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HEARING

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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 FRIDAY 19 JULY 2013

AT 2.04PM

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.

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

MR DOWNING: Thank you, Commissioner.

10 Mr Cooper, just before lunch I'd taken you to page 1248 of Exhibit 28 and I'll just ask you to have a look at that again. That was the bill that you received, the first bill from Mahony Terrin, Taren Lawyers I should say? ---Yes.

And do you recall on receiving that that you forwarded on the email that you'd received from Mr Mahony enclosing the bill as well as the costs disclosure to Mr Petch and also Mr Salvestro-Martin and Mr Peake?---Yes, I do.

20 And can I ask why you were seeking Mr Petch's response or counsel in respect of the bill you'd received?---The email or the bill was, was forwarded to the three because all three of them one, were well aware of the pro bono commitment by Mahony Taren; and two, John Mahony was Ivan's mate or a Liberal Party confrere or former Liberal Party confrere, not mine.

So you wanted him to sort it out?---I don't know about that at the time, I wanted them to be aware of it at least. I think we were getting to the stage of how do we sort this thing out but certainly there, initially there was an awareness function.

30 Sorry, there was a?---An awareness, ie, they needed to be aware that this bill had surfaced as I would put it as a rugby buff from left, left paddock.

But it's the case isn't it that you say Mr Petch had no involvement in the activities of the association?---Mr Petch was one of the six people who attended the initial meeting with Mahony Taren and was, was aware of the pro bono conditions under which we were operating (not transcribable) with no other support.

40 Well, you say he was aware that it was pro bono?---Yes.

It's the case isn't it though that Mr Petch actually took the bill and provided some money to you for you to pay it?---Well, that is not - your construction on that is incorrect if I may - - -

Well, can I start with the bare fact. Is it correct that you sent the bill to him, some time later he provided you with some money and the money was paid to the lawyer, is that correct?---No, it is not.

All right. Tell me what part of it's incorrect?---Thank you. The bill was broadcast to a number of people and a, and if you like a round robin of discussion on it, as a result of that Ivan sought if you like - - -

Can you tell me what part of what I put to you, the bare facts isn't right? ---Well, you're saying that I put it to Ivan Petch directly and deliberately, I didn't, I put it as part of the, the overall.

10 I've already said - I think in fairness to you, Mr Cooper, I did suggest that the email you sent which appears at 1250 went to Mr Petch, Mr Salvestro-Martin and Phil Peake. But the fact - - -?---Yes, but you're singling out Mr Petch, that's all I'm saying.

Well, was it, was it someone else besides Mr Petch that provided the funds to you?---Well, Mr Petch didn't provide the funds to me, that's what I'm coming at.

20 Where did you get the money from?---He, he, he conveyed funds to me and he told me that they were from a, a, a respected benefactor.

So when I said to you that Mr Petch provided funds to you that's correct? ---Mr, Mr Petch gave me funds on behalf of a respected benefactor, that's correct.

Do you have some difficulty with the word provided, Mr Cooper?---No, counsel, I have a degree in English and I am very well aware of the denotation and connotation.

30 So funds started in Mr Petch's hands and were handed to you, is that correct?---The funds started from the benefactor - - -

ASSISTANT COMMISSIONER: Excuse me.

THE WITNESS: - - - through Petch to me.

ASSISTANT COMMISSIONER: Mr Cooper, that's a very simple question. Did Mr Petch hand you some money?---Yes, oh, that's, yes, of course he did, Commissioner.

40 MR DOWNING: Was it cash or a cheque?---It was cash.

\$2,700 in - sorry, I withdraw that. The bill was for \$2,777.43, is that how much he gave you?---No.

How much was it?---\$2,770 from memory.

So in, in dollar notes I take it, not coins?---Ah, yeah, I think it was in a white envelope from memory.

And you say he told you it was from a respected benefactor?---Yes, he did.

Did you inquire of him who the money had come from?---Yes, I did.

And what did he say?---He said that the benefactor wished to remain anonymous.

10 Did he, did he indicate anything to suggest that it was his money?---No, he did not.

So you say he indicated to the contrary, that it came from a respected benefactor?---In fact on reflection and subsequently I think I can, I'm not 100 per cent on surmise almost certainly identify who that benefactor was and is.

Who do you think it was?---I think it was Barry O'Grady.

20 Who's Barry O'Grady?---Barry O'Grady is a local philanthropist in the Ryde Municipality who has helped innumerable, innumerable times very quietly in, in - - -

And what's the basis for your belief that Barry O'Grady helped out with this bill?---It started with the term respected benefactor being used at his funeral and - - -

30 So you linked the term being used at his funeral to the term that Mr Petch used and drew the conclusion?---Also the, the knowledge that I learnt subsequently, in the interim about Barry's philanthropic works, yes. Also, also that I was very well aware that Barry O'Grady was implacably opposed like me to the Ryde Precinct redevelopment.

So he was like minded?---Like minded.

Can I ask you this were you not curious to find out who it was that was actually fronting up the money that was being used to pay the lawyer for your association?---I asked a question I was given an answer, we're talking about old and trusted friends, no, I was not.

40 All right. So you made no further inquiry?---No.

Can I ask whether you ever had any dealings or any contact with Mr Norm Cerreto in respect of - - -?---No.

- - - Ryde Civic Precinct redevelopment or the Ryde Concerned Citizens Association?---No. Not, not that I can recall in any way.

Did you ever have any discussion with Mr Petch, Councillor Petch I should say about whether Mr Cerreto had some interest in backing the association?--I have no recollection of that.

Do you say you just can't recall or - - -?---I have no recollection, I cannot recall.

Now do you recall some time later that you received a further bill from Mahony Taren Lawyers?---Yes, I do.

10

And I'll ask you to have a look at some further documents and these are not yet tendered. If I can give you a paper copy it might just be easier to flick through, we'll provide copies. Can I ask you just to look at the first three pages which are numbered 1291 to 1293. So we will be able to bring it up on the screen as well. Just starting at the bottom of 1291, do you see, that was an email to you from Mr Mahony of 23 October 2012?---Yes, I must say, Counsellor, it's the first time I've ever seen that email. I had no knowledge of it. I was aware that Mahony was, was talking to you and I'll come to that in a moment but I have not seen that email before to my recollection.

20

All right. But you don't deny that you received it do you?---(No audible reply)

Well look up the page, Mr Cooper?---Yeah, I have, I, I can see that. I'm simply saying I have no recollection of receiving that.

I understand that but you don't deny looking at this document that you received it do you?---I'm not sure how I'm supposed to answer that. I said I had no recollection of receiving it.

30

Is your email address coopers.w@.....?---It was at that time. Now do you have a recollection looking at this email and perhaps this might refresh your recollection of receiving a further bill from Mr Mahony for \$1,924.40?---Yes, I do.

And do you recall having received that bill forwarding it on to Councillor Petch and indicating that you were grateful for him to sort it out?---Yes.

40

And indicating that you don't have a problem with Mr Mahony being paid for the job but you simply can't wear it?---I think there are two matters on that. John Mahony said that he had written a letter to ICAC on my behalf and when I asked for that letter I never received it and so there was a question on, on - - -

But, but I'm really just asking about something that you indicated to Councillor Petch. Do you recall expressing in an email to Councillor Petch

that you had no problem with Mr Mahony being paid for the job but you simply wouldn't wear it?---Where are we, Counsellor, please?

Page 1291 in the email from you to Councillor Petch 13 October, 2012 at 10.43pm?---It says I have no intention of paying that invoice, counsel.

Do you see the words "I simply cannot wear this"?---Are we - - -

10 1291?---Yeah, I got that. "Ivan, you recall that I agreed to put up a hand on the basis of absolutely" - - -

Keep going down, third paragraph, "Grateful, you please sort this"?---Yes. But I'm not talking about him paying the bill, I'm talking about him exercising morality on behalf of John Mahony who had erred grievously.

Now, you'll see from the top of the page that the email that you sent to Councillor Petch, according to this train of emails or I should say chain of emails, was then sent on from Councillor Petch to- - -?---Yeah.

20 - - -Norm Cerreto on 24 October, that is the following day from- - -?  
---Yeah.

- - -your email, at 1.32. Do you have any understanding based on your discussions with Councillor Petch in respect of the Ryde Concerned Citizens' Association- - -?---No, I have no - I've said that before, Counsel, I have no knowledge of that, nor do I have any - I cannot recall ever having met Cerreto or, nor am I aware of any - I've heard here obviously - relationships- - -

30 But you had no discussion with Councillor Petch about Mr Cerreto or whether- - -?---No, I did not.

- - -he might perhaps be a benefactor for the Ryde Concerned Citizens' Association?---No.

Or have some- - -?---Some inkling.

- - -involvement in it?---No.

40 I tender the series of emails from pages 1291 to 1299, Commissioner.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 37.

MR DAWSON: Commissioner, if it assists, the documents are already in Exhibit 28.

MR DOWNING: Not in my copy of it.

UNIDENTIFIED SPEAKER: Oh, that's what we were given.

MR DOWNING: I don't want to take up time with extra exhibits, if they are all there and my copy's deficient then I'm happy to avoid having another exhibit.

ASSISTANT COMMISSIONER: Well, as long as we're sure it's all of the emails, I don't know.

10 MR DOWNING: So pages 1291 to 1299?

MR DAWSON: That's what I have.

MR DOWNING: I'm grateful to my friend for his assistance.

UNIDENTIFIED SPEAKER: Could I get a copy of that?

ASSISTANT COMMISSIONER: No, the actual exhibit seems to finish at 1290, so- - -

20

MR DOWNING: It would seem my friends have been given a bonus.

ASSISTANT COMMISSIONER: It seems you're just lucky. So I will make this a separate Exhibit, it will be Exhibit 37.

**#EXHIBIT 37 - SERIES OF EMAILS AND ATTACHMENTS-  
PAGES 1291-1299**

30

MR DOWNING: Thank you, Commissioner.

Now, Mr Cooper, can I just ask you, would you agree that the Ryde Concerned Citizens' Association was an unincorporated association which was created to pressure or lobby the Council in respect of the Civic Precinct redevelopment?---Absolutely.

40

And it actually had no community membership as such, did it?---That was always in train but it never happened because of the time frames involved in getting it registered and organised and whatever.

And in any event, the Council elections – or I withdraw that. No contract was signed, the Council elections occurred and the project then died. That's correct, isn't it?---It, Ryde Concerned Citizens is lying dormant as part of the Ryde Community Alliance- - -

Okay?--- - - -with whom we work pretty closely.

So it's correct to say that as at the period from the first meeting on 15 June through until the Council elections there were actually no signed-up members of the association at all?---No, it was, it was by nod, yes, friends.

So to the extent that it represented anyone it represented the people who were present at that initial meeting?---I don't think it ever represented all of them from what I heard earlier today.

10 So it represented you, your wife, Mr Honey and Mr Peake. Is that it?  
---I don't know about Mr Honey either. Ah- - -

ASSISTANT COMMISSIONER: So it was you and your wife?---Well, the intention, Commissioner, was always to have lots more but that didn't happen.

But you didn't. And I don't really understand the reference to it lying dormant. It doesn't seem it ever existed to lie dormant?---Sorry?

20 Did the association ever actually exist?---Well, the, the instructions ah, to ah, Mahony Taren ah, were for it to be ah, structured and, and, and exist and they charged \$3,000 or thereabouts, \$2,700. I can't recall whether it was registered or incorporated at this stage.

And in any case, it never signed up any members?---No.

MR DOWNING: Can I suggest to you that the Ryde Concerned Citizens' Association that Mr Mahony was acting for was ultimately Mr Petch's creation. Do you agree with that?---No, I don't.

30 And Mr Petch's creation where you had been made or you'd volunteered to be its effective head?---No. I gave previous evidence directly contrary to that.

Now, Mr Cooper, I wanted to ask you about one other matter and that was the circumstances of Mr Neish's departure from Ryde Council. I wanted to ask you in particular whether you became aware at some point of an allegation that had been or a complaint made against Mr Neish in respect of the use of his laptop?---About the pornography on his laptop?

40 Yes?---Yes, I did, yeah.

And how did you first become aware of that?---Not so sure on that. I think it was through the internet, I'm not sure.

Well when you say through the internet did you read - - -?---It was generally known around the community.



Well do your best. Who told you?---I repeat I don't recall who told me, Counsel, I'll say it to you again I think I got it off the internet.

Well, do you mean from a news source, do you mean from a blog?---Yeah, I think a blog, it may have been, I'm not sure but it was certainly it was, it seemed to me to be well known around the community.

All right. Well I want you to listen to a telephone conversation and then I'll ask you some further questions. The transcript will appear on the screen.

10

**AUDIO RECORDING PLAYED**

**[2.21pm]**

MR DOWNING: Now, having heard that, Mr Cooper, do you agree that that's a discussion between you and Councillor Petch?---Indeed.

And you'll see from the transcript that it's timed on 8 February, 2013 at 10.28 in the evening, do you recall a discussion on that date?---Oh, I'm not going to argue with that, that's fine.

20

Well, accept from me that 8 February is the day that Mr Neish signed the deed of separation and effectively ceased work at Council, would you accept that from me. Do you recall that being the context of this discussion? ---Yes, and in that discussion I notice that there's a reference to having heard it later in the day, earlier in the day.

All right. Now, Commissioner, I'll tender the audio and the transcript.

30

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 38.

**#EXHIBIT 38 - COPY OF AN AUDIO CASSETTE AND  
TRANSCRIPT OF A TELEPHONE CONVERSATION BETWEEN  
MR PETCH AND MR COOPER ON 8 FEBRUARY 2013 AT 22:28:52**

MR DOWNING: Now, in the discussion that you heard in the phone call Councillor Petch talked about something not being complete, I'm sorry, I withdraw that, I should say something first. I should indicate that is a shortened version of a longer conversation, there were parts of it that were not relevant to any matters before the Commission which have been taken out of that. And one other matter, on page 3 of 3 where Mr Cooper says, "Oh, he's bloody tox but ah, did he have any recalcitrant's or (unintelligible), I'll ask Mr Cooper to confirm this but I think the word was truculence?---Truculence is correct, yes.

40

Now, Mr Cooper, going back to the conversation, you would have heard Councillor Petch saying, and it's in the transcript, that it wasn't completed until about 8 o'clock that night. Did you understand that was a discussion about the deed of separation?---Yes. Well, yes, I did, I inferred that.

In the second page of the discussion you say the words in the transcript I should say did it, did it, sorry, did it, "Did you show him the photographs?" Now, I asked you some questions earlier about whether you'd been made aware at some point of the allegation against Mr Neish or the complaint that he'd been accessing adult material on his computer. Having heard that telephone discussion today does that assist you at all in where it might have been that you first learnt of - - -?---No, it doesn't, I repeat the point that I, I, I seem to recall I, I got it either third hand or from - I was, I was certainly told that there were, there was pornographic material on Neish's laptop long before that discussion, crude though it may have been, with Ivan.

You don't think that it was Councillor Petch who first told you?---No, no I - - -

20 Are you suggesting - - -?---No, I don't.

And you say you think it was off the computer somewhere?---I'm not sure who told me, I, I, I am aware that it was well, well around Ryde before Neish got terminated.

But you certainly knew it by 8 February, 2013?---Yes, I did.

In the course of that conversation you asked Councillor Petch, "When are you going to take out Johnson, mate?" Do we take it from that that you and Councillor Petch had discussed previously Councillor Petch's desire to sack Dominic Johnson?---No, counsel, what you can infer from that is that is that there is a general perception in the City of Ryde that, that Johnson has questionable conduct in terms of his operations and his job.

Well, if you come back and direct yourself to my question, you spoke the words in that conversation, "Well, that's um, also of course, when are you going to take out Johnson, mate." So do you say you just posed that question without ever having raised it with Councillor Petch before?---I am saying that there, there, that there have been numerous comments by several Councillors about the conduct of - Johnson's conduct in his, in his employment, there are questions about Coxs Road, about College Street, about Bunnings, about a range of matters and these are public purview, they've been debated at length in the Council and I understand have been the subject of various complaints to, to you - - -

ASSISTANT COMMISSIONER: Mr Cooper.

THE WITNESS: - - - among others.

ASSISTANT COMMISSIONER: Mr Cooper, thank you for that but could you now answer the question you were asked?---Which is?

Do you to the best of your recollection recall having spoken to Councillor Petch before this telephone conversation that you've heard about Mr, Councillor Petch having an intention to sack Mr Johnson?---Not that I can recall and it's not, not germane to what I do and how I do it, no.

10

Mr Cooper, in your evidence today are you attempting to assist Councillor Petch?---No.

Are you attempting to answer the questions to the best of your ability?  
---Of course.

Well, I'll ask you again. I'd ask you to look at the transcript at page 3 of 3 in Exhibit 38?---Yes.

20

You went from the discussion about the computer and what was on that and then you went straight into a question about whether he was going to, "Take Johnson out, mate." Looking at that, would you accept that it is very likely that you and Councillor Petch had broached this topic previously?---No.

ASSISTANT COMMISSIONER: I don't think there's any point.

MR DOWNING: Thank you, Commissioner.

30

ASSISTANT COMMISSIONER: Yes. Does anybody wish to cross-examine this witness?

MR HYDE: Yes, if I may, Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Hyde.

MR HYDE: Mr Cooper, I appear for Councillor Petch in these proceedings. You gave evidence about a Barry O'Grady being a benefactor?---Yes.

40

And you gave evidence about a certain sum of money coming to you via Barry O'Grady. Do you recall that?---Yes, I do.

And is it the case that when you received that \$2,700, I think that's the sum you said?---Yes.

Did you have a conversation with Mr Petch?---Yes, yes, I did, it was on our back porch.

And what did he tell you about where those funds had come from?---The conversation was hurried and it was in that context that he said, "Here is the money," because I had to get it out to the lawyer. I said, "Where has it come from?" – or words to that effect. He said, "From a respected benefactor." And I said, "Who's that?" He said, "It's okay, it's all legit," or words to that effect, and, and he took off one way and I went to the lawyer to pay.

10 And it came to your attention subsequently or you became aware that the money had come from Barry O'Grady?

ASSISTANT COMMISSIONER: Sorry, sorry. No way in the world can you put that. He heard a reference at Barry O'Grady's funeral to the fact that he'd been a benefactor and he put two and two together.

MR DOWNING: A respected benefactor.

20 ASSISTANT COMMISSIONER: A respected benefactor. And he assumed that he may have been the person who gave the money. That's as high as it can be put.

MR HYDE: All right.

MS McGLINCHEY: Commissioner, can I just say, to be fair there were other matters cited by the witness about- - -

ASSISTANT COMMISSIONER: There was one other matter that seemed equally improbably. What was it – you can remind me?

30 MS McGLINCHEY: I'm just trying to find it.

ASSISTANT COMMISSIONER: Just because he knew Mr O'Grady- - -

MS McGLINCHEY: (not transcribable)

ASSISTANT COMMISSIONER: - - -had been a very generous man and benefactor.

40 MS McGLINCHEY: A philanthropic, a philanthropic project, perhaps- - -

ASSISTANT COMMISSIONER: Philanthropic. I'm sure there are a lot of philanthropic people in Ryde and all over Sydney.

MS McGLINCHEY: Well, perhaps that could be explored?

ASSISTANT COMMISSIONER: And I would not assume therefore that they were the source of this money.

MS McGLINCHEY: Right. And- - -

ASSISTANT COMMISSIONER: So- - -

MS McGLINCHEY:- - -that he was also against the Ryde Precinct so that they had something in common there. They were the matters- - -

ASSISTANT COMMISSIONER: As I am told thousands of people were in the Ryde area.

10

MS McGLINCHEY: Well, we're not really talking about that, we're talking about why my client might have thought Mr O'Grady- - -

ASSISTANT COMMISSIONER: We're talking about the logic of this assumption which I think may be based more on the fact that this man is now deceased than anything else frankly, because he can't really say now, can he.

MS McGLINCHEY: Well- - -

20

ASSISTANT COMMISSIONER: And I think it's- - -

MS McGLINCHEY: Well, we can't really guess at that, can we.

ASSISTANT COMMISSIONER: Well, I won't comment further, but we've heard the logic of his reasoning and we will give it whatever respect it's due. You may carry on, Mr Hyde.

MR HYDE: Thank you, Commissioner.

30

Mr Cooper, you said that you were of the view or it was made clear to you that Councillor Petch wanted to remain aloof with respect to this organisation. Do you recall that evidence?---Yes, I do.

Now, what led you to conclude or believe that he wanted to remain aloof from the organisation?---Oh, his demeanour at the meeting. Ah, my wife discussed it with me as well ah, and that, that he basically indicated he'd like to remain at arm's length and ah, and, and assist us if he could.

40

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

ASSISTANT COMMISSIONER: Thank you. Yes, any other cross-examination of this witness? No. Do you want to re-examine at all, Ms McGlinchey?

MS McGLINCHEY: No, I don't think so, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes. Well you are now excused, you may leave the witness-box.

**THE WITNESS EXCUSED**

[2.34pm]

MR DOWNING: Thank you, Commissioner. The next witness will be Denise Pendleton.

10

MR LLOYD: Just while Councillor Pendleton's coming up I can indicate that I've explained the affect of section 38 to her and she seeks a declaration under that section that Councillor Pendleton will affirm the truth of her evidence.

20

ASSISTANT COMMISSIONER: Thank you for that. 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 her during the course of her 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.

30

**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 HER DURING THE COURSE OF HER 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: Could the witness be affirmed, please.

ASSISTANT COMMISSIONER: Yes, Mr Downing.

MR DOWNING: Ms Pendleton, could I please ask that you state your full name to the Commission?---Denise Pendleton.

And your date of birth?---31<sup>st</sup> of the 1<sup>st</sup>, '58.

10

I'm sorry, you might just need to speak a little closer to the microphone?  
---I've had a cold, sorry.

I'm sorry. Sorry, 31<sup>st</sup> of the 1<sup>st</sup> '58.

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

And, Commissioner, I'd seek the same non publication order in respect of the home address.

20

ASSISTANT COMMISSIONER: Yes. I make the suppression order in respect of the private address.

### **MS PENDLETON'S ADDRESS IS SUPPRESSED**

MR DOWNING: Now, Ms Pendleton, you were elected to Ryde Council for the first time in September last year?---That's correct.

30

And it's correct isn't it that from soon after that time you have served on the is it described as the Planning and Environment Committee?---That's correct.

On the Council and that's a committee that meets about every fortnight?  
---That's correct.

And the ordinary members Councillor Simon who's the chair, Councillor Chung, Councillor Maggio, Councillor Yedelian, Councillor Salvestro-Martin and you?---That's correct.

40

And is the case that there needs to be three present for there to be a quorum?---That's correct.

And when the committee meets does Mr Johnson, Dominic Johnson often attend?---Always.

Now I want you to cast your mind back to a particular Planning and Environment Committee meeting on 4 June this year and it might assist if we have access to Exhibit 32 which we brought up on screen in moment. We have a spare paper copy. I might - yeah, I'll make a paper copy available as well just so it's easier than having to scroll through the screen. It's 2299. You'll see on the front page from 2299 to 2308 if you go through those pages. I'd ask whether you agree that that's a report that was available in respect to one of the items before the committee that day?--- Yes, I think so.

10

Dealing with some works at - - -?---29 Vimiera - - -

- - - Vimiera Road, Eastwood?---That's correct.

And if you look at page 2309 through to 2312 they're the minutes of that meeting?---Draft minutes I think.

20 Can I ask if they were draft minutes would they normally have the word "draft" stamped across them or written?---No. But they're referred to the Council meeting, the following Council meeting and it's procedurally done there. By my definition that's, that's draft.

Okay. I wanted to ask you just about one particular matter. At page 2309 - - -?---Sorry. And also the chair of that meeting signs them at the next meeting so.

At page 2309 that is the first page of the minutes it refers to you being the chair, so you were the acting chair that day?---Yeah, that's correct, sorry.

30 And the other Councillors present were Councillors Chung, Salvestro-Martin and Councillor Petch?---Yes.

And it notes that Councillor Petch was present only in respect of item 2? ---That's correct.

40 Now, at the bottom of that page it refers to disclosures of interest and indicates that in respect of Councillor Salvestro-Martin and Councillor Petch that they disclosed interests in respect of item 3 but not item 2, does that accord with your recollection?---No. I knew that the Mayor had made a disclosure but I hadn't seen what because he came late and Councillor Salvestro-Martin did it against item 2.

You have a recollection that Councillor Salvestro-Martin declared an interest in respect of item 2?---Yes, that's correct.

Have you been able to find any minutes to confirm that?---It was corrected at the Council meeting where this matter was referred to and then it was corrected on the official minutes which I saw and signed which had it in a box.



In respect of this meeting?---This, yes, but it's corrected in the minutes.

Now, can I ask you just to confirm this, that item 2 involved a building certificate that had been applied for by the owner of 29 Vimiera Road?

---That's correct, that's correct.

10 And do you recall if that - do you know the owner to be either Mr Norm Cerreto or a company controlled by him?---I had heard when it came to us in March that there was an association, I didn't understand who or the - who the person was but I knew there was a connection of some sort.

Do you know Norm Cerreto to identify him?---No, no.

Do you recall that he had a lawyer representing him that day?---At this meeting, yes.

20 Can I ask then do you recall during the meeting when item 2 came up for discussion did Councillor Petch arrive at about that time?---He arrived when we'd finished with the submissions from the people that were attending and  
- - -

In respect of this item or a different item?---This item, and we were in the middle of discussion as a committee.

30 Can you recall whether Councillor Petch at some point during the meeting sat down next to the person speaking on behalf of the applicant for this building certificate?---No, you can't, I, the chair can't see, it was a very crowded gallery but you can't see very much of it.

All right. At some point did Councillor Petch join the, the table of the Councillors who constituted the committee?---Yes, he joined and according to the minutes at that time, we were well into discussion.

Can I ask you then was it the case that at some point there was an adjournment that was sought by one of the Councillors?---That's correct, he asked twice for an adjournment.

40 Was that Councillor Chung?---That's correct.

And did he explain why?---We, he, he asked twice, it was agreed we moved into the room next door and had a - - -

Did he explain why though?---He, he didn't when he asked the adjournment, he was just persistent so we went in next door.

So is the case you then had a period where the meeting was open to the public?---Yeah, it was a very brief five minute - - -

And what happened during that?---All of the committee and Dominic Johnson went next door, the Mayor asked could he come too or should he come too or something like that.

Can I ask, was it unusual for Councillor Petch to attend planning and environment committee meetings?---Yes.

All right. So the Mayor asked if he could come as well?---Mmm.

10

What then happened in the discussion that occurred after the adjournment? ---We sat, we went into the room next door, Councillor Chung asked Councillor Salvestro-Martin I think words to the effect of what's going on or what - I'm not exactly sure what Jeff said because Craig then turned to Dominic Johnson and asked if we remove Part B which was the seek demolition component would that still make it - would, would there be a problem with the Council's earlier decision.

20

Because the Council had earlier at a Council meeting decided to seek a demolition order?---Yes.

Right?---In a confidential session.

Now did the Council, did the committee then come back into open session? ---Well, we got - Dominic said that he thought that wouldn't, wouldn't be a problem, that we already had the earlier decision and then, yeah, we moved back in.

30

So is your recollection that Councillor Petch saying anything during the closed session?---I don't think he did, no.

Do you recall him saying anything during either the initial part when the committee was in open session or after you returned to open session?---No.

Do you recall him saying anything about the way the committee should vote or deal with the issue?---No.

40

All right. So you then returned to open session and it's correct isn't it that there was a vote which was in favour of not approving the building certificate that was being sought?---That's correct.

Effectively sought retrospectively?---Yes, that's correct.

And the matter then got referred to a full meeting of Council which occurred on 11 June 2013?---Automatically because it's different to the staff's recommendation, any decision of that committee that's not consistent with the staff recommendation or unanimous is referred to the Council anyway.

Thank you. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes. Does anyone - yes, Mr Hyde.

MR HYDE: Just one topic, if I may.

10 Councillor Pendleton, I appear for Councillor Petch in these proceedings, and I want to ask you some questions about the 4 June 2013 meeting and I want to ask you whether you recall Councillor Petch saying the following during the course of the meeting that is that he declared to the meeting in occupying his seat that he was only doing so at the request of an officer as he was ex officio and that he was only, the only reason for him, that was the only reason for him being in attendance at that time or words to that effect?--I'm - I've heard him say that I'm not sure if that's when he was sitting down because we were having a discussion but I've heard him say that.

All right. And, and indeed - - -?---And I've actually heard the staff say that.

20 And indeed you heard him say that on the 4 June 2013 at that meeting? ---I'm not exactly sure of he said it when he was sitting down or, or not but I've heard him say it, yes.

But you mean by that that you heard him say words to that effect on that day?---Yes.

All right. Thank you. Thank you, Councillor, thank you, Commissioner.

30 ASSISTANT COMMISSIONER: Thank you. Any other cross-examination?

MR ANDRONOS: Commissioner, I have four or maybe five questions.

ASSISTANT COMMISSIONER: Yes, Mr Andronos.

MR ANDRONOS: Councillor Pendleton, when you were elected as a Councillor in September 2012 had you campaigned on the basis of opposition to the Ryde City Precinct redevelopment?---In part.

40 Right. And you voted against that development in the Council meeting in September 2012?---Yes.

Might the witness be shown Exhibit 21 page 1332. Councillor, did you see that advertisement in September 2012?---I'm not sure, I don't think so.

To the best of your knowledge had you had anything to do with anyone at the saveryde.com - - -?---No.

- - - for the publication of any advertisements?---Definitely not.

Is it fair to say that prior to the commencement of these public hearings this week you have taken no steps to find out who was responsible for that advertisement?---No, I have no, no knowledge of it, no interest in it.

If it please the Commission (not transcribable).

10 ASSISTANT COMMISSIONER: Yes. Thank you for your attendance.  
You are now excused.

**THE WITNESS EXCUSED**

**[2.48pm]**

ASSISTANT COMMISSIONER: Yes, Mr Downing.

20 MR DOWNING: Commissioner, the next witness will be Danielle  
Dickson.

MR BURKE: May it please the Commission my name is Burke. I seek  
leave to appear for Ms Dickson.

ASSISTANT COMMISSIONER: Yes, Mr Burke.

MR BURKE: Thank you, Commissioner. I've explained to Ms Dickson  
the effect of section 38 and she seeks a declaration under that provision and  
she's also going to take an oath.

30 ASSISTANT COMMISSIONER: Yes, 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 her  
during the course of her 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.

40 **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 HER DURING THE  
COURSE OF HER 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: Could the witness be sworn, please.

ASSISTANT COMMISSIONER: Yes, Mr Downing.

MR DOWNING: Thank you, Commissioner. Ms Dickson, could I ask you to state your full name for the Commission?---Danielle Marie Dickson.

And your date of birth?---16 February, 1975.

10

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

And, Commissioner, I seek a similar non-publication order in respect of the home address.

ASSISTANT COMMISSIONER: Yes. The home address is suppressed.

**THE ADDRESS OF MS DICKSON IS SUPPRESSED**

20

MR DOWNING: Ms Dickson, you're currently the Acting General Manager of the City of Ryde Council?---Yes.

And you were appointed to that position in February this year?---Yes, the 8<sup>th</sup> of February.

And that was at the time when the previous General Manager, John Neish, his employment came to an end?---Correct.

30

And can I ask, prior to that time, prior to working – being appointed Acting General Manager, for how long had you worked at Ryde Council?---I started in November 2011 as a director or group manager for community life.

And prior to starting with Ryde Council had you worked in local government elsewhere?---I did, I worked at Wyong Council for nine years.

40

And do you have some qualifications relevant to your work?---I certainly do. I graduated initially with a Bachelor of Architecture and I worked as an architect for a number of years. Whilst at Wyong in the Planning Department I undertook a Masters of Environmental and Local Government Law and I'm currently studying a Doctorate in Business Administration.

Now, well, there's some documents – I'll provide you with a bundle of documents and provide copies to the Commission which I'll be asking you about in the course of your evidence?---Thank you.

And they start at page 1406. Commissioner, it might be convenient if I can to tender the bundle now. I won't read through all of the individual documents that make it up because they are numerous, but they are documents that run from pages 1406 to 1472, and I'll ask that they be tendered as a bundle of documents relevant to Ms Dickson's evidence.

ASSISTANT COMMISSIONER: Yes. Those documents will be Exhibit 39.

10

**#EXHIBIT 39 - BUNDLE OF DOCUMENTS RELEVANT TO MS DICKSON'S EVIDENCE – PAGES 1406-1472**

MR DOWNING: Now, you're aware aren't you that this year after you became Acting General Manager, Council started a process of looking to recruit a permanent person to fill that role?---Correct.

20 And if I could ask you to look at the extract from the minutes of a Council meeting on page 1406 of Exhibit 39, you'll see that that shows a motion whereby – and I'm reading from part of it – a committee comprising the whole of Council be formed to manage the recruitment process for the position of General Manager?---That's correct.

And if I could ask you then to look ahead to page 1407, there's a Mayoral minute there- - ?---Ah hmm.

30 - - -dealing with the recruitment of a General Manager. Is that a document that you drafted?---That's correct. We had a workshop with the Councillors looking at three issues, one was the recruitment of the General Manager and one was, we had an outstanding resolution to review the Council structure and the third was about our community strategic plan and the consensus at the end of that workshop was that the Council wished this motion to go forward, so to assist the Council I prepared this for the Mayor.

40 And one of the documents that was – well, I'll ask you to go ahead to page 1408. Was this a document that was a confidential attachment to this Mayoral minute?---Correct. One of the subjects at the workshop was a question of the time frame to do that recruitment.

And was this a document that you prepared as well?---Correct.

With a view to try to set out a time frame during which the recruitment process for a permanent General Manager would take place in?  
---Yes. I thought it was very important that the Council understood the length of time it would take to do the process appropriately, given the Local Government Act constraints, any senior appointment temporarily to 12 months.

And according to the motion that I've taken you to earlier, it was ultimately according to that motion to be the role of the whole of the Council to make decisions about who was to be recruited to be the permanent General Manager?---Correct.

Now, do you recall on 30 April, 2013, attending a meeting with the Mayor, Councillor Petch?---(No Audible Reply)

10 Now you're looking at a document. Is that a chronology document that you've prepared- - -?---Yes.

- - -for the purposes of assisting you in giving evidence?---Yes. The Commission has a copy.

I might see if we can get the copies that can be made available to the parties. I know I'll be taking you through a number of events. Could I ask you that you first of all try and - - -?---Oh, sure.

20 - - - give evidence according to what you can recall and if you need to refer to the document you can but- - -?---That's fine.

I will have, I'll see to have copies made available for the parties that are interested, Commissioner.

Do you recall meeting, you hold regular meetings with the, the Mayor?  
---Correct.

30 And do you recall attending at one of those regular meetings on that day where the Mayor asked you if you were proposing to apply for the permanent position of General Manager?---Correct. In taking the role on initially one of the decision points for me was obviously to talk to my husband, I've got young children and it had been a matter of discussion between the Mayor and I in terms of how I was managing that work/life balance and over that couple of months the Mayor had seen me at a number of events with my children so yeah, it wasn't an outrageous question for him, he was I think asking how I was coping and whether I was thinking that it was a long term position I was interested in.

40 All right. Do you recall that it was on 9 April, 2013 that the Council by resolution delegated to you the management of the Supreme Court proceedings that had been going on?---Yes.

And you're aware of some of the history of those proceedings then being commenced in the lead up - - -?---Yes.

- - - to the elections last year?---Yes.

Now - - -?---I have to say probably since that time I've become more aware of the detail than I was aware of at that particular time.

No doubt. Now, I want to ask you about some events on 2 May, 2013, that's 2 May this year. Do you recall attending a meeting that day in the Mayoral chambers at about 3 o'clock?---Yes. We were attending the Mayoral chambers, there was a number of staff and the Ryde Citizen of the Year. What we were looking at was the volunteering award judging and so it was a scheduled meeting in my calendar, yes.

10

Now, can you recall if prior to that, that is the day before you had sent an email to Councillors in respect of the progress of the proceedings?---I thought it was that day at lunchtime but I - - -

Have a look at page - - -?--- - - - stand corrected.

Sorry, sorry, I shouldn't have cut across you, please finish what you were saying?---I recall doing it that day at lunchtime before the meeting but I could be corrected.

20

Oh, I'm sorry, it may be my error. If you look at page 1431 of Exhibit 39 and it does appear it's the same letter, 2 May at 12.04pm?---Yes.

And is that an email that you sent around to the Councillors advising, giving them an update in terms of the proceedings?---Yes, referring back to that resolution of Council which you've commented on before that delegated the matter to me, one of the - the second part of that resolution required me to give an update to all of the Councillors at appropriate milestones. I felt that the fact that we had received (not transcribable) from the defendants it was an appropriate time to update the Council.

30

So at this point had you - in terms of the solicitors acting you, you'd engaged lawyers on behalf of the Council?---Correct.

And was that Maddocks Lawyers?---That's right.

And in this email you communicate that solicitors acting for the defendants, now they were the defendant Councillors?---Correct.

40

Which included Councillor Petch?---That's right.

Had written seeking a settlement in accordance with advice provided to Council?---Yes.

I'm sorry, I think I've put that the wrong way, that according to the email that the Council solicitors wrote to the defendants seeking a settlement and in the email you conclude that solicitors for the Council had been advised yesterday that the Council's offer had been declined by the defendants'



solicitor?---Correct, the advice I received from Maddocks demonstrated that in this area of law because the matter had never been, you know, the evidence had never been presented there was never, had been cross-examination, that the appropriate order to be seeking of the court was that each party pay their own costs. We presented that to the defendants and sought settlement of the matter. This - on the Thursday, 3, 2 May I was updating the Councillors to say we'd been formally advised that they'd declined that offer.

- 10 Now, coming back to the meeting later that day, so you'd attended a meeting at 3 o'clock for the purpose of, was it volunteer awards judging?  
---Yes.

And do you recall that at the end of that once the volunteer awards judging was concluded that Councillor Petch asked you to remain behind?---Yes, he did and he asked the staff as they were leaving to close the door.

- 20 All right. After that occurred did he say something to you?---Yes, he did. He said to me that he'd received a number of phone calls from Councillors since my email had been sent out at 12 o'clock, I was clear what email he was referring to and that - - -

That is the one at page 1431?---Correct. And that he - those Councillors were expressing to him some concern about the way the matter was proceeding and he suggested to me that they were unhappy. He then proceeded to say, sorry, at that point I said to him this is not a matter we should be discussing and I made to stand up.

- 30 Well why, why did you think it was not something you should be discussing?---'Cause whilst Councillor Petch was the Mayor he was also a defendant in the matter and in my view it was very important to have a separation and the Councillors had been very clear in delegating the matter to me that I needed to be careful, to be independent and obviously the Local Government Act requires me when I operate as a General Manager to represent the whole interest of the Council.

So you indicated that you didn't think it was appropriate to talk about it and you made to get up and leave?---Absolutely.

- 40 What happened then?---He said to me look I'd like to - let me give some fatherly advice I think there's a lot, Councillors will be, sorry, the defendant Councillors will be looking at this matter with great interest, it would be in your favour to come to a decision on the matter of costs that was favourable to those defendants. At this point I again said to him it's not appropriate for us to discuss this matter, I'm waiting on advice from our insurers, I don't have all the information in front of me. He repeated at this point leaned forward he was clearly upset and angry about my response I think he was surprised and he sat forward, he's, he gets quite breathless and red faced

when he's upset and angry so I again made to get up and he repeated, sorry, he repeated that he, the thought that I should come to a position that was consistent with the advice from K & L Gates which had at that point he confirmed he'd asked to provided to me and just for the record that advice says that Council should pay the defendants costs and he suggested to me that he, that that would be looked on favourably by the majority block of Councillors and that I would need his support to get them across the line when it came to their decision on the appointment of the general manager. Again at this point I said to him we can't be discussing this matter and I left his chambers.

Now you made a reference to advice from K & L Gates. Can you look at page 1447. And it runs from 1447 - - -?---Yes.

- - - to 1452?---Yes.

It's a letter to you of 18 April 2013. Is that what you're referring to?  
---That's correct. If I could just have a minute to give some context. This email appeared in my inbox. My understanding at that point was - - -

Sorry, an email attaching this is a document?---That's correct. On a Friday afternoon and I guess it was the first time I saw K & L Gates involved with this proceedings, I wasn't aware that that was who the Mayor had - - -

Well it's a document addressed to you. Had you - - -?---Correct.

- - - engaged K & L Gates to - - -?---No.

- - - give you advice?---No, and in fact in response to this email I'm not sure you have that but in response to this email I outlined those concerns to Mr Belling that I'm not sure on what basis you're providing me this advice, can I have, see a copy of your retainer, I'm not sure who's, who from Council is you know requested you to give this advice 'cause it's very unusual to get unsolicited advice from a lawyer. I was surprised.

All right. Well coming back then to the meeting. You've said - - -?---Yes.

- - - you've said that you ultimately got up and left?---Correct.

Can I ask you, you've described to some degree Councillor Petch's behaviour. What was his demeanour like during the, the meeting leading up to the point when you left?---Sure. Look initially Councillor Petch and I have a very cordial relationship and you know I'll come to him with things that I'm working on or he will update me on concerns he has from residents, so we have a very cordial professional relationship and it certainly started in that tone. It was - - -

Prior to this point had he ever said anything to you to indicate that he would, thought you'd be a good candidate for the permanent general manager's position?---In the previous discussion that you referred to where he asked me how I was going and whether I was going to apply, look he indicated to me that he thought I was doing a good job and he encouraged me to apply.

10 Right. Come back then and I'll ask you to describe his demeanour?---Sure. I think probably the two things that stand out for me was in the initial – when he initially posed the proposal to me I think he was shocked and a bit taken aback that my response was so strongly against and then I think as we got into the conversation as I described he, his tone became more strident, more indignant, louder, certainly more overbearing and he, you know, he – we were probably initially sitting like a metre apart, he was – if I can describe the Mayor chamber to you, there's like a recliner chair that he sits in and then there's sort of lounges on either side and I was sitting, you know, next to him on the left and, you know, initially we were probably sitting about a metre apart and certainly by the end of it he was within, you know, 30 centimetres of me quite angry, leaning over. You know, I certainly felt that he was displeased and I guess a bit indignant.

20

Now, I asked you some questions before about- -?---Sure.

- - -the advice from K&L Gates that you had received- -?---Mmm.

- - -and you've identified that and you've confirmed that you hadn't requested it?---No.

30 I just want to confirm, was the situation then that – were you aware that the defendant Councillors had engaged their own lawyer, a Mr Laface of AJL Legal?---Yes, I was aware of that.

And he was acting for them in the proceedings?---Yes, that was certainly the advice Maddocks had given me.

Okay. So was it your understanding then on receiving this email from – I withdraw that. You received this email from Mr Belling?---Mmm.

40 And did you speak to the Mayor then about where it had come from?---No. I mean in, in the first paragraph of the email it indicates that Mayor Petch was aware that I was to receive their email so I guess given that I felt, understanding our Code of Conduct and the need for that separation I thought it felt more appropriately for me to chase it up with Mr Belling.

But you then – I'm sorry. So you receive this letter and you understand that this is, well, when you say the first paragraph of the email, do you mean the first paragraph of the letter?---Yes. Oh, sorry, yes, the letter. It says, "The Mayor, Councillor Petch, spoke to me yesterday."

So did you understand that Councillor Petch was one of the defendants who had retained Mr Laface?---Correct.

That you'd had this issue to be delegated to – or had been delegated to you on behalf the Council?---Correct.

And that Councillor Petch had then it would seem engaged another lawyer, not to advise him but to send an advice to you?---Correct.

10 And the effect of that advice was that you should look at – well, recommending that the Council pay the costs of the defendants?  
---Correct.

Now, it's correct, isn't it, that AJL Lawyer were seeing that the costs of the defendants be paid?---Yes.

And when you sent your email that day, was that reporting back on what Maddocks had told you or was that before Maddocks were involved?  
---Sorry, the email that I sent to all of the Councillors?

20 Yes?---That was based on the advice I'd received from Maddocks.

Right. And so the point, what had been reached at that point was that an attempt had been made to see if it could be resolved but your offer had been rejected?---Yes.

All right. Can I ask you then in relation to that event- -?---Ah hmm.

30 - - -if something, were you involved at a meeting or an event later that day, the 2<sup>nd</sup> of May?---That's correct. We were holding community meetings about the Urban Activation Precinct at North Ryde and the second such event happened that evening at the Civic Hall.

40 Well, tell me, what happened at the hall that night?---We had a number of community members in attendance, a number of Councillors, the Councillors and staff sat at the front of the room. At the end of the meeting, I think it finished just after 9.00, 9.30, I gave my goodbyes to the Councillors and the staff and walked out to the car park. A number of the Councillors were congregating and I was aware that, you know, some of the staffers were packing up but given I commute, you know, I made to go home. I was in the car driving down Blaxland Road, my mobile phone rang.

At approximately what time?---I think it was around 10 o'clock.

All right?---And I recognised the number as being the Mayor's office number, obviously I have all that detail in my contacts, so- - -

And I take it you have a hands-free device in your car?---And I was driving safely, yes.

All right. Please continue?---And I answered the call. It appeared to me that the phone was on speaker because the reception wasn't very good, and the Mayor proceeded to say to me, look, I don't recall specifically the words but along the lines of, have you had an opportunity to think about our discussion earlier today. I took it to mean that he- - -

10 Did he say anything about whether he was by himself or whether was anyone else with him?---Yes, I think he did, I think he indicated that he was in his office with his colleagues.

And, sorry, so you said he asked whether you'd thought any more about what had been discussed earlier?---Yeah, and I took that to mean, you know, had I had a chance to reconsider my position so I clearly said to the Mayor that I had had a think about it and, you know, it was inappropriate for us to continue to discuss it, he was a defendant in the matter and I didn't wish to continue to discuss it with him. I reaffirmed to him that I'd given my  
20 instructions to Maddocks because the matter was for mention the next day and then I suggested to him that, you know, again that it was inappropriate and I hung up.

Ah - - -?---I then - oh, sorry.

Sorry, so you hung up?---I was just going to say I, I proceeded to turn my phone off, I actually pulled over, turned my phone off because I just at that point didn't wish to get into another conversation with the Mayor because from my point of view I was quite concerned that, you know, the Code of  
30 Conduct prohibits that kind of discussion and it may be seen that I was making myself available for that discussion and I didn't wish to pursue that.

All right. And did you turn your phone, did you turn your phone on later?  
---Yes, once I got to about Epping I pulled over because obviously my partner knew I was travelling home late and I anticipated he would probably want to speak to me and I hadn't had a chance at that point to tell him I was on my way, so I turned my phone back on. I noted that I had missed a call from Councillor Petch's office so I sent him a text message which basically said the same thing, that - - -

40 Was there a message left on your phone or had you only missed a call?  
---No, I think, I think from memory there was a voicemail message saying that he wanted me to call him back but I sent a text message in lieu of that basically saying you know, I had bad reception and apologies, my phone dropped out, that was an excuse - - -

I see?--- - - - but I was trying to be cordial and polite and again reiterated to him that we can't discuss this matter, you're a defendant, I've given my instructions, I suggest you do the same to Stefano and - - -

Can I ask you to have a listen to something?---Sure.

10 Apparently it's playing but for whatever reason we can't hear it. Can I ask you to look at page 1462, we might have to have this played at a later point. Look, you'll see there is a - this is a record which is said to be a transcript of a message left on your voicemail by Councillor Petch at 10.04 on 2 May?  
---Yes.

Look at the transcript, does that accord with your recollection of the words that were spoken at the time?---I actually don't think I checked the message that, that night, I think I may have checked it the following morning but yes, it sounds right.

20 All right. And if you go to the next page do you see it's a screenshot of what seems to be an iPhone?---Actually I don't have that page 1463 but I can see it on my screen.

I'll hand one up. Oh, it's on the screen in front of you?---I can see it on the screen, that's okay. And yes, as I was saying, I started with an excuse, I guess I - - -

Well, if I can stop there, is that a screenshot of the message that you were referring to - - -?---Yes.

30 - - - that you sent Councillor Petch?---Yes.

All right. Was there any further communication with you on this issue, that is the costs issue and the issue of the position of permanent General Manager after that text message?---Not directly about the Supreme Court matter, indirectly about the acting, sorry, the General, the permanent General Manager role, yes.

40 Well, what do you mean by that?---The Mayor attempted to broach the discussion about the recruitment of the General Manager with me over a number of times and each time I indicated to him that it was a topic of conversation that was, I was conflicted in given that I had indicated to him that I was intending apply and I'd reiterated to him a number of times that I thought it was important for the community of Ryde that the process to select the General Manager was done by merit and that the City of Ryde deserved the best General Manager and the Councillors depending how many applicants they get, obviously City of Ryde at that point had a good reputation and it was a metropolitan council that I anticipated it would be contested and that if the, you know, the Councillors needed to pick the best candidate.

All right. Can I ask you then whether you recall on 10 May receiving a phone call from someone at Maddocks Lawyers?---Yes, I do.

And without identifying the particular solicitor - - -?---Ah hmm.

- - - can you tell me what the solicitor told you about the proceedings?  
---Sure. Throughout the process of working through the Supreme Court matter my intention was to not get too caught with no disrespect to those present, my - - -

10

Non taken?---Thank you. I saw my role quite clearly as to contain the cost of this matter for the public and going to court was going to cost more money than reasonable from my point of view. So one of the things I'd asked Maddocks to do because I go to the point of not really understanding why the defendants were being so intransigent was to have a without prejudice meeting with Stefano and himself and try and have like that frank discussion about what's the barrier 'cause potentially if the barrier was something that we could work through legally to save us that potential additional costs I was happy to consider it. I got a phone call from a solicitor that afternoon. He expressed to me some concern about the way that the meeting had proceeded. I won't recall exactly his words but he said - - -

20

Try and do your best with words to the effect of - - -?---Thank you. He said something along the lines of Stefano had said to him, sorry, started with the solicitor saying you know Council's position is that each party should pay their own costs and Stefano said something along the lines of well that isn't the Council's position that may be the acting general manager's position but it's not the position of the majority of the Council and again the solicitor at Maddocks said well I'm taking my instructions from the acting general manager who has delegation in the matter and that's my understanding of Council's position and Stefano reiterated that that may be her position but it's not the position of the Council.

30

All right. Did you then receive a letter from Maddocks dated 10 May 2013?---Yes, I did.

And can I ask you to have a look at a document at pages 1464 to 1466?---I might be on the screen now.

40

Do you recognise that as the letter?---Yes.

Now I wanted to ask you about a different matter?---Sure.

You started in your position as Acting General Manager back in February of this year?---On the 8<sup>th</sup>.

And do you recall on 12 February getting a call Linda Smith the Mayor's personal assistant asking you to come and see the Mayor?---Yes.

So I take it you went up?---I did.

And did the Mayor raise something with you on that occasion in respect of Bruce McCann the General Counsel?---Yes, he did. Would it be possible to take you back to the 8<sup>th</sup> 'cause I think it gives it some context?

10 Well the 8<sup>th</sup> being the day when Mr Neish finished up?---Correct. We'd had some discussion during the day but I'll just focus on the afternoon. I was called up to the Mayor's office late in the afternoon on the Friday. He indicated that the, sorry, that John had at that point signed the deed of release and then he formally congratulated me for accepting the acting general manager's position. Councillor Salvestro-Martin was also in attendance and they outlined for me I guess the four areas that they wanted me to focus on and the reason I need to give this context is indirectly Bruce came up in that process, the four areas that they talked to me about were they felt that the organisation had too many contractors and consultants and  
20 we were spending too much money on getting expert advice. The second matter they raised with me was the Civic Precinct building, sorry, our building at the Council chambers and the need to get onto the refurbishment project plan. The third area they asked me to look at was whether the Council needed to continue to have a General Counsel being Bruce McCann and then the fourth area was the potential for a short term restructure whilst the acting general manager was there before the general manager started. So giving that context to the 12<sup>th</sup> on the 12<sup>th</sup> I went up to the Mayor's office and I actually took my Council business paper 'cause we were going to have our first Council meeting that Tuesday night as, as I guess as a team and we  
30 obviously wanted to look polished and we went through some ordinary business and then at end of the meeting he said to me I also want to raise a concern with you about Bruce McCann, I'd like you to suspend him pending an investigation.

Right?---I said to the Mayor, "Look, obviously the General Counsel's under the direction of the General Manager and I'm not aware"- - -

Being you?---Yes. "And I'm not aware of any performance issues with Bruce." Obviously I'm a member of the executive team, I work closely  
40 with Bruce, I, you know, hadn't had a feeling in my own way that he wasn't performing according to his job, but I said to the Mayor, "Look, if you've gone something specific you want me to investigate you need to give me those areas of concern and let me have a look at them and let me form my own view." And, and I said to him, you know, "What's your concern?" And he said to me, "Look, I understand Bruce is trading as a solicitor using Council's address and I want you to look into that." So I undertook to do that.



And what was the result of your inquiry?---The following week I met with him again and I took a copy up with him, to him of Council's letter of offer. Bruce wasn't a contract employee, he was a award employee and part of that envelope of material that I provided to the, sorry, to the Mayor was an approval by the previous General Manager for him to undertake secondary employment. And I said to the Mayor, "On the basis of looking at his letter of appointment and the clear approval from the previous General Manager for secondary employment," I said to the Mayor, you know, "Without any other grounds I don't see a reason to suspend Bruce or undertake an  
10 investigation."

So did it go any further than that?---No, but when we went through the process of talking about the review of the organisational structure there was some informal discussion amongst the Councillors about whether we should continue to have an internal counsel, but the ultimate decision of the Council wasn't to do anything with the service.

All right. Well, I wanted to ask you about a different matter, and that was a matter arising in March of this year. Do you recall on about 21 March  
20 meeting with the Mayor and the Mayor indicating that he had a staff matter he wanted to bring up with you the following week?---Yes, I do. And I remember the conversation that he said to me, "I need to meet with you next week." He had a specific time and a specific day in mind and he said to me, "I've got a staff matter I want to bring you to." And I remember at that time saying to him, "Look, I appreciate, you know, hearing from you any concerns you've got but obviously staff issues need to be managed by the General Manager," and I referred to him, sorry, I referred in my conversation with him to the policy which basically details the relationship  
30 between the Mayor and the General Manager which is a policy of the Council and I said to him um, you know, "I'm happy to meet but it would be really much better for me if you could give me some detail about that complaint so that I can be well prepared." And I can remember Councillor Petch saying that, that he would talk to me about it next week and he wasn't willing to give me any information at that time.

Okay. Is the document you were referring to a moment ago the Policy for Interface and Day to Day Oversight of the General Manager by the Mayor?  
---That's correct.

40 All right. Okay. So did you subsequently meet with Councillor Petch the following week?---I did, but in the interim I made contact with his office both by email and phone seeking clarification from him through his PA about what the matter of the meeting was about. Clearly I was concerned that, you know, a staff matter needs to be dealt with quickly, confidentially and I needed to understand what the, what the Mayor's concern was. I never found – I never was provided any detail before that meeting.

All right. Did you, you then attended a meeting on 27 March?---That's correct. When I got up to the Mayoral Chambers he actually had someone with him so- - -

Who was that?---I don't recall, but while we were waiting his PA, Linda Smith, indicated to me that she had to go downstairs because a Brian was at reception. This really made me much more concerned and I interrupted the Mayor before Linda got back and said to him, "I'm really concerned what this complaint's about, you need to give me an opportunity to understand the background." I also cautioned him that I felt he was potentially outside the procedure because, you know, obviously he had knowledge about what was happening and hadn't shared that with me. And I asked him who Brian was. He indicated to me that he had separate obligations under section 11 of the ICAC Act and the complaint alleged corrupt conduct and he had engaged Brian to give him some advice. At that point Brian joined us in the Mayoral Chamber.

And is that Brian Belling---Correct.

20 Now, at that meeting did he show you a letter – and I'll ask that Exhibit 18, hope Exhibit 18 page 867 be brought up. Did he show you a letter dated 14 March, 2013 from Parisi Lawyers to him?---Not immediately. We sat down at the table, he introduced me to Mr Belling, I asked Mr Belling why he was there and Mr Belling indicated that he had been retained by the Mayor to give him some advice on this matter, at which point then the Mayor brought out the envelope and tabled it and then proceeded to speak to the matter of the envelope.

30 Right. Well, tell me what was discussed then at the meeting?---The first thing he said to me was that he'd been, this had been hand-delivered to him at his home on the, I think if I recall – could I just refer to my notes? I just want to refer to the date he – actually, probably, it's probably at the top of that letter.

We do have copies of the chronology so I could have them distributed to the parties that are interested?---Thank you.

40 And I'll – I think I will tender it, Commissioner, just so there's no confusion about it. So I'll provide copies for the Commission?---Thank you, I'm right now. So he indicated that there had been delivered to him- - -

Perhaps just before we get – we might just get it made an exhibit?---Sure, sorry.

ASSISTANT COMMISSIONER: Yes. The chronology will be Exhibit 40.

#### **#EXHIBIT 40 - CHRONOLOGY DOCUMENT**

MR DOWNING: Sorry, if you could continue now, thanks?---Sorry. So the Mayor outlined that he had had this hand-delivered to his home address. He indicated – at this point I had the document in front of me and I- - -

Can I just interrupt you there. So he indicated that this letter coming to him on behalf of a group of property-owners within the City of Ryde had been hand-delivered to his home address?---He didn't indicate, okay. So  
10 stepping back. He said to me it had been hand-delivered to him at home. I asked him who, who handed it to him. He said to me that wasn't something I needed to be concerned about.

Okay?---And the second question I asked him was, "Well, this is dated 14 March?" And he indicated yes, he, in the interim between then and our meeting he had sought advice from Mr Bellings.

Okay. All right. Did Mr Bellings say something or did Mr, Councillor Petch then say something? What happened after that?---Oh, well,  
20 Councillor Petch then took me through the detail of the letter.

And was the nub of it that there had been an allegation by these landowners that Parisi Lawyers represented that a certain Council, sorry, Council staff member had misrepresented particular advice from the Department of Planning and Infrastructure?---I would almost agree with that. I guess the two things I would agree with is there was no mention of landowners.

Right?---It was focussed only on Parisi Lawyers. And, and secondly- - -

30 Well, the letter that you were provided made reference to Parisi Lawyers acting for a group of property owners?---Yeah, I'm, I'm recalling the conversation though, in the conversation that wasn't clear and I suppose just remembering I, I hadn't had a chance to read this, I was, it was in front of me but you know, at the time I wasn't aware of that. And secondly what I would probably say is that in detailing what Parisi had written the Mayor was more focused on the, the disconnect between the two Council reports and the misrepresentation of the Department of Planning's advice it was really only after he'd finished outlining what the Parisi complaint was that he then within the first 15 minutes of the meeting made the allegation that  
40 Dominic Johnson had acted with impropriety.

And did he or Mr Belling then suggest that you do something?---Yes. Mr Belling had already obviously provided the Mayor some advice and I asked Mr Belling to outline for me what that advice was and his advice was that the matter potentially constituted corrupt conduct and that he encourage the Council to act swiftly, to engage a forensic IT company which he recommended to come in, access Council records and undertake an investigation about Dominic Johnson's role in that misrepresentation of the

data. At that point I clarified with Mr Belling that what was his view in relation to the role of the general manager in my making managing staff issues, Mr Belling agreed with my position that it was the general manager's role and was indicating that you know this was his advice but it was for my consideration. The mayor was strongly supporting the engagement of the forensic IT specialist on the basis that both he and Mr Belling felt that the Commission would act more quickly if they were, had more full information with the complaint and that the, if we just table the current information with the Commission they wouldn't have enough to act on.

10

Right?---And that then we moved on and Mr, sorry, Councillor Petch indicated his concern that he had an obligation under section 11 to report it to the Commission and that he wished us to move swiftly on it.

So what, did you say something at that point?---Yeah. I said to him look I respect Mr Belling's advice and but I really need an opportunity to review the material myself because I had a separate, I guess an individual obligation under section 11 and you know I obviously had not been provided the information in advance so I needed an opportunity to review it overnight and I suggested to Mr Belling if he provided the advice, if he had provided advice to the Mayor that it would be appropriate for, that to be provided to myself and Mr Belling asked me for my personal email address 'cause he was concerned about the confidentiality and by the time I got home that evening I had his advice on my email address at home.

20

All right. But did you take some steps then after receiving that advice? ---Yes. The following day I made it a point of giving myself some time in the office to both review the document from Parisi but also look at our internal document management system and looking at the Local Government Act and our code of conduct to form in my own mind a sense of whether I felt both a notification was necessary and secondly whether Mr Belling's suggestion of engaging a forensic IT specialist was appropriate.

30

And did you ultimately form some conclusions about what should be done in respect to this allegation?---Yes. I, on our document management system at Council TRIM I located an internal email from the division, sorry the Department of Planning to one of my senior planning staff which appeared to be the document that was quoted in both of the Council reports. It was clear from looking at that that in the two Council reports the - - -

40

Can I just stop you there?---Yes.

Is that an email that appears at pages 855 and 856 of the same exhibit. Could we just have a date then?---Sorry, if you could just scroll down there.

It should be on the screen in front of you. An email from Ms Karac-Cooke to Sue Wotton of 20 June, 2012?---Yes. And I'd have to say I haven't

confirmed with the planning staff whether that is the email but that was the email I did locate that seemed to be the one that was quoted.

So you looked at that?---Yes.

10 Did you ultimately form any views?---With reference to our code of conduct and the Local Government Act and the ICAC Act I guess the section 11 that I lodged dealt with two issues. One that I felt that it could be sustained that there was evidence of partiality in the advice we provided to Council but the second issue that I raised with the Commission in my section 11 was I felt concerned - and I might be just getting a step of one, ahead of one conversation with Mr Petch, but I was concerned that Councillor Petch had formed the view that Dominic Johnson was responsible where on the basis of the information I had from Parisi and this internal email I couldn't see how he reached the conclusion that Dominic was responsible.

All right. Would you- -?---Just can I – would I be able just to clarify, I had a conversation with the Mayor in between.

20 Well, I'm going to- -?---Oh, you're going to get to that, sorry.

I'm going to ask you. So the meeting, this meeting was 27 March?---That's right.

Did you speak to him or meet with him on 28 March?---Yes, I did.

30 And what was, what was discussed at that point?---Well, I had agreed to the Mayor, with the Mayor that I would sleep on it overnight and come back to him, so we had a meeting scheduled for the 28<sup>th</sup>. I said to him that I felt having reviewed that document that, as I explained, that I felt there was potential partiality demonstrated in the reports to Council and that I felt that a section 11 notification was appropriate, however I was not of the view that it was our role to undertake any investigation of that complaint and certainly - - -

Do you mean by that a forensic examination?---Yes, so it wasn't appropriate to engage a forensic IT specialist.

40 All right. Anything else discussed at that meeting?---I did ask the Mayor, you know, 'cause I'd made some notes on my package and I did ask the Mayor, you know, was there other information that he had or other things that he could provide to me that led him to the conclusion that Dominic Johnson was the person from the staff who was responsible, and his reply to that was that Dominic had approved each of the reports. I explained to the Mayor that group managers take ultimate responsibility for the reports to Council and it's clearly their accountability and I wasn't stepping away from that, but I felt that it was a very detailed thing for a group manager to pick up when the reports were quite a number of months apart.

Would the group managers sometimes sign off on reports that had been drafted by others working within their area at the Council?---That's correct. And that was part of the reason I explained to the Mayor why I felt the IT specialist may not be an appropriate answer in this sense that the way our reports are produced, they go through a number of staff members before they're finally approved electronically by the group manager.

10 Now, after that were you called to a meeting with the Mayor on 2 April, 2013?---Yes. I was in a budget meeting and I had – my PA attended at the door and suggested to me the Mayor wanted to urgently see me, so I stepped out of that meeting and went up to his office.

20 And what occurred then?---The Mayor was sitting at his desk. I walked in and sat down. He reached down into his drawer and brought out a piece of paper that was from K&L Gates that was a waiver and he was seeking my agreement to sign the waiver which would have allowed the appointment of the forensic IT specialist and give my authorisation for them to access the building and access the corporate system to undertake the search. I declined to sign.

And what happened after that?---Councillor Petch expressed his dissatisfaction but I left the room.

And did you subsequently make a notification to the Commission?---Yes, I – on the Parisi matter itself, yes.

You did.

30 Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes, does anyone seek to cross-examine Ms Dickson?

MR HYDE: Yes, I do, thank you, Commissioner.

ASSISTANT COMMISSIONER: Mr Hyde.

40 MR HYDE: Ms Dickson, I appear for Councillor Petch in these proceedings. Can I start by asking you, asking you this, would you agree that it was an unusual situation the Council found itself in with respect to the Supreme Court proceedings in August of 2012?---I would agree it's unusual.

And obviously we've heard that it created some tension within the Council ranks?---I wouldn't say it created tension within the Council ranks, I would say that within the framework of the Code of Conduct it was a matter that Councillors had to be very careful about how they managed.

All right. Now, and you received – or no, I withdraw that. Do you agree that K&L Gates were retained by the Council in January of 2013?---I came to be aware of that, yes.

10 All right. And you came to be aware of that because you looked at the letter that attached the retainer agreement?---I actually became aware of that initially when we started to receive bills from Mr Belling. I raised with the Mayor that I was concerned on the basis of which he'd engaged K&L Gates because a number of the bills in the itemised section seemed not to relate to the negotiation of the deed of release.

All right. But when you became concerned about those bills, I take it that you went back and tried to find the retainer letter and see exactly what it was that K&L Gates were retained to do?---My initial steps were actually to speak to the Mayor about it and then when I got no response to that I formally emailed him and it wasn't until, as you – you're correct, until he provided the Supreme Court advice that I actually then approached Mr Bellings and asked for the retainer.

20

And he provided you with that retainer?---He did.

And you understood that that retainer indicated that his firm, K&L Gates, were acting for the City of Ryde. Do you accept that?---No. I think it's fair to say that that was Mr Belling's view, I think that's a matter that – if I can refer to an email that I sent Mr Belling, I actually terminated his services in relation to the Parisi matter and my view was that at that point that he had moved beyond the scope of his initial engagement in terms of Mr Neish.

30 And when, when did you form that view?---It would have been around the time I got that email in relation the Supreme Court matter.

And when was that?---I just, can I just refer to the letter?

Certainly?---It would have been April.

Yeah. April 2013?--That's right.

40 All right. And do I take it that at no stage have you looked at the K & L Gates letter dated 15 January 2013 on closing the terms of the retainer with Council the City of Ryde?---If it was attached to the email that he provided me then I would have, I can't tell, confirm the date 'cause I haven't got it in front of me.

Okay. Well can I suggest to you that the letter from K & L Gates addressed to Councillor Ivan Petch the Mayor foreshadowed that the client is the City of Ryde and secondly that the work to be done was to advise Council generally with respect to Supreme Court litigation concerning the

Independent Commission Against Corruption and related issues. So can you accept from me that that is what the retainer documents stated the terms of the retainer?---I would repeat my comment that it's clear that Councillor Petch felt he had delegation to engage Mr Bellings on those matters. My view is Councillor Petch's delegation extended only to the general manager's appointment or discharge from the organisation.

10 All right. But you accept don't you that there's room for debate on that topic and plainly there has been debate?---Clearly Mr Petch and I have a different view, yes.

Yes. And you may be correct or he may be correct but nonetheless there is, there is a debate between you about it?---Yes, but I would say that the code of conduct gives some very clear indication about the separation of personal and Council business.

Now and indeed you received some advice from Mr Belling in February 2013 with respect to the costs of the Supreme Court proceedings?---Yes.

20 That is a letter addressed to you - - -?---Yes.

- - - and not - - -?---Correct.

And I take it you don't dispute in any way, shape or form that what the subject matter of the Supreme Court proceedings concerned was in effect Council business?---What I would say is that the matter had been delegated to me but I sought no advice from K & L Gates.

30 I'm not - that's, that's not my question. These aren't trick questions. I'm asking whether you accept that the Supreme Court proceedings were in effect Council related business, they emanated from the Council?---Well I think that goes to the heart of the point and that's why I'm being careful answering and I accept you're not making, trying to make them tricky questions but what I'm saying is that Council was the plaintiff in the matter but Council could also be construed to be the defendant in the matter.

40 Yes, quite?---And what I'm saying is for me Mr Belling had misconstrued the client. Because I had the delegation of the matter and I did not ask for advice and I wasn't the client.

All right, okay. When do you say you got the delegation to deal with the matter generally?---The Council resolved in April.

Of which year?---This year.

All right. And the K & L Gates retainer letter I think you've agreed with me was dated 15 January 2013 and outlined what it was in terms of work being undertaken what it was that was to occur. I think there's no debate about



that really is there, seriously?---No, but I guess the point I'm trying to make is that at the point that I got delegation the Mayor can't have delegation on the matter.

Well I understand that?---So that whatever retainer he had with whomever he had become redundant unless I chose to continue it and I didn't I chose to engage matters.

10 Yes. And you, and you formed - - -?---And the Mayor was aware of that.

I'm sorry to cut across you. And, and you informed K &, K & L Gates of that proposition, that is that their retainer had been terminated?---I did.

And that occurred in April 2013?---It may have been earlier. It was around the time that the Parisi letter came through.

20 All right. Now you accept though don't you that K & L Gates did tender advice to you and when I say that I mean in the sense that you were the acting general manager K & L Gates tendered advice regarding the issue of costs of the Supreme Court proceedings. You accept that proposition?---I think I've answered that question.

All right. And you subsequently had advice that it was appropriate for Council to meet the costs of, that is the personal costs incurred by each of the Councillors in these proceedings that is the Supreme Court proceedings?---I received that advice from Stefano Laface on behalf of the defendants, yes.

30 Yes. And did you or have you obtained your own advice on the appropriateness or otherwise of Council meeting the costs of those Supreme Court proceedings?---My advice currently from Maddocks is that the appropriate resolution of the matter is that each party pay their own cost and my current advice from Zurich is that our insurance policy would cover the reasonable costs of the defendants.

40 All right. So in answer to my question you agree that you've received advice that it's appropriate for those costs be paid, that is the Councillors not be left out of pocket having been engaged in what is in effect Council business - - -?---No. I hold a, I hold a completely view and that view is that under our insurance policy and through advice from Maddocks the reasonable costs of each party should be covered and I'm aware that Zurich as recently as this week has indicated that the cost of the defendants are not going to be completely covered.

All right. Well - - -?---So I, that's what I'm drawing the exception to your question.

I understand and I appreciate the distinction and I'm not debating the costs, that is the amount of costs that, that have been incurred. But you do accept that it's appropriate that the Councillors have their costs met leaving aside the extent to which that would be met. You accept that there is a responsibility to meet some costs?---Based on the advice that I've been given.

10 Thank you. All right. Now - - -?---And, sorry, can I just clarify that it's actually not Council who will pay the costs it'll be the insurer.

Yes, all right. Well we'll call it the insurer- - -?---And, and that's on the basis of the Council's policy covers the Councillors.

All right. Now the advice that you received from K & L Gates addressed to you came to that conclusion that is that the insurance policy would answer the claim for, for costs in relation to each of the Councillors?---I think - - -

20 That was the general nature of the advice?---Well I think that K & L Gates proposed two solutions actually. I think the initial solution that K & L Gates advice proposed was that the Council should agree to pay the defendants costs so that the plaintiff paid all the costs, they said the secondary outcome less favourable was that each party pay their own costs and Council seek to recover their costs in paying the defendants total costs from the insurer. Now my view is the insurer's not going to pay all the costs so therefore Council out of general revenue would be paying part of the defendants costs. That's the distinction.

30 All right. Now you say that and I'm not suggesting that you didn't but you had a conversation with Mayor Petch about the topic of the costs of the Supreme Court proceedings and you've set out quite clearly the exchange that you had with Mayor Petch. Do you, do you recall that evidence?---Yes.

All right. Now do you accept that one view might be that Mayor Petch was doing no more than asking you to follow the advice that had been tendered by K & L Gates in respect to the costs?

40 MR DOWNING: Commissioner, I object to that question. I don't really understand what is being put that one view might be. I mean the witness can be asked what she saw, what she heard, what she perceived but being asked whether one characterisation isn't really a fair question.

ASSISTANT COMMISSIONER: That's right. I think that's the question for argument. She can only be asked what he said and what she took that to mean.

MR HYDE: Thank you, Commissioner. I'll move on from there. I think if I took down accurately and I may not have but I'll stand corrected but you indicated that during the course of that conversation with the Mayor he said

something to the effect that you should come to a position consistent with the K & L Gates advice. Is that something he said or something that you saw?---No, he, he said that I should come to a position with a cost issue that was favourable to the defendants. Now in him saying that I knew he was referring to the K & L Gates advice but can I just clarify one point, we had no advice from the insurer at that point.

Well, I accept that, I'm not suggesting you did but you had advice - - -?  
---Yes.

10

- - - from K&L Gates?---Yes, and Stefano.

And you had a retainer, that is Council on the face of the document of 15 January, 2013 had retained K&L Gates to provide advice to it, you accept that?---No, I've answered that question.

All right. Pardon me, Commissioner. Now, you gave some evidence about Bruce McCann and the Mayor indicating that he might be surplus to Council if I can put it neutrally?---Yes.

20

And you said I think that inquiries were made as to the basis upon which Mr McCann was retained in Council?---Ah hmm.

And it came to your attention that he was an award employee as, as opposed to a contractor, is that the effect of your evidence?---I made inquiries on the basis of the Mayor raising with me that he wanted him to be suspended, yes, and one of the questions I guess that the Mayor, I thought the Mayor was alluding was whether he was a contract employee or an award employee so I went back and found out on what basis he was engaged.

30

So you understood at that time of that conversation that the Mayor was unsure of the status of Mr McCann?---Yes.

All right. And of course it would be the case that depending on the nature of his employment, that is whether he was some form of contractor or an award employee he would have to be treated differently?---Correct.

All right. Pardon me, Commissioner, I think I've finished but if I could just take a moment. Yes, nothing further. Thank you.

40

ASSISTANT COMMISSIONER: Thank you.

MR HYDE: Thank you, Commissioner.

MR LLOYD: Commissioner, I seek leave on behalf of Mr McCann to ask this witness a few questions.

ASSISTANT COMMISSIONER: Yes.

MR LLOYD: Thank you.

Ms Dickson, Lloyd is my name and I appear on behalf of Mr McCann. You gave some evidence in answer to questions asked by Downing about some discussions that you had with the Mayor about Mr McCann's employment in February of this year, do you remember that?---Yes.

10 And did you know at that time or do you know now what the result was of Mr McCann's annual performance evaluation in 2012?---No, I'm not aware but I am aware that he's held in high regard by the group manager.

If I could ask you to have a look at this document and, Commissioner, I've given a copy to Mr Downing. Ms Dickson, is that document or does it appear to you to be the letter setting out what the result of Mr McCann's annual performance evaluation was for 2012?---Yes.

20 And it shows doesn't it that Mr McCann achieved a very good rating for that year?---Yes.

But that rating to your knowledge wouldn't provide any basis for a suspension of Mr McCann's employment as at February 2013?---No, and that's what I was raising with the Mayor in saying that as a member of the executive team I felt he was performing well.

30 And that rating certainly wouldn't support the proposition that there was any basis that Mr McCann's employment be terminated would it?---No, I can't imagine any employee on performance management getting a very good rating.

I wish to tender that, Commissioner.

MR DOWNING: I intend to tender it, Commissioner.

ASSISTANT COMMISSIONER: You will tender it?

MR DOWNING: I will.

40 ASSISTANT COMMISSIONER: Yes, thank you. Yes, well, that will be Exhibit 41.

**#EXHIBIT 41 - COPY OF A LETTER DATED 12 NOVEMBER 2012  
TO MR MCCANN RE ANNUAL PERFORMANCE EVALUATION  
2012**

MR LLOYD: Thank you, ma'am.

ASSISTANT COMMISSIONER: Thank you, Mr Lloyd. Is there any other cross-examination? No. You have no re-examination?

MR DOWNING: No, Commissioner.

ASSISTANT COMMISSIONER: You don't?

10 MR DOWNING: Oh, I'm sorry, there was one, one matter, I do apologise. One matter.

Ms Dickson, you've given some evidence about the request by the Mayor and Mr Belling that forensic document examiners look at the computer system in respect of Mr Johnson. Were you aware that during the period from early February until early April 2013 that the Mayor had instructed Mr Belling to have Mr Neish's laptop computer forensically examined?--I wasn't aware until the Commission.

20 All right. Thank you.

ASSISTANT COMMISSIONER: Yes, thank you.

MR DOWNING: Oh, I'm sorry, it may have been that the examination was of the CD rather than the laptop but in either case were you aware of that having been - until the Commission, until the evidence of the Commission - - -?--I wasn't aware until the Commission.

Thank you.

30 ASSISTANT COMMISSIONER: Thank you, Ms Dickson. That concludes your examination and you are now excused.

**THE WITNESS EXCUSED**

**[3.56pm]**

40 MR DOWNING: Oh, I'm sorry, Ms Dickson's pointed out to me that Mr McCann's address is on the document that just became the exhibit. Perhaps if we could have that suppressed consistent with the other - - -

ASSISTANT COMMISSIONER: Yes, Mr McCann's address will be suppressed.

**MR McCANN'S ADDRESS IS SUPPRESSED**

MR DOWNING: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Well, we will now adjourn at this time until 10 o'clock on Monday morning.

**AT 3.57PM THE MATTER WAS ADJOURNED ACCORDINGLY  
[3.57PM]**