to do that. And in this case, that document would have been left on my desk.

MS McDONALD: Right.

15

MR HARLE: And someone would have written that on there to say that they'd collected that from my desk, yes.

MS McDONALD: All right. Now, as you can - you've obviously read this mayoral minute in the past?

20

MR HARLE: Yes.

MS McDONALD: And if - just very quickly looking at it, it raises the meeting of 16 April?

25

MR HARLE: Yes.

MS McDONALD: It raises that, as a result of this occurrence, the mayor and the deputy:

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"Myself and the deputy mayor are concerned for our safety."

MR HARLE: Yes.

35

MS McDONALD: And:

". Has caused us significant distress and anxiety."

40

MR HARLE: Yes.

MS McDONALD: And then it refers to work health and safety matters, and then towards the bottom of the page it raises part of clause 9.8 of the employment agreement whereby:

45

"The council may grant special leave to the employee."

MR HARLE: Yes.

MS McDONALD: And then it says:

5 "The public seem to think I will be moving a motion to fire the CEO. But despite recent events, I have no intention of doing so."

And then, if we go across the page, we've got the recommendation.

10 **MR HARLE:** Yes.

MS McDONALD: That, basically, putting to one side (2) and (3), is Mr Ajaka will go on leave with pay until the investigation is conducted and completed, effective immediately?

15

MR HARLE: Yes.

MS McDONALD: And was it your understanding that the investigation referred to there was going to be an investigation into - sorry, if we go back to page 15, under the paragraph that commences "this is completely unacceptable and requires an immediate investigation". Sorry, I've jumped round. Can you see that?

20

MR HARLE: Yes, I can see that. Yes, thank you.

25 **MS McDONALD:** And that would appear to relate back to the swearing meeting -

MR HARLE: Yes. Yes.

MS McDONALD: - and matters that occurred afterwards. For example, as the mayor states:

30

"Failure to retract the statement and apologise."

MR HARLE: Yes.

35

MS McDONALD: Now, can I just ask you when you've moved into closed session and this is presented to you, is this the first time you've seen it?

MR HARLE: I believe so.

40

MS McDONALD: Before you moved into the closed session and were shown this, was it discussed with you by the mayor or any other councillor that this type of recommendation of leave and investigation was going to be pursued?

45 **MR HARLE:** No. Not that I recollect in any case.

MS McDONALD: Okay. So your recollection is the first time you're confronted with this is when you move into the closed session?

MR HARLE: Yes.

5

MS McDONALD: Excuse me for a minute. Sorry. Could you just excuse me for a minute. There was debate in - within the closed session about this?

MR HARLE: Yes.

10

MS McDONALD: What was - did you speak during the debate, or -

MR HARLE: Yes.

15

MS McDONALD: What was your position on this?

MR HARLE: My position basically was that I do not believe that these were grounds, sufficient grounds, to terminate the CEO.

20

MS McDONALD: Termination isn't being put forward. It's this proposal of he goes off on special leave with pay and some kind of investigation is undertaken.

MR HARLE: Yes.

25

MS McDONALD: Did you agree with that?

MR HARLE: I don't - to be honest, I don't remember. They were - it got fairly heated, and I knew what the overall intention was and that was based on the previous meeting that I had with - Betty and I - Councillor Green and I had with the CEO.

30

We - I think we understood what was - what this was leading up to. And, quite honestly, I thought that it was wrong. And, as stated in this documentation here, that using those words, in my opinion, and others', is that that's not sufficient grounds to what the process was going to be.

35

MS McDONALD: When you - in that answer, you referred to "I knew what" - I'm paraphrasing, "I knew what the actual intention was."

MR HARLE: Yes.

40

MS McDONALD: "I knew what the ultimate intention was." What, in your mind, was the ultimate intention?

MR HARLE: To terminate the CEO.

45

MS McDONALD: Now - sorry. If I take you back to the minutes, which was INQ.001.001.1099. All right. And if you go to page 10. You've got the

recommendation there, which also now includes that Mr Breton would be appointed as the acting chief executive officer?

MR HARLE: Yes.

5

MS McDONALD: And then there's some additional matters that are being sought to be investigated, including issues raised and feedback provided by the USU representative with the mayor and offensive chants made by attendees in the public gathering?

10

MR HARLE: Yes.

MS McDONALD: And if we go to the next page, that recommendation was put. It was declared carried, a division was called. You're recorded there as voting in favour of it?

15

MR HARLE: Yes, I did.

MS McDONALD: From - the evidence you gave just then, was that when you were in the closed session you were against it?

20

MR HARLE: Yes.

MS McDONALD: You changed your mind? Or - sorry. I'll withdraw that.

25

MR HARLE: Yes.

MS McDONALD: Ultimately, you voted in favour of it. Why did you vote in favour of it?

30

MR HARLE: A good - a good question. I had other thoughts about all of this and I think I went along with the majority. I was speaking to other councillors who were on - next to me, and, to be honest, I don't remember entirely why I thought about it, but that's - I voted that way. I can't exactly remember why I changed my mind. I still knew what the overall intention was, and at the time, maybe followed the process and see what happens.

35

MS McDONALD: Or indeed the investigation that was envisaged -

40

MR HARLE: Yes.

MS McDONALD: - may make findings or recommendation which may be contrary to your view of what the ultimate intention was?

45

MR HARLE: Yes.

MS McDONALD: All right. Now, after that meeting, there was a period of time leading up to the meeting in - the council meeting in May?

MR HARLE: Yes.

5

MS McDONALD: And at the council meeting at May - in May, do you remember there was another mayoral minute, but this time seeking the termination of Mr Ajaka's employment?

10 **MR HARLE:** Yes.

MS McDONALD: Again, if we can get the - I'll just bring up the minutes, which is INQ.001.001.1105. And if we can go through to page 51. And can you see there the recommendation this time that Mr Ajaka's contract of employment be terminated, but
15 without notice and with immediate effect. And under a particular clause of the employment contract, which in a sense is termination with cause, so it's like a summary dismissal?

MR HARLE: Yes.

20

MS McDONALD: Unlike Dr Jackson, where his contract was terminated without cause and -

MR HARLE: Yes.

25

MS McDONALD: - gave him at least an entitlement to 38 weeks. This, in substance, was a summary dismissal.

MR HARLE: Yes.

30

MS McDONALD: Now, in the lead-up to this meeting, did you know that this was going to be presented to you, this mayoral minute was going to be raised?

MR HARLE: I don't believe I did.

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MS McDONALD: I think you gave evidence that, back in the April meeting, you had in your mind what you thought the ultimate intention was going to be, which was to terminate the contract. Here the termination has taken a particular form, that is, in
40 substance, a summary dismissal?

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MR HARLE: Yes.

MS McDONALD: Did that go - did you know that that was going to be the substance of the motion?

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MR HARLE: No, I didn't. But I have - I recognised the pattern and what has happened. And over the years, a number of CEOs were terminated, and that appeared

to be a pattern that was happening in this instance. This is another case of another CEO being terminated for whatever reason. And, as I said, I've been there since 2008 and I have seen, or witnessed, 10 CEOs being terminated. And this pattern was very similar. Yes. I think I'll leave it at that.

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MS McDONALD: You'll remember the April mayoral minute, and the resolution referred to an investigation being undertaken?

MR HARLE: Yes. Yes.

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MS McDONALD: Were you aware by 29 May that that investigation had been started by the engagement of an outside organisation called Weir?

MR HARLE: Yes.

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MS McDONALD: So you knew they had been engaged?

MR HARLE: I didn't know that they had been engaged at the time. I did read the report. I saw the Weir report and their recommendations. Now, I'm not sure when that occurred, whether that occurred before this or after this. I'm not sure of the times and dates, but I did see the results.

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MS McDONALD: All right. And this isn't being critical; while we've been waiting to resume your evidence, were you watching it - what was occurring or the evidence being given in one of the rooms outside?

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MR HARLE: No, I don't recall that. No.

MS McDONALD: Okay. We've heard evidence that there were - if I put it broadly again - kind of, three variants of a report by Weir?

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MR HARLE: Yes.

MS McDONALD: And the first one I wanted to raise with you was an interim fact-finding report which was published on 27 May. If we can bring up, please, LCC.008.001.0023. And while that's coming up, if I can just indicate to you, after the interim report there's, kind of, a draft final report and then a - kind of, an amended final report, but that doesn't occur until June?

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MR HARLE: Could be, yes.

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MS McDONALD: And if you have a look here, you can see it's a confidential interim fact-finding report by Mr Peter Harvey of 27 May 2024. It's only five pages. Maybe if we can just have a quick look. And maybe to assist you, if we keep on going. Maybe if we stop at - sorry. 1.4 sets out the fact-finding process to date. So there's been some interviews, some background information, the interim report's

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been completed. And then if you keep on going. Under 1.8, there's Interim Observations and Conclusions and it talks about the swearing.

MR HARLE: Yes.

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MS McDONALD: And then if - you can see then:

"The CEO's comments were uncharacteristic and do not form a pattern of behaviour."

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And then the recommendation is that the council waits for the outcome of the final fact - sorry, the final fact-finding report.

MR HARLE: Yes.

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MS McDONALD: Now, I know it's a couple of years ago, but thinking about it, when you were attending that council meeting towards the end of May, had you seen this interim fact - the interim report?

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MR HARLE: I don't recollect, to be honest. I don't - I don't remember.

MS McDONALD: Is that an appropriate point?

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COMMISSIONER: Yes. Councillor, before you came in I rather flippantly remarked that we're being evicted from the building. We're not being evicted, but our time here has come to an end and we need to remove all the infrastructure, so we need to finish a little bit earlier. That means that when we resume, which I hope will be as soon as possible - whether here or someone else - we'll need to continue with your evidence. But I'm most grateful for your attendance today, and for your patience while we had to interpose Mr Breton to get him finished. And I'll see you again hopefully in the not-too-distant future, but you're free to go for the moment.

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MR HARLE: Thank you very much. Thank you, Commissioner.

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COMMISSIONER: Thank you.

<THE WITNESS WITHDREW

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COMMISSIONER: All right. Thank you, everybody. I will adjourn to a date to be fixed, which I hope will be able to be announced in very short time - is how I'll put it. All right. Thank you.

<THE HEARING ADJOURNED AT 3.51 PM