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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION CAVILL

Reference: Operation E12/1191

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 16 JULY 2013

AT 2.12PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

MR GREEN: Commissioner, we can't hear at the back at all.

MR DOWNING: I'm sorry, I'll try and get a bit closer to the microphone?

ASSISTANT COMMISSIONER: Is that better?

10 MR GRIFFIN: It is.

MR DOWNING: Just before lunch I was asking you about the actual meeting you had with Councillor Petch at Delitalia on 1 February?---Yes.

But prior to that at the end of your phone call earlier that day you indicated to Mr Petch in plain terms didn't you that he shouldn't inform the press of anything to do with these allegations until you'd done your due diligence and determined a strategy?---Ah, yes.

20 Now, you met with him later day at around lunchtime at Delitalia?---I think that's right, yes.

Can I ask you to have a look at some images. Do you recognise that as you and Councillor Petch at Delitalia?---Yes, that's what, certainly what it looks like.

If you can look at the next page, 844 please. You again with Councillor Petch?---Yeah.

30 846, you again with Councillor Petch?---Yes.

Now, that shows you on the phone during the meeting. Do you recall whether you called anyone during the meeting with Councillor Petch?---I don't.

Are you able to assist us at all into, as to who you were speaking to at that time?---No idea.

40 And if we could go to 848 and is that you leaving the meeting with Councillor Petch?---It looks like it, yes.

Now, at that meeting did he give you some discs?---Yes, and that looks like them in my hands I think.

Did he give you any still images?---Yes.

Commissioner, at this point can I tender as well as those documents there's a bundle of documents in respect of Mr Belling, some of which I'll be referring to further documents as we conclude his evidence.

ASSISTANT COMMISSIONER: So as one exhibit or - - -

MR DOWNING: As one exhibit. What they contain are the surveillance stills which I've just had Mr Belling shown, an email from Mr Belling to Ivan Petch of 11 March, 2013 enclosing a deed of release signed by Ivan Petch and John Neish on 8 February, 2013, a letter from Bryan Belling to Ivan Petch of 11 April, 2013 enclosing an email from Nick Klein and a report from Nick Klein of Klein & Company which is said to be dated 5 April, 2013 but that must be an error, it must be April 2013 and a letter from Bryan Belling to Nick Klein dated 11 April, 2013. They're the documents. I'll have copies made available to the parties.

ASSISTANT COMMISSIONER: Yes. Those documents will be Exhibit 11.

20

**#EXHIBIT 11 - SURVEILLANCE STILLS OF 1/2/2013, EMAIL FROM MR BELLING TO MR PETCH DATED 11 MARCH 2013 ENCLOSING DEED OF RELEASE, LETTER FROM MR BELLING TO MR PETCH DATED 11 APRIL 2013 ENCLOSING EMAIL FROM MR NICK KLEIN AND LETTER FROM MR BELLING TO MR KLEIN DATED 11 APRIL 2013**

MR DOWNING: Now, in the course of that meeting can you tell us what Councillor Petch told you beyond what he told you on the phone earlier that day?---I can't, I can't. I think a bit of it would have been repetitive, but I can't really remember the conversation very clearly, although I certainly recall saying to them that we needed to check the provenance of the information because it was entirely possible that in the dynamics of an employment situation that, that the General Manager may have been set up.

Did you say anything to him to the effect that he should not go anywhere near the press with this information?---I, I just don't remember that. I don't, I don't -- I may well have, I just don't recall one way or the other. I certainly had no apprehension, Mr Downing, that he would, yeah.

Do you recall whether at that meeting you had a discussion with Mr, with Councillor Petch about having a particular person or organisation check the disc?---Yes, yes, I certainly had that conversation with him.

And what did you say?---I, I said that I had a person who I'd known and used in other similar situations who was an IT expert who should have a look at the disc and, and -- as to its provenance.

And what did Councillor Petch say to you?---Well, he agreed with that, that that should occur on the advice I tendered.

Can you recall anything else discussed at that meeting?---Not really, I, I can't even remember how long the meeting was frankly, but I don't recall what else we discussed.

Are you familiar with John Booth?---No.

10

Have you ever met John Booth?---I may have but I don't remember.

Do you recall whether he might have been present with Mr Petch on the day that you met with him at Delitalia, 1 February, 2013, when you arrived?  
---Oh, I don't remember.

20

Now, it's the case isn't it that you obtained instructions from Councillor Petch at or around this time, or in early February 2013, I should say, to assist in drafting a deed of separation?---Yes, I think, I think that instruction came on either the 6<sup>th</sup> or the 7<sup>th</sup>.

But just going back, so the instructions to have the forensic analysis of the discs undertaken, that was obtained at the meeting on 1 February?---Yes, yes.

And did you- -?---Obtained or confirmed, I just can't remember which, we may have talked about it earlier.

30

Well, wasn't the phone call earlier that day the first time you knew about the discs?---Yes.

Well, there couldn't have been any earlier conversation?---Well, that's true, that's true, so it would have been at that meeting.

And did you then undertake to, or did you then contact Klein and Company and ask for the analysis to occur?---Yes.

40

Now, going back to the deed of separation, could I ask you to have a look at the documents at page 782 and following of the exhibit – I'm sorry, Commissioner, were the documents in respect of Mr Belling given Exhibit 11?

ASSISTANT COMMISSIONER: I beg your pardon?

MR DOWNING: Were the documents in respect of Mr Belling that I just tendered, were they made Exhibit 11?

ASSISTANT COMMISSIONER: Yes, that's right.

MR DOWNING: Sorry. So it's page 782 of Exhibit 11. Do you recognise that as an email that you sent to Councillor Petch on 11 March enclosing the deed of release?---Yes.

Now, you drafted the deed of release and separation and you'll see that the actual first page of it is at the following page?---Yeah, in truth I settled I think one of my lawyers, Mr Neish, Mr Zeng probably drafted it I'd say.

10 Can I ask you just to have a look at page 784. Do you see under the what I'll describe as the background or the recitals G refer to the fact that Ryde Council alleges that Mr Neish on or around 1 February 2013 breached Ryde Council's Code of Conduct?---Yes.

And that defined that as the allegations - - -?---Yes.

- - - and noted that Mr Neish doesn't admit the allegations?---Yes.

20 Can I ask what part of the Code of Conduct did you understand or were you instructed that Mr Neish had breached?---I can't tell you expressly but what that recital is intended to catch is in very broad terms the allegation of the misuse of the Council's laptop computer.

So did, did you not check the Code of Conduct to find a relevant part that it was, it might be suggested that he might have breached?---I, I didn't personally, no.

30 Well did you call someone else to?---Yeah, I would have asked Mr Zhang to do that but what, what we're after is a euphemistic description for looking at pornographic material really.

Well this deed, you're aware aren't you was signed by both parties on 8 February 2013?---I think that's right, yes.

If you go to page 784 or the page we're still on at the top it's dated that date. If we just scan up?---Yes.

40 And you were aware weren't you that it, it provided that whilst Mr Neish's employment was to continue until 28 February 2013 he wouldn't in fact be attending work over that time?---That's so, yes.

That he'd just be paid - - -?---Yes.

- - - for that leave?---Yes.

So his employment under this deed came to an end on the 28 February 2013?---I think that's technically correct, yes.

Well have a look just, just so that I'm not misleading you?---Yeah.

Please have a look at page 786 under clause 4.1 particularly 4.1a and c?  
---Yes.

Now it's the case isn't it that despite Mr Neish's employment coming to an end on 28 February - - -?---Yes.

10 - - - you continued to have Klein & Company undertake the forensic examination for some time longer?---Yes.

And is it correct that you ultimately got the report from Klein & Company and I'll, I'll again so there's no mystery I'll ask you to have a look at page 794 on or about 5 April 2012?---Yes.

So is it the case that he remained that is Mr Klein instructed to do the forensic analysis up until that point?---Yes.

20 Can I ask you what was the purpose of obtaining forensic analysis once Mr Neish's employment had ended that is as at 28 February 2013?---Firstly I, I didn't know at that time of any admission by Mr Neish that he had looked at, at any of those websites and secondly I was concerned that if, if he were being set up by another staff member that we should try and identify that staff member or staff members could be dealt with.

But is this the case you've told me already you were already aware of the Code of Conduct and the complaint handling procedures?---Yes.

30 They provided for a range of penalties where people have breached the Code?---Yes.

Everything from censure through to termination of employment?---Yeah.

Well in circumstances where Mr Neish's employment had come to an end what was the purpose as you understood it of continuing to have the document, the - - -?---To - - -

40 - - - discs forensically examined?---To see whether or not there are any issues involving other staff members because it was entirely possible that Mr Neish had not been viewing any websites and that he'd been set up and trapped or - - -

But, but you understood that he ceased his employment?---That's true but, but, but - - -

Well why did it matter if, if you'd, if you uncovered - - -?---But it didn't - - -

- - - material to suggest that Mr Neish, that others might have accessed the material?---Because at that time there was still an outstanding question as to how that CD and the material to which it referred had come into existence and it's entirely possible that the IT manager or some member of the IT team had had actually falsely created it if I can put it that way.

But isn't this the case that assuming for the sake of argument that it was genuine and it had been accessed that the material had been accessed by Mr Neish - - -?---Yes.

10

- - - the end point in terms of consequences for him would have been termination of employment?---Yes.

That had happened?---Yes.

Well what was the point of pursuing the forensic examination further?  
---Because it may have, because we didn't know at that time including on 28 February as to whether or not that information about him had been fabricated by others.

20

Well what, were you contemplating having him reinstated if it showed that it had been fabricated?---No, not at all because, because Mr Neish had lost the confidence of the Chamber, he wasn't, his contract wasn't terminated for the reason that he looked at the websites.

But I'm having some difficulty understanding what you're telling me, Mr Belling. Is this the case, you, you had instructions from Mr, Councillor Petch in respect of this matter, that is pursuing the forensic examination of the material?---Yes.

30

Those instructions continue, that is you continue to be instructed to have the material forensically examined until you got the April?---Maybe I could put it this way, the forensic examination of the material ceased to be a matter only related to the employment of Mr Neish and continued to be a matter that may or may not have concerned other members of staff.

Had you had any information from Councillor Petch or anyone to suggest that it might involve other persons?---Yes, I mean, absolutely because the information was brought forward by the IT manager purporting to show that, that Mr Neish had been in, in breach of Code of Conduct obligations of being using a laptop computer, a tool of trade computer to view pornographic websites.

40

But you understood that that was a laptop that Mr Neish had at home?  
---Yes.

Well, are you suggesting that there was some information that raised the possibility of other persons having used that computer too?--- Yes, because

the laptop was brought into Council for a virus scan and it was during the course of that virus scan as I was instructed that this information was uncovered.

But, but given that Mr Neish had gone what would, even if you uncovered information to suggest that others had looked at it or that it had been falsified in some way what was the consequence?---Well, no consequence for Mr Neish but, but in the event that the material that given to Councillor Petch was material created by persons other than Mr Neish there was an employment issue concerning those authors to be considered.

Now, it's the case isn't it - oh, I'll withdraw that. Do you recall on 8 February, 2013 receiving a voice message on your phone from Councillor Petch?---No, not expressly but I'm not saying it didn't happen, it could well have happened.

Perhaps I could play you some audio and also the transcript should come up as well.

20

**AUDIO RECORDING PLAYED**

**[2.27pm]**

MR DOWNING: Now, having heard that and seen the transcript do you recall getting that message from Councillor Petch?---I have to say I don't but I obviously did get.

The greeting at the beginning is your phone isn't it?---Yes, it's certainly my phone and that very - - -

30

You recognise - sorry?--- - - - very, very annoying admonition, you know, to leave a message or - yes.

And you recognise the voice of Councillor Petch don't you?---I do.

Commissioner, at this point I tender the audio and the transcript but there is one word which I think has been mis-transcribed. In the first line of Councillor Petch's message it says "We're all allayed", I think it was pretty plain it was "elated".

40

ASSISTANT COMMISSIONER: Elated, yes.

MR DOWNING: So I'd ask that that be corrected and I tender the audio and the transcript.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 12.



**#EXHIBIT 12 - COPY OF AN AUDIO CASSETTE AND  
TRANSCRIPT OF A TELEPHONE CALL FROM MR PETCH TO  
MR BELLING ON 8 FEBRUARY 2013**

MR DOWNING: Now, I appreciate you say you don't have a recollection now of receiving that but you don't, I don't take – I take it you received- - - ?---No, I don't deny it, I don't deny for a moment I, I- - -

10 You check your messages regularly, don't you?---Not as regularly as I should but I do check them, yeah.

Well, you check them from time to time?---I do, I do.

And in this message would you agree with me that Councillor Petch was referring to appointing an Acting General Manager?---I think that's the meaning of it, yes.

20 And you were aware from your dealings with him at the time that the person who he had in mind was Danielle Dickson?---I wasn't actually.

You're aware that she was appointed- - -?---Yes.

- - -Acting General Manager?---Yes.

30 Now, in the message did you also understand having heard it now that what Councillor Petch was indicating was that he would appoint her as Acting General Manager, but only on condition that she would immediately sack Bruce McCann?---That seems to be what it's saying, yes.

Now, you were familiar with Bruce McCann is the counsel, general counsel for Ryde Council, weren't you?---I, I, I was – don't ask me when I became aware of that but I was aware of that at some stage certainly.

In the course of you acting for the Council?---Yes, yeah.

40 Now, can I ask you, would you regard it as an appropriate matter for Councillor Petch to impose as a condition on the appointment of Ms Dickson as Acting General Manager the requirement that she would have to sack Mr McCann?---I can't really answer that in any reliable way, Mr Downing, because it's contextual, there may, there may well be circumstances when it's justified or not justified so I just don't know.

Well, did you give Mr, did you give Councillor Petch any advice about whether that was an appropriate condition to impose on Ms Dickson's appointment as Acting General Manager?---I don't recall ever doing that actually, I – to the best of my recollection I didn't.

Would you agree that questions of whether a staff member like Mr McCann, who was general counsel, should be sacked or disciplined or whether his performance might merit some review- - -?---Yes.

- - -would be matters that would properly be dealt with under a person's contract?---Ah, yes, and also under the chapter 11 arrangements under the Local Government Act, yes.

And the Code of Conduct?---Yes.

10

But without more suggesting that someone should be, should, should – I with draw that. Without more imposing a condition on an Acting General Manager that you can have the job on the basis you get rid of this person, that wouldn't be appropriate, would it?---It may or may not be, it's impossible to answer in, in the abstract I think.

20

So are you able to say whether you gave any advice to Councillor Petch that questions of staff performance, termination of employment were matters properly to be dealt with under the contract, relevant contract of employment, the Act and the Code of Conduct?---Ah, I can't recall having any, any particular conversations about that issue other than related to Mr Neish, I must say, but it's possible that I did.

Sorry, Commissioner. We do have the documents that constitute the last tender, that's Exhibit 12 – I'm sorry Exhibit 11. There's a problem with one of the copies and Mr Prince informs me it can be rectified very promptly so that we can make it available to parties.

30

ASSISTANT COMMISSIONER: Yes.

MR DOWNING: At this stage might we just have a moment to do that? I apologise for interrupting the hearing further but I'm informed that we need to do that in order to have the proper copy attended to.

ASSISTANT COMMISSIONER: Does it need to be done now?

MR DOWNING: It would depend on whether the parties wish to cross-examine Mr Belling. I'm finished my examination of him.

40

ASSISTANT COMMISSIONER: Well, I don't really know – well, does anybody, will anybody seek to cross-examine Mr Belling?

MR HYDE: Yes, I will, Commissioner.

ASSISTANT COMMISSIONER: You will. All right. Well, we'll, you want to adjourn for a few minutes, do you?

MR DOWNING: It would only be two minutes in order for the copies to be attended to.

ASSISTANT COMMISSIONER: Yes. All right. Well, we'll adjourn for a short period.

**SHORT ADJOURNMENT**

**[2.34pm]**

10

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MR DOWNING: Thank you, Commissioner. With further copies being done and it's, two particular passages on pages 792 and 793 which are now blacked out but not entirely successfully, they relate to matters that are of no interest to the Commission. Could I just simply ask that there be a suppression order in respect of those. I'm happy to have you see, Commissioner, what those two matters relate to on copies that aren't masked but they're simply, they are still visible if one reads them.

20

We've got the original tab which is not redacted and then a version which, 792 and 793 which are but unfortunately not entirely successfully.

ASSISTANT COMMISSIONER: Is anybody other than Mr Hyde wanting to cross-examine this witness? Well perhaps we can just give him a copy. I'm not really comfortable handing them out if the matter has not been - we can successfully do it later and give it to the other parties but nobody needs it now if they're not going to cross-examine.

30

MR DOWNING: Thank you, Commissioner.

ASSISTANT COMMISSIONER: So perhaps if you can just give a copy to Mr Hyde.

MR HYDE: Thank you, Commissioner.

Mr Belling, I think your evidence is that you first met Councillor Petch early February 2013?---Early January.

40

Early January, sorry?---Yeah.

And is it the case that you provided a retainer letter to Mr Petch on or about the 15 January 2013?---Not sure of the date but it was about that time, yes.

And what did you understand your retainer was when you were first retained?---It, it was to advise in relation to the determination is perhaps the neutral way of putting it, the determination of the, of the contract of

employment of Mr Neish notwithstanding the fact that undertakings were given to the Supreme Court not to do that.

And your advice to Councillor Petch was that Mr Neish's employment could not be terminated at that point in time that is in February, January, correction?---Up, up until 1 February, yes.

10 All right. And I think in your evidence you said that the relationship between Mr Neish and the Council had broken down. What was, what were you told about the basis upon which the relationship had broken down?  
---Prior to the September election - - -

ASSISTANT COMMISSIONER: Sorry. What is the relevance of this, Mr Hyde? Do we care why the relationship had broken down? I don't think we do. What, what does it go to that we have to determine?

20 MR HYDE: well it goes to the nature of the advice that Mr Belling then gives to Councillor Petch regarding how he might treat Mr Neish in terms of his employment contract. Perhaps I won't take it any further at this point and I'll, I'll ask this question.

Mr Belling, for the purposes of advising Mr Petch on the employment of Mr Neish did you have regard to Exhibit 2 and in particular the terms of the employment contract which is located at page 25 of Exhibit 2?---The Exhibit 2 is the employment contract?

Yes. Amongst other things - - ?---Yes. I, I did have regard to the employment contract, yes.

30 And when you reviewed that contract did it come to your attention that it was possible for Mr Neish's employment to be terminated by giving him an appropriate period of notice without any cause?---As a matter of contract, yes, although that issue was complicated by the Supreme Court proceedings of course.

All right. And you advised Mr Petch of that?---Yes.

40 Right. And on 4 February 2013 did you write to Councillor Petch and advise him that in relation to the material that had been disclosed that is the pornographic material that he needed to exercise a degree of caution in the way that he was treating that material?---That's my recollection, yes.

Right. And did you indicate to him at that time that it could be detrimental to the reputation of the Council and Councillors if Council and Councillors commenced disciplinary action against Mr Neish without first verifying the authenticity and legitimacy of that evidence?---I, I tendered that advice, yes.

Thank you. And did you also refer Councillor Petch to the Code of Conduct and the public interest disclosures internal reporting policy in that advice?  
---I must say I don't presently recollect whether I did or I didn't but I may have.

On the 1<sup>st</sup>, correction, on 5 February, 2013 did you send or cause a letter to be sent to Jeffrey Lawrence, the Chief Investigator, Independent Commission Against Corruption regarding the material that had been uncovered on the laptop of Mr Neish?---Yes.

10

What was the purpose of writing that letter?---I, I was, I was concerned that, I was generally aware of the dynamics and I was concerned to make sure that, that the Commission was properly informed about the issues of propriety that, that concerned the material that had been adduced and the way we'd reacted to it.

And prior to sending that letter did you have conversations with Mr Petch regarding the matters that you raised in your letter to ICAC?---My recollection is I, I, I got his express instructions to do that, yes.

20

All right. On 5 February, 2013 did you have a telephone call or a telephone conference call with Jeffrey Lawrence, the Chief Investigator for ICAC regarding the IT issues surrounding the disc of pornography?---I had a conversation but I can't, I can't recollect the date.

All right?---It would have been around that time though.

And again, what was the purpose of that telephone conversation?---To, to inform the Commission of what we'd found out and what we were doing about it.

30

And was that something that you did on instructions from Mr Petch?---Yes.

On 5 February, 2013 you drafted or appear to have drafted a letter to Mr Neish and in that letter you, amongst other things, informed Mr Neish that ..... has made an official complaint regarding his use of the Ryde Council issued laptop, do you recall that?---Yes.

And did you - - -

40

ASSISTANT COMMISSIONER: Sorry, could I just remind parties that ..... name has been suppressed and may not be published.

MR HYDE: Thank you, Commissioner.

And did you send that letter to Mr Neish on instructions from Mr Petch?  
---Yes.

And on 6 February, 2013 did you receive a letter from Mr Roy Waldon, Solicitor to the Commission, that is 6 February, 2013 regarding the IT issues that had been raised with the Commission?---I believe I did yes, I don't remember the date of the letter or when I, quite when I received it.

And is that a document that you would have raised with Mr Petch?---Yes, I, I think I would have done that, yes.

10 And sorry, just to be clear, that letter was regarding the alleged unauthorised usage of Ryde City Council's resources?---Yes.

On 13 February, 2013 did you cause a letter to be sent to the solicitor the Commission, Mr Roy Waldon, concerning the evidence uncovered on the General Manager's laptop?---I don't remember but if you, if you have a letter there that's dated that, that date the answer's yes.

Yes, thank you?---I just don't remember doing it.

20 And when you gave advice to Mr Petch regarding the termination of Mr Neish's employment you had regard for the purposes of your advice to the, firstly the contract that Mr Neish had entered into with the Council? ---I did.

You secondly had regard to the Supreme Court proceedings that had been on foot in 2012?---Yes.

30 And you formed the view that because of the nature of the contract Mr Neish had with Council it was open for him to resign?---Certainly open for him to resign, yes.

All right. And you gave advice to Mr Petch regarding the mechanism by which Mr Neish could exit the employment from the Ryde City Council?---I did.

And on 7 March, 2013, did you send a letter to Mr David Wong of the Independent Commission Against Corruption setting out your recollection of certain events?---Is that a long letter, a two or three-page letter?

40 Yes, it is?---Yes, I think I remember that, yes.

And did you set out in that letter amongst other things your conversation with .....?---I did.

And it was your understanding that the Council had lost confidence in Mr Neish?---That's as I was instructed, yes.

And you thought it was entirely appropriate to have a discussion with .....as someone who might be able to, as it were, broker a deal to have Mr Neish leave the employment of the Council?---I did.

And prior to making that telephone call to ..... and to which you refer in your letter of 7 March, 2013, I take it that you discussed that with Mr Petch?---I did. I had had conversations with ..... before I was retained, as I explained to Mr Downing, in – I just can't remember the date, it may have been late 2012 or very early January.

10

But nonetheless you conveyed to Mr Petch- - -?---Yes.

- - -the conversation that you'd had with .....- - -?---Yes.

- - -at some point?---Yes. And it was necessary for me to get instructions to further that, as it were, brokerage.

And it was on your advice that the forensic analysis of the laptop and associated material was carried out?---Yes.

20

And that was advice that you gave directly to Mr Petch?---Yes.

Now, you were asked some questions by Counsel Assisting about whether you'd had regard to the Council's Code of Conduct. Do you recall those questions?---I do.

And you were asked those questions in the context of whether you'd given certain advice to Councillor Petch regarding the pornographic material? ---Yes.

30

And you were asked questions about Mr Petch's intimation that it would be damaging to Mr Neish for that material to be made public?---Yes.

You said in answer to Counsel Assisting that you gave Mr Petch other warnings or you had other conversations with him about the release of that material. Do you recall that?---Yes.

Do you remember on how many occasions you had conversations with him about the way in which that material should be treated?---I don't.

40

Could I suggest to you that you had at least two or three conversations? ---That's possible.

And when you met him, that is when you met Councillor Petch regarding the pornographic material, you discussed a protocol with him that was to be developed for the managing of that material?---Ah, yes, I think, I think we had that conversation at the café on 1 February.

And - - -

ASSISTANT COMMISSIONER: I'm sorry, was that with the purpose of keeping it confidential?---Yes.

A protocol about - - -?---Yes.

- - - about how to handle - - -?---Yes.

10 - - - it confidentially?---Yes.

Thank you.

MR HYDE: And are you able to recall in any more detail the nature of the protocol that was discussed?---One of the issues was that normally and I think Mr Downing, I think with respect averred to this, these issues might be dealt with under the complaints procedure but my counsel was in, that Mayor Petch needed to hold that information away from the organisation as best he could because it's potentially quite damaging and I suggested that I would take possession of it and have, and retain an IT expert to review it as to its provenance.

20 And I think you gave evidence to the effect that you told Councillor Petch on 27 January 2013 that at that point in time his employment could not be terminated?---I did, yes.

And to your knowledge, no I withdraw that. Do you know or have you heard the name .....?---Yes.

30 And was that an individual that you discussed with Mr Petch?---On one or two occasions I think, yes.

And when, when were those discussions?---Very early on in the retainer from memory.

40 And what was the nature of those discussions?---Mr Petch had indicated that, that the name of ..... had been referred to him as a person who was engaged to assist in the performance review of Mr Neish and that ..... was in another context a person described as Mr Neish's mentor in previous employment.

And was there something unusual - - -

MR DOWNING: I object.

ASSISTANT COMMISSIONER: I'm sorry, what is the relevance of this? No idea.



MR HYDE: Well the relevance is that there were a number of factors that led to the loss of confidence in Mr Neish.

ASSISTANT COMMISSIONER: We are really not interested in the loss of confidence. I think I've made that clear. This is not a wrongful dismissal action it's a, I'm sure you can see that that is not really a relevant issue for us to, we're not going to determine that issue.

10 Yes. Well I, I suggest the only relevance it has is that the Commission is looking at the mechanics of how Mr Petch treated Mr Neish in the bringing to an end of his employment and this in my submission forms part of that matrix.

ASSISTANT COMMISSIONER: Well I don't know that we are necessarily looking at the mechanics. We're looking at certain aspects about how information was treated mainly I think. We're not going to go into the rights and wrongs of all of the issues that may have been involved in the relationship and in any case I'm sure Mr Petch can tell us whatever he likes about that issue himself.

20

MR HYDE: Yes.

ASSISTANT COMMISSIONER: I mean the fact that he took advice about it is I would have thought neither here nor there.

MR HYDE: Well other than - Mr Petch's motivations for wanting to bring to an end Mr Neish's employment it would seem to me are squarely an issue. Indeed he is criticised and strongly criticised verging on the dishonest scale of things in terms of what motivated him to do and take the action that he did. Now Mr Belling is giving some context to Mr Petch's conduct and in my submission this, this, this in part is, is, is relevant to the Commission, but I can put it no higher.

30

ASSISTANT COMMISSIONER: Well, look, I really don't think it is but if you want to briefly just draw from him what the concern was, it's something that it seems was never raised with Mr Neish or dealt with in any way as an employment issue.

MR HYDE: Mr Belling, are you able to answer that question?---I've forgotten the question.

40

..... was the subject of a conversation between yourself - - -?  
---Oh, yes, yeah, the, the issue was the failure by Mr Neish to disclose the relationship between ..... and himself when, when ..... was engaged to assist in Mr Neish's performance evaluation.

And was that something that troubled or did you deduce from your conversations with Mr Petch that that was of concern to you?---Yes, I think that's fair.

Yes, I have nothing further, thank you.

ASSISTANT COMMISSIONER: Thank you.

10 MR HARRIS: Assistant Commissioner, I would ask please that the current suppression order in relation to ..... be extended to ..... who I think has been referred to about four times in this recent section?

ASSISTANT COMMISSIONER: Yes, well, I suppressed publication of the firm name ..... or ..... as the name of the person.

MR HARRIS: All right. Thank you.

20 ASSISTANT COMMISSIONER: Thank you. And I think I should also suppress the name of ..... who we are not hearing from and have no evidence at all to suggest there's been any impropriety between him and Mr Neish so I suppress publication of the name of the .....

**THE IS A SUPPRESSION ORDER OVER THE NAME OF  
.....**

30 ASSISTANT COMMISSIONER: Is there any re-examination, Mr Downing?

MR DOWNING: No.

ASSISTANT COMMISSIONER: No re-examination. Thank you, Mr Belling. You are now excused - - -?---Commissioner.

- - - and may leave.

40 **THE WITNESS EXCUSED** **[3.07pm]**

MR DOWNING: Commissioner, the next witness will be Robert Patterson.

ASSISTANT COMMISSIONER: Mr Blackburn, is Mr Patterson seeking a section 38 declaration?

MR BLACKBURN SC: Yes, I think he is, Commissioner, and it has been explained, the significance of it has been explained to him.

ASSISTANT COMMISSIONER: Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

10

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

20

ASSISTANT COMMISSIONER: Now, do you wish to take an oath on the Bible or make an affirmation?

MR PATTERSON: Affirmation.

**<ROBERT JOHN CHARLES PATTERSON, affirmed [3.08pm]**

ASSISTANT COMMISSIONER: Yes, Mr Downing.

MR DOWNING: Thank you, Commissioner.

Mr Patterson, could I ask you to tell the Commission your full name?---Ah, Robert John Charles Patterson.

10

And your date of birth?---7<sup>th</sup> of the 9<sup>th</sup>, 1988.

And your address?---.....

Now, as at January and February of this year were you a journalist working for the Northern District Times?---I was.

And do you continue in that employment?---Yes.

20

Mr Patterson, I'd ask that you listen to a telephone conversation which we'll have played and there'll be a transcript which will appear on the screen as well?---Sure.

**AUDIO RECORDING PLAYED [3.09pm]**

30

MR DOWNING: Now, Mr Patterson, do you recall, do you recall having a conversation – first of all, do you recognise that as a telephone conversation between yourself and Councillor Petch?---Yes.

You would have seen from the transcript that it's dated 1 February, 2013 at 9.10am?---Ah hmm.

Do you recall a phone call on 1 February this year with Councillor Petch? ---I actually didn't until you replayed it to me, but I do now.

40

Now, I should indicate in fairness to you that what was played was a shortened version of a conversation. There were other matters that were of no relevance to the Commission that were discussed as well?---Ah hmm, yeah.

But you accept that that's a conversation between yourself and Councillor Petch?---Ah, I, I can't really deny that.

Well, you recognise your voice, don't you?---My voice, yes.

And Councillor Petch's voice?---Yes.

I tender the audio and the transcript, the two-page transcript of the conversation on 1 February, 2013, Commissioner.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 13.

10 **#EXHIBIT 13 - COPY OF AN AUDIO CASSETTE AND  
TRANSCRIPT OF A TELEPHONE CONVERSATION FROM MR  
PATTERSON TO MR PETCH ON 1 FEBRUARY 2013**

MR DOWNING: Are you able to recall whether – I'll withdraw that. The phone call seems to start with you telephoning Councillor Petch?---I, I don't have recollection of the call itself, I don't recall who called who, but it sounds like I called him.

Do you have any recollection of whether there might have been a message left for you that day by Councillor Petch to call him?---I don't believe so, not to my recollection.

20

Was he someone that you had some communication with before this occasion?---Ah, yes, I'm the Ryde Council reporter for the Northern District Times, I would say I would meet with Councillor Petch on a weekly basis.

For the purpose of reporting Council events?---Yes.

Now, in the phone call, Councillor Petch gave you some information about certain, about Mr Neish, who I take it you knew was the General Manager at the time?---I did.

30

And about the discovery of pornography on his laptop computer. You heard that in the phone call?---I heard that in the call, yes.

And he suggested to you that you might meet later that day?---Yes.

Do you recall going and meeting with him at Coxs Road on that day, that is 1 February, 2013?---I, I do recall. I didn't recall the date but I'm, I'm assuming that's the date.

40

Can I ask you to have a look at some footage for a moment?---Yeah.

I think we might have a technical difficulty, Commissioner. Perhaps I'll ask a question and we might come back to the footage if we need to. You've told us you recall meeting with Councillor Petch that day at Coxs Road?---I do.

Did he give you anything?---I, I'm sorry I don't believe I can answer that question because - well he did give me something, yes.

Did he give you some images of pornography?---I'm sorry, I don't feel I can answer that question due to my journalist Code of Conduct I can't reveal confidential information coming from sources.

Well perhaps we'll need to have the footage shown - - -

ASSISTANT COMMISSIONER: Mmm.

10 MR DOWNING: - - - Commissioner, so I apologise but we're going to have to have a short adjournment in order to - - -

ASSISTANT COMMISSIONER: All right. We will adjourn for a short period.

**SHORT ADJOURNMENT**

**[3.16pm]**

20 ASSISTANT COMMISSIONER: Thank you, please be seated.

MR DOWNING: Thank you for that. Before I resume the questions of Mr Patterson counsel appearing for him I think has something he wants to indicate.

MR BLACKBURN SC: Yes, thank you, Commissioner. May I indicate to the Commission that I've been informed by Counsel for Mr Petch that Mr Petch releases the witness, Mr Patterson, from any undertaking of confidentiality that he, Mr Patterson, perceives himself to be under in relation to the conversation that is being asked about or the contents of the document that was handed over at the, at the meeting.

30

ASSISTANT COMMISSIONER: Thank you for that, Mr Blackburn.

MR BLACKBURN SC: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Downing.

40 MR DOWNING: Thank you.

Now, Mr Patterson having heard that, I asked you some questions before about the meeting later in the day at Delitalia?---Yes.

At that meeting you sat down with Councillor Petch?---Yes.

Did he provide you with some video stills of the pornography said to have been found on Mr Neish's computer?---Yes.

Did he give you a disc?---No disc.

What did he - well, doing your best to recall now what did he tell you about it?---My best to recall, I believe he said this is a, this is what John Neish does in his spare time, it's a sackable offence to look at porn on a work computer, hold this close to your chest for the time being.

Did he say anything to you about whether it was on a computer in the Council premises or a laptop at home or - - -?---I can't recall.

10

I'm so sorry, he said hold it close to your chest for the time being?---Yes.

What, you took that to mean that he would contact you about it later?---To me at that point in time I just took that as meaning it's not, not for publication at this time.

Well, he had said to you on the phone earlier that he owed you one, mate, this will be your when we do the release if it goes national, do you recall that in the phone conversation that was played before?---Yes.

20

Did you understand from that that Councillor Petch was intending at some point for it to be released and that you would get the first go at the story? ---That was my understanding.

Did you have any later conversations with him about the release?---I can't recall have any later conversations after that with him. I may have.

Did you ultimately publish anything in respect of it?---No.

30

Was that because you formed a view it wasn't appropriate to publish?--- Partially it wasn't appropriate. We also couldn't trust the voracity of the information we were given.

Excuse me for one moment. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Does anyone wish to cross-examine Mr Patterson? No. All right. Thank you for your attendance, you are now excused.

40

**THE WITNESS EXCUSED**

**[3.34pm]**

MR BLACKBURN SC: Commissioner, might we be excused now from further attendance?

ASSISTANT COMMISSIONER: Yes, you are excused, Mr Blackburn.

MR BLACKBURN SC: Thank you.

MR DOWNING: Commissioner, the next witness will be Bruce McCann.

MR LLOYD: Commissioner, while Mr McCann's coming up can I indicate  
10 that he will take an oath and that I've explained the effect of section 38 to  
Mr McCann and he seeks a declaration under that section.

ASSISTANT COMMISSIONER: Thank you for that.

Mr McCann, just take a seat there. I'm just going to make a section 38  
declaration in respect of your evidence.

Pursuant to section 38 of the Independent Commission Against Corruption  
Act, I declare that all answers given by this witness and all documents and  
20 things produced by him during the course of his evidence at this public  
inquiry are to be regarded as having been given or produced on objection  
and there is no need for the witness to make objection in respect of any  
particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT  
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT  
ALL ANSWERS GIVEN BY THIS WITNESS AND ALL  
DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE  
30 COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO  
BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON  
OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO  
MAKE OBJECTION IN RESPECT OF ANY PARTICULAR  
ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

ASSISTANT COMMISSIONER: Mr McCann will take an oath, thank you.



ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Mr Downing.

MR DOWNING: Mr McCann, if you could state your full name for the Commission?---Bruce Edward McCann.

10 And your date of birth?---19 July, 1956.

And your address?---.....

And it's correct isn't it that you're general counsel for Ryde Council?  
---Yes. In addition I'm also the public officer.

And public officer?---And public officer.

And for how long have you worked in that capacity for Ryde Council?  
20 ---Since 17 January, 2011.

And prior to that have you worked in local government elsewhere?---Yes, Shellharbour City Council in effectively the same capacity for some five years.

You're obviously familiar with John Neish, the former General Manager of the Council?---Yes, I am.

And you worked with him up until his departure earlier this year?---Yes,  
30 that's true.

Can I ask you to cast your mind back to 2012 and to indicate whether you can recall at some point Mr Neish speaking to you about an approach by a Mr Tony Abboud?---Yes, I can recall that.

Are you able to say when that was?---I recall specifically that the disclosure was fully made to me in the presence of HWL Lawyers who had been instructed by the then Mayor, Councillor Artin Etmekdjian, to seek a Supreme Court injunction to protect Mr Neish.  
40

This is something that I've been guilty of myself, but it might be helpful if you could just try and move closer to the microphone when you give your evidence, Mr McCann?---I'm sorry.

So sorry, if you could continue?---Yes, that full disclosure was made to me early August of 2012 in the presence of solicitors from HWL Ebsworths.

And are you able to recall now what it was that Mr Neish told you about the approach by Mr Abboud?---Yes. Mr Neish informed me that he had been approached by Mr Abboud as messenger for a Mr John Goubran who in turn had been approached by Mayor Petch, Councillor Salvestro-Martin and Councillor Li to establish a community consultative group with the purpose of determining what was to be built on the Civic Centre site and that that was to delay the process of construction and determine what was to be built there beyond the September 8 Council elections.

- 10 Is there anything else you can recall about it, about what Mr Neish told you about the approach?---Yes, I can. He said that he had refused the approach and advised Mr Abboud that he proposed to report the matter to ICAC.

Anything else?---And that he had made that complaint to ICAC.

Now, you're aware aren't you that in July 2012 and more particularly on 23 July, that a motion was put before Council seeking that Mr Neish's employment be terminated?---Yes, I recall that meeting, I was there.

- 20 Right. And at the same meeting after that motion was passed, a rescission motion was put up?---Yes, that is correct.

And you're aware aren't you that not long afterwards there were Supreme Court proceedings instituted by the Council and later proceedings commenced by ICAC in respect of Mr Neish's employment?---Yes, that is the case, I do recall.

- 30 Seeking injunctions?---Yes, to protect Mr Neish from any retributive behaviour by those persons the subject of the protected, sorry, public interest disclosure.

Now is it the case that at some point in August 2012 you sought some advice from Mr Ross Woodward of the Division of Local Government? ---Yes. I did at different times seek advice, I can't recall the specific advice. If you can show me I can certainly respond for you.

- 40 If we could just bring up page 662 of the brief and we'll have copies distributed. Perhaps to make it easier, Commissioner, there are certain documents I expect I'll be asking Mr McCann about. There's a letter from Ross Woodward to Mr McCann of 8 August 2013, there's an attachment to some Ryde Council Planning Environment Committee meeting minutes of 4 June 2013, extract of a meeting of the Planning and Environment Committee on 4 June 2013 and minutes of a Council meeting of an 11 June 2013. Could I tender those now.

ASSISTANT COMMISSIONER: Yes. They will be Exhibit 14.

**#EXHIBIT 14 - DOCUMENTS RELATING TO MR McCANN,  
LETTER FROM MR WOODWARD TO MR McCANN DATED 8  
AUGUST 2012, AN ATTACHMENT TO RYDE COUNCIL  
PLANNING AND ENVIRONMENT COMMITTEE MEETING ON 4  
JUNE 2013, EXTRACT OF MINUTES OF RYDE COUNCIL  
PLANNING AND ENVIRONMENT COMMITTEE MEETING ON 4  
JUNE 2013 AND MINUTES OF COUNCIL MEETING HELD ON 11  
JUNE 2013**

10

MR DOWNING: One of the documents included in the Exhibit is hopefully on the screen before you?---It is, Counsel.

Do you recognise that as the letter that you received from Mr Woodward?  
---Yes, I do.

And it refers to you seeking some guidance in respect of the Council's consideration of the rescission motion?---Yes.

20

Can I ask you in relation to that what was the, the purpose for you seeking that guidance?---It was a difficult situation whereby Council had resolved to terminate Mr Neish's employment. I must say I'm myself along with all other Council officers left the Council chambers when the matter was actually discussed but returned later, it was a formal Council meeting.

30

Is that because it was in closed session?---Exactly, yes. Being a matter under section 10(a)(2) of the Local Government Act dealing with a personal matter of a staff member and was properly closed to the public and, and Council officers were also removed. I sought some guidance specifically, if I could just check here for a moment. Yes, I was wanting to know whether the rescission motion could be deferred 'til after the Council elections. More importantly if it could be deterred or deferred until ICAC had completed two investigations that I was aware of. Now I, I asked you already about your knowledge of Supreme Court proceedings that were commenced last year?---Yes.

40

Did you have some involvement in those proceedings?---Yes, I did. I effectively was the appropriate go-between, between Councillor Mayor Etmekdjian who gave instructions for the proceedings to be commenced and in turn relayed his instructions to solicitors at HWL Ebsworth who acted for the Council and in turn relayed advice from those solicitors back to the Mayor when further instructions were required.

Now the Mayor changed after the 2000, the September 2012 mayoral elections?---That's correct. Mayor Petch was elected on that night.

Did Mayor Petch seek your advice or ask you to act in respect to those proceedings?---Yes, initially there was a resolution of Council on 25

September 2012 that was to the effect to inform the court, the matter was currently before Justice Schmidt having originally come before Justice McCallum that the matter was before Justice Schmidt and her Honour had reserved your decision at that point and it was resolved by Council that Justice Schmidt be informed that the orders originally made by Justice McCallum restraining any conduct by persons from interfering with the General Manager's contract, the resolution was to inform Justice Schmidt that those orders had been discharged and that the proceedings were to be adjourned 'til a further date in order that the issue of costs could be considered along with discontinuance of the proceedings.

Now just on that issue of costs, did you give some advice to Councillor Petch and others in respect of the costs?---I think in general Council meeting I have, more particularly the acting General Manager who has delegation now to deal with that issue because Councillors were conflicted has I think given that advice.

What was your advice to Councillor Petch in respect of costs?---That each party should pay their own costs.

And was that advice accepted?---No.

When was that advice given?---It would have been shortly following the resolution of Council on 25 September, 2012 and my return from the hearing before Justice Schmidt on Friday, 28 September.

Now, Mr McCann, you're aware of Mr Neish having a complaint made against him by an IT employee earlier this year in respect of a virus found on his laptop computer?---I am and I need to correct the record, the individual concerned was not an IT manager, he was a fairly low-level employee in the IT section.

But working in IT?---Absolutely.

Right?---An employee of Council.

And you're aware that the allegation was that the virus on the laptop had been - the virus had come to be on the laptop because of adult sites being accessed on the laptop?---Yes, that's my understanding.

Mr Neish's laptop?---Yes.

And you've heard that evidence I take it over the last couple of days?---I've only been here today - - -

Oh, I'm sorry?--- - - - and I have heard it, I have heard it today.

All right. Were you aware of that before today?---Yes, I was.

And are you aware that Mr Neish has - well, I withdraw that. Has Mr Neish indicated to you that he, that the allegation of accessing pornographic material on his work laptop at home was true?---Yes, he has.

Now, you're aware aren't you of the Code of Conduct at the Council and the complaint handling procedure that it provides for?---Yes, I'm regularly involved in that process.

10 What's the nature of your involvement in, in respect of complaint handling procedures?---Matters are usually either referred to Mr Newsome, myself or Council's Manager, Audit and Risk, John Schanz, often the three of us will discuss the matter and there are fairly established principles that we must follow and procedures we must follow in determining a matter. Essentially we or I would determine whether there was sufficient grounds to establish a concern and then would send that complaint to one of Council's sole reviewers on Council's Code of Conduct review panel and have the matter dealt with by that reviewer.

20 Now, have the sort of complaints that you've dealt with over your time at the Council involved matters like inappropriate use of computers or accessing material on the internet?---Yes.

And have those complaints been handled in the manner you've described, that is by having the matter referred off to a conduct reviewer or conduct review committee?---None of them have been so significant as to have done that, in fact my recollection is that the, the matters were resolved by a reprimand and counselling.

30 In relation to what, use of the computer in future?---Yes, and a reminder of Council's policies.

Are you aware of any instances where conduct of the nature of what I've described in Mr Neish's case resulted in an employee being sacked?---No.

Can I ask you whether in your experience - I withdraw that. You're aware that in this case Mr, Councillor Petch engaged an outside lawyer, Mr Belling, to - in relation to the complaint against Mr Neish and his employment?---I'm aware of that from Mr Belling's evidence today.

40 In your experience is it unusual for a Mayor to engage an outside lawyer for a matter of that type?---Yes, it is. The normal process would be to refer the matter to either Mr Newsome, Mr Schanz or myself and effectively do what was necessary to assist the Mayor in making a determination whether the matter should be referred to an external reviewer.

Are external firms, that is of lawyers, sometimes engaged in urgent matters?  
---Yes.

Did you understand or regard this matter involving Mr Neish's conduct as being an urgent matter?---Not at all.

Now, just coming back to the Supreme Court proceedings for a moment, at some point this year did you recommend to Councillors that Council should delegate to someone the task of handling the costs issue?---Yes, I did, for the reason that most properly the defendant Councillors that were re-elected  
- - -

10

Being who?---Being Mayor Petch, Councillor Perram, Councillor Li, Councillor Salvestro-Martin. They were four re-elected defendant Councillors. Councillor Butterworth, who was a defendant, did not stand and Councillor Vic Tagg was not re-elected.

Right. So- - -?---And- - -

Sorry, so go on. So you gave some- - -?---Yes, I- - -

20

You made a recommendation about the delegation to someone, the handling of the costs issue in those, in those proceedings?---I did, because every time the matter was raised, Councillors correctly wanted to declare a conflict of interest, whether it be pecuniary or non-pecuniary and in leaving the Chamber, left the meeting inquorate so a decision could not be made. Now, Councils code of meeting practice specifically addresses that situation and permits the conflicted Councillors to vote on a delegation to another person, in that, in this case, the Acting General Manager.

30

So when was it this year that the delegation to the Acting General Manager was made?---I can't be sure. I think it would have been sometime in March, perhaps April.

And have you spoke to – the Acting General Manager is Ms Dickson?  
---Yes, yes.

Because the Council's going through a process of seeking to employ a permanent General Manager at the moment, isn't it?---That's correct. That, that process has been temporarily stayed awaiting the outcome of these proceedings.

40

Right. Now, after Ms Dickson had the delegation in respect of the costs issue made to her, did you sometimes communicate with her about the proceedings and costs?---Yes, we would often discuss the advice received from Maddocks who have been engaged on Council's behalf in this matter and we would discuss what was appropriate and if she had any issues she wanted clarification on I would advise her, but the ultimate delegation as to what to do rests with the Acting General Manager.

So Maddocks were acting for the Council?---They are now acting by the, for the Council, I'm sorry, I think they are in fact the third firm in, in this matter, but yes, Maddocks have specifically been engaged by the Acting General Manager, being completely independent of anything in the past, to guide on the costs issue alone.

And there are separate legal representation of the defendants. Is that correct?---Yes, a Mr Stefano Laface, solicitor, acts for the defendant Councillors and Mr Butterworth and Mr Tagg.

10

Now, has Ms Dickson said anything to you since she's had the delegation in respect of costs about any communications with Mayor Petch about costs? ---Yes indeed.

What has she told you?---She told me – and it was not very long ago and she was quite – distressed isn't the right word, but, but concerned at the content of the conversation with the Mayor.

20

What did she tell you about it?---She told me that she'd been called to a fireside chat with the Mayor and he made it very clear to her that he was going to be on the panel that would select the new General Manager and that he and the Council were not happy with her handling of the costs issue and that if it did not go the way he wanted, she would not be selected as the new General Manager.

Did she say anything to you about what Mayor Petch had said about the way he wanted the costs issue to go?---Yes, the Mayor wanted an order that the plaintiff council pay the defendants' costs.

30

So that would include him as one of the defendants?---That's correct.

And you say that that was a communication you had with Ms Dickson fairly recently?---Yes. I, I, I – trying to keep things in perspective for you, I would think that would be perhaps two months ago.

Now, the last matter I wanted to ask you about was a matter that came before Council and the Planning and Environment Committee in respect of a property at 29 Vimiera Road, Eastwood this year?---Yes, that's Vimiera Road, to assist you.

40

I'm sorry, my- -?---No, no, that's, it's difficult.

Now did you have some involvement in that matter?---Not in the meeting, I didn't attend that meeting but I came to learn of what transpired at it through a public interest disclosure by Councillor Pickering.

Now just by way of background that address do you understand that to be an address, residential address where Mr Norm Cerreto lives?---Yes.

And was the matter before Council because some works had been done without proper Council authorisation?---That's correct. No DA had been submitted for those works. The extension the subject of the, the matter amounted to effectively twice the size of the existing house, so it was a substantial addition.

10 And in your role as general counsel did you have any involvement with taking any action in respect of that?---Yes, I hold the delegation to, to, to prosecute in such matters and my advice to the Group Manager Planning and Environment Mr Dominic Johnson was to prosecute both Mr Cerreto and his company Alramon Pty Limited in relation to two matters, essentially development without consent and also failing to comply with the stop work order issued by Council officers.

And when did you make that recommendation?---That would have been I think at about the time of that meeting that you referred to of the planning committee.

20 Being 4 June 2013?---That's right. It would have been thereabouts or perhaps a little later.

Now did you attend any of the meetings at which this matter was discussed?---No, I didn't.

30 So you have no first hand knowledge of matters that occurred at those meetings?---Not at the planning committee meeting, I only, as I say I only know it through a disclosure. I was at the Council meeting that it was referred to from that planning committee.

Thank you. Thank you, Commissioner. I see the time, I'm not sure if any of the other parties do wish to ask questions.

MR HYDE: Yes, I have a couple of questions if I might, Commissioner.

ASSISTANT COMMISSIONER: How long do you think you'll be?

MR HYDE: Five minutes.

40 ASSISTANT COMMISSIONER: Yes. Does anybody else seek to cross-examine?

MR NEIL QC: I just have one very short question, Commissioner.

ASSISTANT COMMISSIONER: Yes. Mr Neil, all right. Well you go ahead, Mr Hyde.



MR HYDE: Mr McCann, I appear for Mr Petch. You're aware aren't you that Mr Belling attended advice to the Ryde City Council through the Acting General Manager Ms Dickson?---Yes, I am.

And indeed you looked at and considered the advice that Mr Belling provided to her, correct?---No, no, I haven't considered it, I, I glanced over it. My, my function in relation to that advice was to check that it accorded with the Fair agreement entered into and that was correctly billed.

10 Commissioner, if I might show the witness two documents, one is dated 18 April 2013 which is a letter to Ms Dickson from Mr Belling and a second is a letter from Mr Belling dated 23 April 2013 both with respect to this issue of costs.

ASSISTANT COMMISSIONER: Have these been shown to Counsel Assisting, Mr Hyde?

MR HYDE: They were shown this morning but they were returned to me this afternoon, they form part of that bundle (not transcribable)

20

ASSISTANT COMMISSIONER: Mr Hyde, can I just ask you what issues these documents relate to?

MR HYDE: Yes. They relate to advice that Mr Belling gave regarding whether it was appropriate to pay the costs of those members of Council who were respondents in the two Supreme Court applications.

ASSISTANT COMMISSIONER: Right. And do they set out what his advice was?

30

MR HYDE: Yes.

ASSISTANT COMMISSIONER: Well I suppose we can receive them. I don't know what the - it was his advice that the Council should pay their costs?

MR HYDE: Yes. That there was no impediment and he, he flagged that it was not appropriate that he advised Mr Petch but that he could as part of his retainer with Council the Acting General Manager.

40

ASSISTANT COMMISSIONER: Yes. All right. Well, do you just want to tender those letters?

MR HYDE: If I might, thank you.

ASSISTANT COMMISSIONER: I'm sure they speak for themselves as to the advice given. They will be Exhibit 15.

**#EXHIBIT 15 - COPY OF A LETTER DATED 18 APRIL 2013 TO MS DICKSON FROM MR BELLING AND COPY OF A LETTER DATED 23 APRIL 2013 TO MS DICKSON FROM MR BELLING**

MR HYDE: Mr McCann, you were also I think giving evidence about the extraordinary Council meeting held on 23 July, 2012. Was that the - - -? ---23 or 25 July, sorry?

10

My note is 23 July but - - -?---23 July, certainly, I accept that, yes.

And it was at that meeting that the rescission motion was lodged at the conclusion of the meeting?---Yes, I do recall.

And the interest that the Councillors had in the Supreme Court proceedings meant that they had to absent themselves on that occasion?---Counsel, could you just - - -

20

I'm sorry, I'm sorry, I've given you the wrong date?---I'm sorry, that's, that's prior to the commencement of proceedings.

I'm sorry, I've given you wrong date. I mean to say 25 September, 2012? ---Yes, yes. Could you repeat the question now that we've got the date?

So 25 September, 2012 there was an extraordinary Council meeting?---Yes.

30

And there was a rescission motion tabled, is that correct?---25 September, 2012, that was the night of the election of the Mayor and other matters, is that the Council meeting you're referring to?

Yes?---I'm sorry, you'll have to refresh my memory.

Was there a rescission motion tabled on that date?---I'm sorry, I can't recall. Many things were done on that evening.

40

All right. Now I'll move on from there. It was not usual was it for the Mayor to seek legal advice from time to time on matters that arose? It was, it was not something that was new to you?---No, I was aware that it had happened. My practice at both Councils that I've worked at is that as General Counsel I would be approached by the Mayor to get advice for him or her, Mayor Petch has chosen on occasion to get his own advice and there's nothing improper in that.

All right. Thank you, nothing further, thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Neil?

MR NEIL QC: Thank you, Commissioner.

Mr McCann, I act for Mr Cerreto. Could I just ask you this, have the prosecutions you mentioned in respect of the Vimiera Road, Eastwood property being brought in the Burwood Local Court?---They were initially commenced in the Ryde Local Court but because the estimate of hearing was two days plus it was assigned to Burwood Court with the facilities to attend to those.

10 Thank you?---The matters are for hearing on 21 to 23 October, this year.

And are you aware that pleas of not guilty have been entered?---I am.

Thank you.

ASSISTANT COMMISSIONER: Thank you, Mr Neil. No re-examination, Mr Downing?

MR DOWNING: No, Commissioner.

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ASSISTANT COMMISSIONER: Thank you. Thank you for your attendance, you are now excused?---Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[4.03pm]**

ASSISTANT COMMISSIONER: And we will adjourn until 10 o'clock tomorrow.

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**AT 4.03PM THE MATTER WAS ADJOURNED ACCORDINGLY**

**[4.03PM]**