

**COMMISSION RESUMES ON 2 FEBRUARY 2012 AT 9.30 AM**

**603 COLOMBO STREET CONTINUES**

**605 – 613 COLOMBO STREET**

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**Also Appearing: Duncan Laing and Fiona Sing for Christchurch City Council, Daniel McLellan for Opus International Consultants and Andrew McIntyre for Buchanan & Fletcher**

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**JUSTICE COOPER ADDRESSES MR LAING AND MR MCINTYRE**

**JUSTICE COOPER TO MR LAING:**

15 Q. Mr Laing overnight just to round off our discussion from – well not round it off but to continue it I had a look at section 330 of the Resource Management Act and satisfied myself that it's got nothing to do with the issues that we're talking about here.

A. I came to the same, well it would not allow an owner to – whether it would allow the Council to go in and do work –

20 Q. Well the Council would have to assert a financial responsibility to do so.

A. Financial responsibility for that and still would need other, potentially other powers to go in and say demolish a building too. So there's quite a complexity around section 30 as to whether it would go that far either.

Q. Well I just think it would be a non-starter really.

25 A. Yes, yes.

Q. And obviously not designed for use in circumstances such as this.

A. No it, where I got to Your Honour is I think at best it would, could in some circumstances cover off the RMA situation but it would not necessarily cover off the, the powers to go in and actually do the work which would have to be a Building Act matter.

30 Q. Yes so it would be useless because –

A. By itself yes.

Q. But then in order to do the work there would still be reliance on the private landowner doing it and that would question the integrity of any previous resort to section 330 in the same process.

A. Absolutely, absolutely.

5 Q. So those are my views anyway.

A. Do you still want a memorandum from me?

Q. Not on that subject no.

A. No.

Q. Not unless you could think of some very clever argument.

10 A. Sir there is only, I should really mention it now. There is one other, one other thing which Mr Higgins touched on as evidence although just in general terms and that's the Canterbury Earthquake Resource Management Order 2010.

Q. Well the implications of that are another matter.

15 A. Yes but I may still wish to address you on that separately.

Q. Yes, yes well that would be welcome. Yes all right.

**MR LAING:**

Sir if the Commission pleases this morning I will be calling three witnesses.

20 There's Mr Ward who was present at the meeting on 1 February 2011 and he will give evidence as to what happened at that meeting. Mr Higgins, he will be dealing with the position in relation to heritage and dealing with buildings after the September 4 and Ms Billante who was formerly the team leader of the Building Recovery Office, or BRO Office, and she will be talking about her role  
25 and how it might impact on the matters relevant to this hearing.

**MR LAING CALLS****SEAN MICHAEL WARD (AFFIRMED)**

Q. Your full name is Sean Michael Ward?

A. It is.

5 Q. Could you start reading your brief of evidence from paragraph 1.

**WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 1**

A. "I am a senior planner in the resource consents team at Christchurch City Council. I have worked for the Council since 2006. I have seven years of experience working in planning and resource management dealing with resource consents and approvals under the Resource Management Act. I hold a Bachelor of Science and MRS degrees.

10 I attended a number of meetings with building owners and agents in the period leading up to the expiry of the section 124 Building Act notices served by Council following the September and Boxing Day earthquakes. My role generally at these meetings was to present a picture of likely processes to be followed in terms of approvals required within the RMA and city plan framework to allow both repair, reinstatement and/or demolition of affected buildings, particularly where those buildings were listed in the city plan for heritage reasons.

15 I have been asked to provide evidence to the Royal Commission in relation to my involvement with the buildings at 603 and 605 to 613 Colombo Street following the September 4, 2010 earthquake and before February 22, 2011. My evidence relates and responds primarily to issues raised in evidence of Marton David Sinclair and Matthew James Bushnell in relation to a meeting which I attended on the 1<sup>st</sup> of February 2011 concerning these buildings. I understand that evidence will be provided by Mr John Higgins which discusses more generally the statements made in the evidence of Messrs Bushnell and Sinclair about Council's policy and approach to resource consents for demolition of damaged heritage buildings both before and after the earthquake of

20 25 30 4 September 2010.

Meeting of 1<sup>st</sup> of February 2011. My only involvement with the buildings at 603 and 605 to 613 Colombo Street was my attendance at the

meeting of the 1<sup>st</sup> of February 2011 referred to in the evidence of Mr Marton Sinclair. The notes that I made at this meeting are attached as annex A. My notes record the meeting date as the 1<sup>st</sup> of February 2011. It was not unusual for meetings to be held with building owners and/or their representatives at this time as the deadline for work to be carried out and a number of s 124(1)(c) Building Act notices was the 31<sup>st</sup> of January 2011. The other attendees at the meeting are recorded in my notes as John ? (I didn't catch his surname at the meeting), Marton Sinclair, Trudi, Matthew Bushnell, Phillip, JJ, Amanda and Sean. John refers to John Dallison, a solicitor acting for the owners. Trudy refers to Trudi Berney, a planner from Elliot Sinclair. Phillip refers to Philip Hector, a Council senior building consent officer. JJ refers to John Barry, the Council's case manager in relation to the building and Amanda is Amanda Ohs who is a policy planner in Council's heritage team. Mr Matthew Bushnell states in his evidence that the meeting in relation to the buildings was held on the 17<sup>th</sup> of February 2011 however I attended only one meeting in relation to these buildings –“

Q. Could you pause there please? The secure website reference there Mr Ward should be BUI.COL605-613.0004.4. Is that correct?

A. Yes.

Q. Thank you. Just continue reading.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. “However I attended only one meeting in relation to these buildings and the records I have indicate that this was on the 1<sup>st</sup> of February 2011. Mr Bushnell also states that Vincie Billante was present at the meeting. I do not believe that Ms Billante was at the meeting I attended. The notes do not record that she was present.

At the start of the meeting Mr Sinclair circulated an agenda and photographs taken of the relevant buildings (Annex B). The intention was to discuss several buildings in relation to which Mr Sinclair and/or Mr Bushnell had been engaged,

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603 Colombo Street the Tea Net Café, 605 to 613 Colombo Street the Khmer Noodle, Khmer Satay Noodle House and Kiwi Disposals, 615 Colombo Street Leather Direct and 626 Colombo Street the Bean Bag and Chilli Shops. The buildings at 603 to 615 Colombo Street were collectively referred to as the Austral Building.

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According to my notes and from my recollection we discussed the Austral Building first. It was noted that some work had been done in the previous week at the Leather Direct site. This was primarily work to secure a parapet. No resource consent had been obtained and so I advised that a retrospective resource consent application should be made in relation to the work. This reflected Council's processes at the time whereby building owners could carry out necessary temporary restraining securing work to heritage buildings without resource consent provided an application was subsequently made for a retrospective consent. I understand that further details in relation to this matter are provided in the evidence of John Higgins.

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We then discussed the options available for the entire Austral block. The options discussed were upgrade, repair and strengthening or alternatively demolition. It was noted that three of the four owners of the block were under-insured and that less than half of the floor plate of the building had been occupied prior to the earthquake on 4<sup>th</sup> of September 2010. The indication given at the meeting was that the available insurance cover may extend to meet the cost of demolition and site clearance but little else. Mr Sinclair stated that the figures provided by a quantity surveyor in relation to a similar building showed that there would be an approximate difference in cost of 15% between strengthening the building to 33% of the new building standard and strengthening to 67% of new building standard. In addition strengthening to 67% would cost approximately \$1800 per square metre compared with two and a half thousand dollars per square metre to build a new commercial building. As a result Mr Sinclair and Mr Bushnell were of the opinion that it would not be economic to repair the Austral Building.

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The option of converting the second floor of the building to residential use was discussed. Mr Sinclair asked whether any Council funding such as development contribution remissions would be available for this but I advised that it would not.

5 Damage to the Leather Direct building was discussed. Mr Bushnell and Mr Sinclair considered that this part of the building was not as seriously damaged as the rest of the building but if demolition of the other part of the building was required then this would affect the structural integrity of the Leather Direct portion. We then moved on to discuss 626 Colombo  
10 Street.

Mr Sinclair states that although the hazard posed by the façades on both sides of the street was raised at our meeting and at other times I do not think that the risks posed by the façades of 626 and 603 to 613 Colombo Street were fully appreciated by the Civil Defence when  
15 balancing a number of conflicting requirements. Because of the two dangerous façades, one on either side of the road, the whole of Colombo Street should in my view have been closed until the buildings could be made safe or demolished. Mr Bushnell states that, "In my opinion the best and safest course of action for 605 Colombo Street and  
20 the surrounding buildings involved immediate deconstruction of the façade and demolition of buildings". My recollection is that Mr Sinclair's and Mr Bushnell's concerns around safety at the meeting of 1<sup>st</sup> of February 2011 related to the building at 626 Colombo Street. It was this building which Mr Bushnell and Mr Sinclair were most  
25 concerned about. While we did discuss the details of damage to the Austral Buildings, and this is noted in the meeting agenda, the discussion related more to the costs of repair and Council processes and views on the demolition of the building. Neither Mr Bushnell nor Mr Sinclair indicated that the barriers around 603 Colombo Street were  
30 insufficient at the time or that the buildings from 605 to 613 Colombo Street needed to be cordoned. I have no record in my notes of comments of this nature being made. I have no recollection of

Mr Sinclair mentioning that the whole of Colombo Street needed to be closed due to the danger posed by the buildings”.

Q. Would you just pause there for a minute. Were you at this hearing yesterday?

5 A. I was, yes.

Q. And did you listen to the evidence of Mr Bushnell?

A. I did, yes.

Q. And during the course of that evidence he made some comments about 605 to 613 didn't he?

10 A. Yes.

Q. Do you wish to in any way to add to your evidence?

A. Sorry can you...?

Q. Do you wish to add anything to your evidence to comment on Mr Bushnell's evidence?

15 A. Yes I don't recall there being discussion about safety concerns in relation to the buildings, the Austral Buildings. There was discussion about the condition of 603, the Tea Net café on the corner and Marton Sinclair had supplied photographs showing cracking in the elevations and those, those photographs were discussed yesterday but  
20 there wasn't discussion in my recollection that, that the Austral Building itself posed a risk to Colombo Street.

Q. Thank you, can you continue now at paragraph 19?

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

25 A. “By comparison my notes of meeting do record a discussion about the need to take action in relation to the damage at 626 Colombo Street and the risk this building posed to the public. The case manager notes prepared by Mr Barry in relation to 626 Colombo Street, also known as 178 Tuam Street, are attached as Annex C. The notes state that on the  
30 9<sup>th</sup> of February 2011 Mr Barry, Neville Higgs, an engineer contracted to the Building Recovery Office, Paul Campbell, an engineer from Opus, also working on contract for the Council, Marton Sinclair and John Dallison, attended a site meeting and discussed the need for cordons and other securing work. Temporary propping work was then

carried out under Mr Sinclair's supervision and cordons were erected on the 11<sup>th</sup> of February 2011.

Mr Sinclair and Mr Bushnell also referred to the discussion around the timeframe for processing a resource consent for demolition of the Austral Building and 626 Colombo Street. I did advise at that meeting that it may take up to six months to obtain a resource consent for demolition. However, I also advised that this was an estimate only and would depend on whether the application was to be notified. I advised in general terms that notification was a strong possibility based on my experience with similar applications. I have read the evidence to be given by Mr Higgins in relation to the resource consent process and notification issues and believe this reflects the general advice that I provided at the meeting on the 1<sup>st</sup> of February 2011. The owners' representatives at the meeting were also advised that action was still required in the interim to temporarily secure the buildings as this was required under the section 124(1)(c) Building Act notices which had been issued. This included obtaining an engineer's report concerning any interim securing works which needed to be taken.

I had no further involvement with these buildings. There is no record of the Council having received any application for resource consent to demolish the buildings at 603 to 613 or 626 Colombo Street prior to the 22<sup>nd</sup> of February 2011 and I understand from a review of Mr Barry's case manager notes that no engineering reports were received."

**CROSS-EXAMINATION: MR ZARIFEH**

25 Q. Mr Ward I just want to deal firstly with that meeting on the 1<sup>st</sup> of February?

A. Yep.

30 Q. You said in paragraph 18 that, "We did discuss the details", the fourth line, fifth line, "We did discuss the details of damage to the Austral Buildings". What details were discussed then?

A. I can't recall the exact conversation. There was discussion about, a particular discussion about the 603 building on the corner, the damage



to the, that façade, particularly that south façade, and then the discussion also about whether knock-on's the right word but given that it was an integral, there was an integral connection between parts of that building with others the separate buildings, discussion about a level of damage to some of the transverse walls and whether that was repairable or the relative cost of repairing that and whether given that damage that demolition of the bulk of that building might ultimately be required.

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Q. Right, did you take notes of the damage to the Austral Buildings that was discussed?

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A. The note, the only notes I took, the notes that I took are the ones that are appended to my evidence.

Q. So there's no notes of that?

A. No I hadn't recorded anything about particular damage to the building.

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Q. But your recollection is that there was damage to the transverse walls?

A. That there was some damage to those.

Q. All right, along the building?

A. Along the building but the, the, the key focus of comments in my recollection from, and they were from Mr Sinclair were around the building on the south corner on Mollett Street.

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Q. Right so do you recall then him telling you that the connection between the walls in the transverse, the transverse walls and the façade then?

A. No I don't recall that.

Q. You don't recall that?

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A. No.

Q. But you remember damage to transverse walls?

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A. I remember that because the discussion was about whether or not, the discussion was about the links between those walls and the overall building. The discussion in terms of whether 603 were to be demolished what effect that would have on the immediately adjoining one. So there was some discussion about the fact that that maybe the case right the

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way up to the building on the other end on the Lichfield Street corner, the Leather Direct building.

Q. Right, and you remember that wasn't as bad?

5 A. The discussion really was that that wasn't badly damaged. It wasn't particularly badly damaged, that there had been some strengthening work to it already carried out. Matthew Bushnell did say, and I think I've got that in my note, that there was structural reliance, that building had structural reliance in terms of the other parts of the building, the central piece – 605613 – and so that if that first part of the building was  
10 demolished then there was some question about whether or not the Leather Direct building would be viable on its own.

Q. So you do recall them telling you that the building, leave aside the 615, that the building was seriously damaged?

15 A. I don't recall him saying it was seriously damaged. They were saying there was damage to the building and the discussion was around ...

Q. At paragraph 15 you said that Mr Bushnell and Mr Sinclair considered that this part of the building, that's Leather Direct, was not as seriously damaged as the rest of the building?

A. Yes.

20 Q. That implies that the rest of the building was or is that not your recall?

A. The way that's worded does imply that but it's not my recall that there was discussion that it was seriously damaged.

Q. Right but you can't recall what they actually said now?

A. No I can't.

25 Q. And so presumably you're not in a position to say that they didn't tell you, as they have given evidence, that they were concerned about the façade and the connection between the façades and the transverse walls?

30 A. As I said, I can't recall those exact details of the conversation. I didn't note it anywhere. I did note in my notes the concerns about the damage to the building across the road.

Q. Mr Sinclair, paragraph 16 of his evidence, said, "At the meeting various options were discussed and both Matthew (Matthew Bushnell) and I

expressed our concern over the buildings and the risk of failure of the walls.” So that was his evidence. I gather you’re not saying that he didn't say that?

5 A. I'm not saying that he didn't say that. I don't recall that and I didn't note that.

Q. All right and you heard Mr Bushnell yesterday –

A. Yes I did.

10 Q. – He said that he expressed concern about the façades and the potential for failure of façades. So again he could well have said that as well?

A. He could have. I'm confident that I would have recorded that. I have recorded detail about concern to the building across the road and the damage that was discussed in relation to that. I don't recall Mr Bushnell talking about separation of the façade wall from the rest of the building.

15 Q. But he could well have as he says?

A. He could well have, as he says, yes.

Q. Because the agenda that Mr Sinclair had prepared says, “Extent of earthquake damage – danger to public” in relation to both buildings doesn't it, and presumably you had a copy of this?

20 A. I did, yes.

Q. You'll be able to produce it?

A. Yes.

25 Q. So you saw that the first item in relation to each of the buildings they were there to talk about was the extent of damage and the danger to the public, correct?

A. Yes.

Q. So are you saying you didn't connect that agenda item with what they were telling you?

A. I'm sorry can you...

30 Q. Well if they hadn't have said anything about danger to the public or concerns they had about the façades you might well have wondered why they were putting danger to the public in there?

- A. Why they had it on their agenda, yeah. I don't recall connecting that or asking the question why have you got it on your agenda if you haven't raised it.
- 5 Q. Mr Bushnell you heard was only there to talk about the Austral buildings wasn't he, correct?
- A. I heard him say that, yes.
- Q. And that's why he went to the meeting we heard?
- A. Yes I did hear that.
- 10 Q. And he had only inspected 605–613 and I think had later done some work on 615?
- A. Yes.
- Q. But he hadn't had anything to do with 603, that was Mr Sinclair right?
- A. Yes that came out yesterday.
- 15 Q. And so his sole focus really was 605–613 and he said that he went to the meeting to get his concerns about that building across?
- A. Yes.
- 20 Q. And he didn't seem, I don't know if you've had other dealings with him, but he didn't seem from how he appeared yesterday giving evidence to be someone that would be backward about expressing a view if he had it. Would you agree?
- A. I would agree with that.
- Q. You are a planner?
- A. Yes.
- 25 Q. You are in the planning department, so I take it from that that you don't have anything to do with the assessment of buildings, these rapid assessments and the Building Act notices and all that entails?
- A. No.
- Q. So again you wouldn't be involved in deciding on or establishing cordons?
- 30 A. No not at all, no.
- Q. You said Mr Barry was present?
- A. Yes.

- Q. And I think he's referred to as the case manager. What does that mean?
- A. He was the building case manager so he was the building recovery office case manager for that building. On approach from the building's owners or agents he arranged a meeting. He requested me to be present at the meeting because it was a heritage building so his role was to manage the building recovery office.
- 5
- Q. Right so you were there really just for the planning side of it?
- A. Yes.
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- Q. If it became relevant in terms of resource consent issues?
- A. It was, yes.
- Q. So Mr Barry then he would be involved if it was required deciding on and directing cordons, further assessments, things like that?
- A. My understanding yes. It's a really big building recovery office, yes he would be.
- 15
- Q. And the Council file, just tell us about that. Who would have the Council file with things like rapid assessments, letters, copies of letters to owners et cetera. Who would have that?
- A. Are you asking about a file in relation to post earthquake issues with the building? The property file would have been stored at Recall with other property files so the building recovery office –
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- Q. – So they'd have their own file –
- A. – maintain a file on the property.
- Q. Would you have had access to that or not?
- 25
- A. Would I have?
- Q. Yes.
- A. Ah, I could have got access to it.
- Q. But at the meeting of 1 February did you have it?
- A. I didn't have it, no.
- 30
- Q. Who would have had that?
- A. Um, I don't know.
- Q. Mr Barry?
- A. Mr Barry may have had it.

- Q. Do you recall him having a file?
- A. I can't recall at that time the actual details of the meeting I'm sorry.
- Q. That's the kind of material that he would have access to in his position?
- A. From my understanding, yes.
- 5 Q. So presumably you wouldn't have been aware, given your role, of a rapid assessment on the 26<sup>th</sup> of December and the details of that?
- A. No.
- Q. But that would be on the BRO file?
- A. I would presume so, yes.
- 10 Q. You knew there had been a Building Act Notice?
- A. A section 124?
- Q. Yes.
- A. Yes.
- Q. And did you have a copy of it?
- 15 A. No.
- Q. So you just simply knew that that procedure had been followed?
- A. Yes that was the reason that these meetings generally were taking place. There was a 124 notice that was coming due or due to expire.
- Q. But you didn't familiarise yourself with that notice in this case?
- 20 A. No I didn't, no.
- Q. But again Mr Barry presumably from the BRO would have had the Council copy of that and would have known about that?
- A. I would presume so, yes.
- Q. So you didn't know that the Building Act Notice recorded that the Council records show the parapets above the roof line appear to have separated from the cross walls?
- 25 A. No.
- Q. You didn't know that?
- A. No. At the meeting I didn't know that.
- 30 Q. Now the concerns that Mr Sinclair and Mr Bushnell raised, and I appreciate that the 626 concerns appear to have been followed up and we heard from Mr Sinclair that he in fact had other meetings about 626?
- A. Yes.

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Q. And I think he appears to, certainly for himself appears to have been more concerned about 626, because it was a taller building and he'd had more to do with it, but Mr Bushnell's concerns about 605 to 613, presumably you haven't, following the meeting you didn't do anything about those or you weren't involved in any follow up about those?

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A. No, as I said I didn't recall Mr Bushnell making strong representations, or expressing strong concern about that, but I didn't follow up required building work at the meeting there would have been advice there, if there were works that were needed to be carried out in order to deal with the section 124 then they should be carried out and retrospective consent could be sought at a later date but in terms of following up work, no.

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Q. So from what you've said then because you're in the planning department it wouldn't have been your role anyway, correct?

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A. No, no I'm quite divorced from that, follow up.

Q. But if a, effectively a representative of an owner comes to a meeting like that.

A. Yes.

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Q. And expresses concerns about the façade of a two-storey – unreinforced masonry building, and concerns that are obviously directed to public safety.

A. Mhm.

Q. Is that something then that the building recovery officer would be expected to follow up and look into rather than the planning?

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A. Yes.

Q. Just on the resource consent issue.

A. Yes.

Q. You heard Mr Bushnell's evidence yesterday that his recollection was that they were told that it would have to be a notified consent.

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A. I did hear that yes.

Q. And that his recollection was that they were told that there wasn't really room to move on that in terms of the notification, it was he put it a

political decision from higher up. Do you recall any of that such thing being discussed or anything like that?

5 A. We discussed the issue of notification. My recollection is that I advised Mr Bushnell and Mr Sinclair that any decision on notification in relation to a heritage building would be made by a hearings panel which comprises, regularly comprised an independent commissioner and two elected members. I said to them that it was likely from the experience that we'd had that it could be notified or would be notified, that that was a likely outcome of that notification decision and that was part of our policy at the time, to be sure that people knew as early as possible the likely path that it would follow rather than there being a surprise if a decision was made that, for notification that they were surprised by that, and so the –

10 Q. You said strong possibility in your brief.

15 A. I did.

Q. So – well leave aside the exact words that were said, is it fair that you said to him, or you made it clear, left them with the clear impression that it was going to have to be notified and would take up to six months because of that. Is that fair?

20 A. I left them with a clear impression it was likely to be notified and that ultimately a timeframe from them, you know, preparing, presenting the application to approval could be six months.

Q. And that I think as they – he put it, that you were being very helpful but your hands were tied was the impression that they were getting, tied by the rules and regulations or by –

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A. Yes, I said we were obliged in terms, we were legally obliged to follow a process and I don't make the decision about notification so it was – it might come across that way, yeah.

Q. And that in terms of the notification issue it was out of your hands, someone higher up dealt with it and that was just how it was?

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A. My – in terms of notification decision, my advice was that a panel would make the decision on notification. There would be a report, a planning report with input from Heritage which would consider an engineering



reports and what, have any material they presented, but ultimately the decision wasn't – I may make a recommendation, I don't make a decision.

5 Q. So because it was a heritage building the position was if it was in a state, such a state that it had to be demolished, then in all likelihood it was going to take some considerable time for that process to conclude?

A. Yeah, quite possibly was.

Q. And there really wasn't a way out of it, a way to shorten it?

10 A. Mmm. We could expedite it as far as we could but my conveying this, the possibility of six months was that if the material that they provided with the application wasn't adequate then Council asking for more information invariably causes a (inaudible 10:05:31) timeframe.

Q. Whether it was going to be six months or not it was going to months wasn't it?

15 A. In all likelihood yes.

Q. And therefore the public safety issue, if there was one, was something that would have to be dealt with by other means such as barricades or cordons, correct, pending the demolition of such a building?

A. If the damage was such to warrant that then yes.

20 **CROSS-EXAMINATION: MR ELLIOTT**

Q. Mr Ward, I think one thing that everyone seems to agree was that the prospect of demolition was discussed at that meeting on 1 February?

A. Yes it was.

25 Q. And in relation to the Austral Building it was clear that the position that Mr Sinclair and Mr Bushnell had was that demolition was the only viable option from the owner's point of view?

A. Yeah from the owner's point of view, yeah.

Q. And so far as you understood that was because the owner's insurance would cover the cost of demolition but little else?

30 A. For that, I noted that in my notes, and I distinctly remember that comment, the comments from Mr Sinclair and Mr Bushnell as I recall them around that were related to economic viability of any other option

and that demolition really was a likely outcome to be sought by the owner.

Q. And you discussed the possibility of some form of Council funding, is that right, but you said well there is no financial support available from that source?

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A. They asked, yes they asked a question or I think it was Marton Sinclair who asked the question about if they were to repair the building and convert the upper level into residential would there be Council funding and what they were asking was would Council decline to require development contributions in relation to that, and I said, "No, that that had been discussed in regard to other buildings and other owners and the answer had been no, that there wouldn't be any remission of development contributions." So it wasn't effectively funding that was – funding by not taking contributions.

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Q. I see. And you must have learned during your discussions that interim securing work was expensive for the owner?

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A. There was discussion about strengthening work, yes.

Q. I'm talking about interim securing work though.

A. Interim securing, I can't recall, as I said, really I can't recall the exact conversations but from experience with a number of other buildings I have no doubt that the comment was made that it is expensive to carry out securing work.

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Q. And you must have appreciated that if interim securing work was required, it would mean the expenditure of a potentially large sum which would be effectively wasted if the building was ultimately demolished?

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A. Yes I'm aware if they carry out strengthening work and then ultimately demolish the building then that money's not recoverable.

Q. And you would have appreciated that wouldn't have been particularly attractive for the owner and/or insurer?

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A. Yes, I can appreciate that that would be the case, yes.

Q. You say in your statement that you've read the evidence from Mr Higgins?

A. Yes.

Q. I'm just going to refer you to a section of that, WITHIG0001.8.

**WITNESS REFERRED TO DOCUMENT**

Q. Just highlight paragraph 30 and the first sentence of paragraph 31 please? So he refers there to section 129 of the Building Act which he  
5 says provides powers for dealing with a dangerous building, or immediate danger to the safety of people where immediate danger to

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the safety of people is likely including the potential for such buildings to be demolished to remove that danger and then the effect of the order in  
10 council, that is, the Canterbury Earthquake Resource Management Act order of 2010 being that where such buildings were demolished under that power there was no need for a resource consent and that was particularly relevant to listed heritage buildings as they, in general, were the only buildings which required a resource consent for demolition. I  
15 take it that you understood that legal position at the time of your meeting on 1 February?

A. I knew a 129, yes, had been used on one or two other buildings I think.

Q. And in paragraph 31 Mr Higgins says, "Because the powers are broad and potentially draconian they were likely to be exercised sparingly by  
20 the Council." I know it's an adjective but the powers, the power would not necessarily be as draconian where an owner wants the demolition to happen. Would you agree?

**JUSTICE COOPER:**

25 Q. You need to pronounce an answer audibly.

A. I'm sorry – yes I do.

**MR LAING:**

Sir we're getting into this old problem about asking a witness what section 129  
30 means.

**JUSTICE COOPER TO MR LAING:**

Q. I didn't think so. Why?

A. Well he's asking whether it was draconian from the owner's point of view. I mean that's not, that's not the test in the section. So if he, if that gives the answers –

5 Q. You're calling a witness who's evidently going to say that the powers in section 129 are draconian which is why they likely to be used sparingly.

A. Yes, that's an observation.

10 Q. Yes. So all Mr Elliott I think is drawing from this witness and he's now agreed that, that characterisation of the powers would be less appropriate where an owner had come to the Council and asked the Council to provide for the demolition of the building under that section. Now what's the objection?

15 A. No, probably in retrospect I've (inaudible 10:12:30) but I'm just concerned that this is a sort of way down a slope but if, if that's the scope of the question, that's it, I'll -

A. Well that's as I think I understood it. I think that's as the witness understood it.

#### **CROSS-EXAMINATION CONTINUES: MR ELLIOTT**

20 Q. Just from your point of view I'm going to ask you what you envisaged would happen. Assuming that the resource consent process ran its course and a resource consent for demolition would not be granted.

A. Yes.

Q. What did you envisage would happen at that point?

25 A. I don't honestly know what, what the, if a resource consent was not granted for demolition then ultimately if the building needs repair work that repair work would need to be carried out.

30 Q. Yes but you appreciated that we had an owner here who couldn't afford necessarily to repair or upgrade and with the resource consent not allowing demolition, couldn't demolish. So what, what would happen to that building?

A. I don't have an answer to that question. I don't know what would happen to that building.

**JUSTICE COOPER TO MR ELLIOTT:**

Q. Well that's a fair answer I think Mr Elliott.

A. Yes Your Honour.

**5 CROSS-EXAMINATION CONTINUES: MR ELLIOTT**

Q. You would agree though that the Council could have given consideration as at 1 February to the exercise of its power under section 129?

10 A. Possibly I'm not familiar with, intimately familiar with the provisions of 129 but if, if the building, my understanding of 129 is that the building presents an imminent danger to public safety.

**JUSTICE COOPER TO MR ELLIOTT:**

15 Q. It may be Mr Elliott that the questions you're asking now are more appropriately directed at somebody who was concerned with the administration of the Building Act. As I understand this witness he's a, he's a planner.

A. Yes Your Honour.

20 Q. His expertise is on whether or not resource consent's necessary and no doubt the criteria that would be applied et cetera, et cetera, et cetera and whether he can step, whether he should be questioned on the basis which requires him to step out of that framework I wonder.

A. No Your Honour. I accept that Your Honour.

25 Q. Presumably one of the next witnesses would be able to respond to such questions.

A. Yes Your Honour Mr Higgins addresses it. My point really is one which is self evident I suppose that the, the power was not exercised.

Q. The power existed and it wasn't exercised (inaudible 10.15.48).

**CROSS-EXAMINATION CONTINUES: MR ELLIOTT**

Q. Perhaps Mr Ward could answer the question as to whether there had been some direction from within the Council to you or others about when consideration might be given to its exercise.

5 A. I, I can't recall a direction about, if you're asking whether I received a direction about when 129 could, should, could be exercised I don't recall receiving a direction on that. My understanding was that 129 had been exercised on approach by building owners but I may not be correct in that. I didn't really have any dealing with, with, you know, exercise of  
10 section 129. It's not the area that I'm in so.

Q. As you said in paragraph 21 of your evidence the outcome was that you sent the owner's representatives away leaving them to take the step of interim securing work.

A. Yes, in relation to that 124 notice, yes.

15 Q. And as Mr Zarifeh has pointed out you were contemplating that therefore the building would be there for some time from that point.

A. Yes.

Q. And you were aware that a Building Act notice classifying it as dangerous had been issued?

20 A. Yes I was aware there was a 124 issued against it.

Q. And you said that you don't recall discussions about safety concerns. So does it follow from that that you did not raise any question of safety concerns yourself?

A. I don't recall doing so.

25 Q. Do you recall the case officer raising any safety concerns?

A. I don't know. I've said that I didn't recall any safety concern being raised in relation, I hadn't noted any safety concern being raised in relation to the building, to the Austral building but only in relation to the one on the other side of the road.

30 **CROSS-EXAMINATION: MESSRS McLELLAN AND McINTYRE – NIL**

**QUESTIONS FROM THE COMMISSION: COMMISSIONER FENWICK –  
NIL**

**QUESTIONS FROM THE COMMISSION: JUSTICE COOPER**

5 Q. Mr Ward at the meeting were Mr Hector and Mr Barry. Mr Hector is a senior building consent officer.

A. Yes.

Q. And Mr Barry was the case manager. Is he also a person from the building inspectorate side of the Council or was he another planner?

10 A. No he wasn't a planner. He, I think prior to working in the building recovery office he had been working with the building inspection area in terms of code compliance.

15 Q. And do you recall any of the Council representatives at the meeting advising Mr Sinclair or those who were there representing building owners about the powers available under section 129 of the Building Act?

A. I don't recall that, no.

1020

Q. But am I right that demolition was squarely on the table as a subject for discussion?

20 A. As an option yes.

Q. Yes. And it was in relation to that that there was the discussion about timeframes for a resource consent application?

A. Yes.

25 Q. And that was in the context of pretty clear advice that the owners were not in a position to repair or strengthen the building, is that right?

A. Yes that was in response to statements from I think I noted them being from Mr Sinclair that the owners weren't financially you know...

Q. All right, thank you.

A. Or they were under-insured rather so...

30 **RE-EXAMINATION: MR LAING – NIL**

**WITNESS EXCUSED**



**MR LAING CALLS:****JOHN RICHARD HIGGINS (SWORN)**

Q. Your full name is John Richard Higgins?

A. Yes.

5 Q. Could you read your brief of evidence from paragraph 1 please?

**WITNESS READS BRIEF OF EVIDENCE**

A. "My name is John Richard Higgins. I am the resource consents manager at the Christchurch City Council. I have worked for the Council since 2001. During the state of emergency following the earthquake of 10 4<sup>th</sup> September 2010 I was involved with urgent demolitions and latterly assisted in setting up a Council building recovery office. I have 11 years of experience working in planning and resource management including four years in management positions dealing with resource consents and approvals under the Resource Management Act. I hold a Bachelor of 15 Resource Studies and have completed a number of post graduate papers also in the field of resource management. I was also seconded to CERA in April 2011 for a period of three months working as a policy advisor. I have been asked to provide evidence to the Royal Commission relating to specific aspects of the Council's approach to 20 resource consent issues for demolition of listed heritage buildings after the earthquake of 4<sup>th</sup> of September 2010 and prior to the 22<sup>nd</sup> February 2011 earthquake.

Scope of Evidence. My evidence relates and responds primarily to issues raised in evidence of Marton David Sinclair and Matthew J 25 Bushnell. While their evidence is specific to buildings at 603 to 615 Colombo Street and meetings that they had with Council officers regarding those buildings, they also made more general statements about what they understood the Council's policy relating to resource consents required for demolition of heritage buildings including 30 notification of such consents and the likely timeframe for obtaining consents. I was not present at the meetings with those gentlemen regarding those buildings and any necessary responses about what was in fact said at those meetings will be addressed by other Council

officers. My evidence will however address the following matters. The statements made in the evidence, (a) the statements made in the evidence of Messrs Bushnell and Sinclair about the Council's policy and approach to resource consents for demolition of earthquake damaged heritage buildings. (b) The list, the requirements of the Council's city plan regarding demolition of listed heritage buildings. (c) The Council's practice regarding notification of resource consents for alteration, repair and demolition of listed heritage buildings prior to the 4<sup>th</sup> September 2010 earthquake. (d) The Council's approach to resource consenting requirements for demolition of heritage buildings which were damaged by the 4<sup>th</sup> September 2010 earthquake and aftershocks. (e) The Council's policy for notification of resource consents relating to demolition of listed heritage buildings following the 4<sup>th</sup> September 2010 earthquake and the likely timeframes for those process, for the process to be completed, and (f) examples of how the Council's approach to resource consent requirements for demolition of heritage buildings followed the 4<sup>th</sup> September 2010 earthquake was applied.

The statements of Messrs Sinclair and Bushnell. Mr Bushnell states at page 3 of his evidence that Council officers advised, (a) it was Council policy that no work could be done on damaged heritage buildings without a resource consent. (b) A resource consent would be notified because this was Council policy. (c) Notification presumably of resource consents could not be accelerated and (d) an outline of information required to accompany resource consents applications was provided and pre-application meetings to prevent delays in processing was recommended, and (e) the Council advised that it would probably take a minimum of six months to obtain a resource consent permitting demolition of heritage buildings. Mr Bushnell also claims at paragraph, at page 3 prior to the 22<sup>nd</sup> February 2011 earthquake that Council had begun serving notices on owners of heritage buildings under section 124 of the Building Act to prop the façades of those buildings. His evidence states that the owners of buildings served with these notices requiring propping of their buildings would have been forced to

waste money doing this to allow the resource consent process to run its course so that demolition, consent for demolition could be obtained. At page 4 of his statement Mr Bushnell's evidence states his view that Council intransigence meant that other heritage buildings that required demolition were in a damaged state but could not be demolished because of the refusal of the Council to fast track resource consents required for demolition. He also states that his understanding of the insistence of the need for a resource consent for demolition of heritage buildings and a requirement for such consents to be notified resulted from a policy decision of the elected Council. Mr Sinclair's statement at paragraph 14 outlines his understanding of heritage, of the heritage status of the building at 626 Colombo Street. At paragraph 17 of his statement Mr Sinclair states his recollection of the meeting with Council officers on 1<sup>st</sup> of February 2011 regarding the resource consent requirements for heritage buildings. He states that he was advised by staff that it was Council policy that a resource consent was required for demolition. Consent could be applied for and that such an application would be notified. He states that his recollection was that a timeframe for the granting of the notified resource consent was up to six months. He expresses the opinion at paragraph 21 of his statement that the process of dealing with dangerous buildings had become far too complex and time consuming which was as a result of the Council decision on notification of resource consents. He states that this decision effectively prevented urgent decisionmaking and action on dangerous buildings. With regard to the building at 626 Colombo Street Mr Sinclair expresses the view at paragraph 22 of his evidence that demolition was the only practical and economic outcome and that the resource consent process was only delaying an inevitable outcome.

Requirements of the Council's City Plan Regarding Consent Requirements for Heritage Buildings. Listed heritage buildings, places and objects are divided into four groups under the Christchurch City Plan being groups 1, 2, 3 and 4 heritage items. Group 1 heritage items

have the highest level of protection. A description of the groups and their importance is attached to appendix 1”.

Q. Can I just ask you to pause there and go to attachment 1 Mr Higgins and can you just go through that very briefly for us.

5 **WITNESS REFERRED TO ATTACHMENT 1**

A. Yep. So this is the city plan group descriptions for heritage buildings. “Group 1 listed heritage items including those of international or national significance, the protection of which is considered essential. Group 2 listed heritage items include those which are of national or regional importance, the protection of which is seen as very important where this can be reasonably achieved. Group 3 listed heritage items include those which are of regional or metropolitan significance, the protection of which is seen as important where this can be reasonably achieved. Listed heritage items include those which are of metropolitan significance and/or involve a contribution to the heritage of the city, the protection of which is seen as desirable by the Council”.

**JUSTICE COOPER:**

Q. Can you just tell me the Council’s plan is an operative plan is it?

A. Yes it’s an operative plan.

20 Q. And how long has it been operative?

A. Since 2006, 2007 maybe, I’m not completely sure that’s a guess.

1030

Q. Were you with the Council when it became operative?

A. Yes I was.

25 Q. And was there any proposed plan change relevant to heritage issues as at the 4<sup>th</sup> of September?

A. No, no.

Q. And since?

A. Still no.

30 Q. So it’s a simple situation we’re looking at the district plan and what it provided, an operative plan?

A. Yes. That’s right.

**EXAMINATION CONTINUES: MR LAING**

Q. Yes can you continue at paragraph 16?

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

5 A. "The buildings at 603 to 615 Colombo Street, corner of Tuam and  
Colombo Streets, also known as the Austral Buildings were listed in the  
city plan as a group 4 building. The city plan explains that a group 4  
heritage item include those which are of metropolitan significance and/or  
involve a contribution to the heritage of the city, the protection of which  
is seen as desirable by the Council. Rule 1.3.2 states that alterations to  
10 a group 4 heritage building require a controlled activity status resource  
consent. The rule also states that demolition of a group 4 building  
requires a discretionary activity status resource consent. A copy of the  
volume 3 rules and associated definitions is provided at appendix 2.  
Prior to – "

**15 JUSTICE COOPER:**

Q. Just a moment, can you just go over to appendix 2 please Mr Higgins?

A. Yes.

Q. And just briefly take us through that.

A. So these are the city plan definitions and rules, and it's just running  
20 through some of the relevant definitions there. "An additional building  
means in relation to protected buildings, places or objects, means any  
additional structure, whether temporary or permanent, movable or  
immovable, but does not include alterations as defined below." Then  
alteration is defined immediately below that. Do you want me to read  
25 these out?

Q. No, but I'd just like us to have time to read them.

**EXAMINATION CONTINUES: MR LAING**

Q. Just perhaps pause.

A. Okay.

30 Q. Just going down to the bottom of appendix 2, you see there rule 1.3.2,  
and community standard, "any demolition of a group 3 or group 4

building, place or object shall be discretionary activity”, and then the next one: “any alteration or removal of group 3 or removal of group 4 shall be discretionary activity with exercise limited to matters concerning the heritage value of the building”. And the last one is in relation to

5 “alteration of group 4 building ... shall be a controlled activity”. And was that your understanding what applied in February of last year?

A. That is my understanding, yes.

Q. Could then we come back to, I think you're at paragraph 18?

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

10 A. “Prior to the September 2010 earthquake it is my view that notification of resource consent applications for demolition of heritage buildings would have been highly likely in most instances, particularly given the RMA’s statutory tests and the provisions of the city plan that the Council was obliged to apply.

15 Council practice for demolition of heritage buildings after 4 September 2010. Following the 4 September 2010 earthquake there was no change to the regulatory framework which was in place regarding resource consents for heritage buildings. The city plan was not changed and apart from one matter dealt with by order in Council which I’ll discuss

20 later in my evidence, there was no relaxation of the RMA or city plan requirements. The Council still had the same regulatory framework and the same legal tests to apply, albeit that the circumstances for a number of heritage buildings had changed significantly due to earthquake damage. The Council therefore had to try and adjust this practice for

25 resource consents for demolition of heritage buildings to respond to the change in circumstances. It was well recognised at the time that safety was paramount. As noted earlier the city plan rules provided that alterations to group 4 heritage buildings required consent as a controlled activity. Given the need for damaged buildings to be made safe and

30 secure pending decisions as to the future of damaged heritage buildings the Council was facilitating a stabilisation of heritage buildings with the requirement of lodging a retrospective resource consent application when the repair or demolition of the building was determined. This

including propping, bracing and removing parts of the building such as an unstable parapet. It was a requirement for the work to be designed or advised by a suitably qualified engineer and in consultation with the Council heritage team to ensure works were being carried out in a way that was as sympathetic as practicable to the heritage fabric of the building. Where demolition was being proposed the resource consent was required as it triggered the rule outlined earlier in my evidence. That in turn triggered a need for a resource consent application to be made as part of the process and as part of that process an assessment of the proposal was required on both the RMA's notification and merits provisions, guided by the provisions of the city plan".

**EXAMINATION CONTINUES: MR LAING**

- Q. If you could just pause there. What kind of information would you expect to be provided for a resource consent for demolition?
- 15 A. The key information requirements we were asking for was an engineering assessment, a – some financial information in terms of the various options proposed to the building, and if they could, a heritage assessment as well. The Council were undertaking their own heritage assessments so in the case of say group 4 buildings we were not necessarily always asking for heritage assessments.
- 20 Q. In terms of an engineering report, what would you have expected that would contain, what sort of matters that would expect to be covered?
- A. A report on the state of the building, the level of damage and the options for the repair, demolition and so on.
- 25 Q. Yes, the options available to the owner?
- A. Yes.
- Q. Or lack of as the case may be?
- A. Yes.
- Q. Thank you, could you continue at paragraph 21?
- 30 **WITNESS CONTINUES READING BRIEF OF EVIDENCE**
- A. "Where demolition was being proposed, the resource consent was triggered as triggered the rule outlined earlier in my evidence. That in

turn triggered a need for resource consent to be made and as part of that process an assessment was required under both the RMA's notification and merits provisions guided by the provisions of the city plan. Both prior and following the September 2010 earthquake for the proposed demolition of a group 4 building such as the Austral Buildings notification of an application would not have been automatic. An assessment of the building in terms of the adverse effects on heritage values as the result of a demolition would have been necessary. This required expert opinion and largely dependent on why the building was listed, the level of damage and the ability for heritage values to be retained through the retention of the building. For group 1 to 3 buildings the notification position was not dissimilar. It was largely dependent on the level of adverse effects on the heritage values of the building. An important difference however was the heritage significance of the building. The higher the listing the more heritage significance the building is deemed to have and therefore the greater the likelihood of adverse effects as a consequence of demolition. It was not inconceivable that a resource consent application for demolition of the Austral Buildings could have been processed without notification. Having said that, given the RMA statutory tests and the provisions of the city plan that the Council is obliged to apply, my experience was that notification was a strong possibility and in the Austral Buildings case I understand that this position was accordingly advised. No in-depth heritage assessment had been carried out in the Austral Buildings case and so Council was only in a position to advise in general terms. In any event while it was my understanding that the buildings' owners indicated through their agents that they wished to demolish the buildings, no resource consent application for demolition was ever lodged with the Council.

30 1040

Notification under the RMA is a process which can take between three to six months. There are legislated time-frames in the RMA which result in a minimum possible time-frame of around three months between



notification and a decision. However often it takes between four to six calendar months due to information requirements being satisfied. As I noted earlier the Council was still operating under the same regime post earthquake as it had done prior to that event. The September 2010 earthquake had, however, given rise to an unprecedented situation and so the Council was mindful of the need to expedite the processing of applications as much as it could within the legal constraints. Notification is also a fairly narrow assessment primarily focused on the adverse effects of a proposal. When deciding whether or not to grant or decline a resource consent, a wider range of factors are able to be taken into account such as the cost of the repair work. While an application may be required to be publicly notified for demolition of a heritage building that application may well be granted. The Council's interpretation of the notification provisions was subject to guidance from legal advice. It was well recognised that the Council was facing a unique situation under the RMA with respect to listed heritage buildings and damage caused by an earthquake. The Council was also well aware that there was a high level of public interest associated with heritage buildings so it needed to ensure the decisions being made were legally robust. The Council is not only guided by expert opinion and legal advice but also guided by previous decisions on notification. These decisions were usually made by a hearings panel which included an experience planning commissioner and elected representatives. Examples of notification decisions regarding heritage buildings are provided in the section below".

**EXAMINATION CONTINUES: MR LAING**

- Q. Can you pause there please. Before you get on to that next section you were present at this hearing yesterday?
- A. Yes I was.
- 30 Q. And did you hear Mr Bushnell's evidence?
- A. Yes.

- Q. And Mr Bushnell made certain comments, if I can put it that way, regarding direction or decisions by elected members about notification. Did you hear those comments?
- A. Yes I did.
- 5 Q. Would you like to comment on that please?
- A. Um, there was no policy, um, or direction from elected members that applications were to be publically notified. Um, my experience was that these applications were going to elected members which included the planning commissioner and, um, they were being assessed on the
- 10 merits in terms of the notification clauses.
- Q. That is what you refer to as the Hearings Panel?
- A. Yes that's right.
- Q. And you say that the Hearings Panel include an experience Planning Commissioner. Is that somebody outside the Council or within the
- 15 Council?
- A. That's somebody outside the Council with considerable experience in resource management issues.
- Q. And as far as the elected members on the panel, what sort of background might they have?
- 20 A. They would normally have completed the Good Decision-Making Course. There may be instances where they haven't and that might be due to availability but as a general rule or policy we try to get those people with experience on panels.
- Q. And what would be the procedure to obtain a decision from the Hearings
- 25 Panel in terms of officer involvement?
- A. The officer involvement, obviously the officers involved pre application and initial assessment of the application they write their section 42A report and that goes with a recommendation to the Hearings Panel. They hold a meeting and consider that report at that meeting.
- 30 Q. Was the Hearings Panel something specific to heritage issues or was it more general?
- A. No, it's more general and we have a policy that, there's essentially two tiers of decision making for resource consents – the first is at Council

officer level where officers such as myself, Senior Planning Officers such as myself, make decisions on resource consent applications but where they are controversial and there's a whole list of applications which may be controversial they are elevated to a Hearings Panel to make a decision and at this time heritage was included in that list.

5

Q. So if the owners had made an application it would seem that any notification decision would have been made by the Hearings Panel but upon recommendation from officers. Does that summarise the position?

A. Yes that's right.

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**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 29**

A. "Canterbury Earthquake Resource Management Act Order 2010. As I noted earlier in my evidence there had been an Order-in-Council made shortly after the September 2010 earthquake on 16 December 2010. This provided for the relaxation of certain RMA requirements as they apply to local authorities including extensions of certain time-frames under the RMA, a relaxation of the duty of local authorities to keep records and observe and enforce planning documents, modification of the exercise of the RMA Emergency Works powers and the exemption from the need to obtain resource consents if the local authority exercised its powers under section 129 of the Building Act 2004. Section 129 of the Building Act provides powers for dealing with a dangerous building where immediate danger to the safety of people is likely, including the potential for such buildings to be demolished to remove that danger. The effect of the Order-in-Council was that where such buildings were demolished under that power there was no need for a resource consent. This provision was particularly relevant to listed heritage buildings as in general they were the only buildings which required a resource consent demolition. Because the section 129 powers are broad and potentially draconian they were likely to be exercised sparingly by the Council. Two examples where these powers were utilised with full demolition were the Manchester Courts building,

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160 Manchester Street, and 461–469 Colombo Street, Sydenham, where Council approved their demolition under section 129 of the Building Act. The powers were also used to give a notice to fix the unsanitary conditions that the building at 31 Teddington Road, Governor’s Bay, known as Ohinetahi, in order to ensure provision against moisture penetration. The Minutes of an Extraordinary Meeting of the full Council on 4 and 6 October 2010 regarding the exercise of these powers are attached at appendix 3”.

**EXAMINATION CONTINUES: MR LAING**

10 Q. Were you involved in any of those matters?

A. I was, yes. There were several examples where there were discussions around the use of section 129 of the Building Act and they weren’t decisions that I ultimately made. The process at the time was generally that those issues were discussed. They were elevated to Mr McCarthy who then considered them further and there may have been a report recommendation go to the chief executive and full Council to ultimately make that decision.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. “Other matters being considered by Council. Due to the RMA and City Plan requirements that the Council was acting under regarding the demolition of heritage buildings and concerns expressed by the building owners about that process, it was recognised that some stream-lining of the resource consent process may be desirable. Accordingly discussions were initiated between Council officers and officials from the Ministry for the Environment about the possibility of having Orders-in-Council made under the Canterbury Earthquake Response and Recovery Act 2010 which would provide for relaxation of the RMA’s requirements relating to resource consents for demolition of heritage buildings in Christchurch. These discussions were ongoing and progressed to the point where further progress towards an Order-in-Council was awaiting a decision from the Council’s Regulatory and Planning Committee. The Regulatory and Planning Committee

considered a report dated 2<sup>nd</sup> February 2011 for a proposed Order-in-Council to streamline the demolition of heritage buildings under the RMA. The report is attached at appendix 4 and a supplementary report dated 18<sup>th</sup> February 2011 is attached at appendix 5. These reports were ultimately considered by the Regulatory and Planning Committee who concluded that there was no need at the time to accept the recommendations in the reports that an Order-in-Council be pursued. That recommendation is recorded in the supplementary report and was to go to the 23<sup>rd</sup> February 2011 Council meeting. The Council meeting never took place due to the 22<sup>nd</sup> February earthquake.

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Q. Were you involved in that process again Mr Higgins?

A. Yes I was. I was involved in, at a Council officer level and in discussions with the Ministry for the Environment and involved in the preparation of the report although I wasn't the author.

Q. No but you were aware of its contents?

A. I was aware of our contents and it was our area and myself and the heritage area that we were leading that streamlining or proposed streamlining.

Q. Thank you. Paragraph 36.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "I consider that it is useful to respond to this statement at paragraph 21 of Mr Sinclair's evidence that the process of dealing with dangerous buildings had become far too complex and time consuming which was a result of the Council decision on notification of resource consents. He states that, 'This decision effectively prevented the urgent decision-making action on dangerous buildings.' The first point is that there was no decision that the Council made regarding notification of consent application to demolish heritage buildings. As I explained earlier the legal situation post the 4 September event was largely unchanged and the Council through its officers sought to work practically through that framework given the change in circumstances. The second point is that as I consider some of the examples I describe below, the Council and its

officers were doing a number of things to make the processes as simple and as efficient as it could be in the circumstances. Following the 4<sup>th</sup> September 2010 and Boxing Day earthquake, Council Planning, Building and Heritage staff met or corresponded with a number of heritage building owners and their engineers in relation to stabilisation and demolition proposals. Appendix 6 contains a typical example of correspondence sent to owners' engineers where Council gave approval for stabilisation works to occur prior to a resource consent application. The attached letter relates to 88 Cashel Street, the former Zetland Hotel, a group 3 heritage building, following the Boxing Day event. In this instance the building owner engaged an engineer to assess and design propping for the building. The proposal was received by Council on 18<sup>th</sup> January 2011. The Council responded to the building owner on 26<sup>th</sup> January 2011 in relation to the temporary propping giving approval to propping works to be supervised by the owners' engineers. Further to this an email was sent on 31<sup>st</sup> January 2011 giving the owners advice about the resource consent process. For larger make-safe proposals such as significant deconstruction of high value heritage buildings several urgent resource consents were processed rather than giving approval in principle for the works prior to the consent being lodged. An example of this kind of consent was the removal of the turret off College Hall at the Arts Centre. In this case a meeting identified that the structure was a collapse hazard and several days later a draft consent application was lodged on 15<sup>th</sup> November 2010. Further information was provided by the building owner on 19<sup>th</sup> November 2010 when the engineering methodology was more comprehensively developed and approval to start preparation works for the removal was given on 24<sup>th</sup> November with consent being granted on the 30<sup>th</sup> November 2010. A copy of the consent is attached to appendix 7. In relation to demolition proposals owners were advised of the need for resource consent and of the information requirements for submitting applications for resource consent. Apart from the decisions made under the September state of emergency and section 129 of the Building Act no

5 approvals were given to demolition prior to the resource consent being granted. Owners were encouraged to make buildings safe in the interim while the consent for demolition was being pursued. An example of the advice given is attached at appendix 8. The example relates to 208 Hereford Street, the Occidental Hotel, where the applicant wanted to demolish the building prior to obtaining any engineering assessment. During the period of 4<sup>th</sup> September 2010 to 22<sup>nd</sup> February 2011 the Council had processed and granted one non-notified consent for the full demolition of a building. This related to 456 Colombo Street. A copy of the consent is attached at appendix 9. The consent was applied for on 12<sup>th</sup> October 2010 and contained a full engineering assessment. The consent was processed on a non-notified basis as the effects on heritage values were assessed as being minor. Consent for demolition was granted by a Commissioner on 5<sup>th</sup> November 2010. During this period two consents were processed for partial demolitions at 68 Manchester Street and 232 Tuam Street. Both of these applications were processed non-notified and granted by Hearings Panel. Decisions to publicly notify three applications for full demolition had been made by hearings panels before 22<sup>nd</sup> of February 2011. These related to residential buildings at 121 Papanui Road and 112 and 116 Centaurus Roads where demolition was considered to have more than minor adverse effects. As at 22<sup>nd</sup> February 2011 no decisions under section 104 of the RMA had been made relating to these properties. As stated above the notification to decision process takes a minimum of three months where all relevant information has been provided by the applicants. In these instances the applications all required further information. The process would have taken longer than three months had it been completed. As noted earlier, paragraph 21 of Mr Sinclair's statement says, "The process of dealing with dangerous buildings had become far too complex and time consuming and this effectively prevented urgent decision-making and action on dangerous buildings." I agree with Mr Sinclair that the demolition of heritage buildings was a complex and time consuming process, however I consider that the

Council has been very pragmatic by offering building owners assistance and actively facilitating the stabilisation of heritage buildings in order to make them safe. Council officers were conscious of the safety issues presented by unstable heritage buildings. There were also other ways in which a dangerous building could be managed such as cordoning off an area around the building. Finally there was also the section 129 process under the Building Act where a dangerous building including a heritage building could be demolished without the need for resource consent while the criteria in that section were satisfied. This was seen as a final and relatively rarely used option but nevertheless was a potential option where other options were not seen as being sufficient to address immediate safety issue.”

**CROSS-EXAMINATION: MR ZARIFEH**

Q. Mr Higgins I just want to ask you about the final two paragraphs of your brief that you've just read out. You said that you agree with Mr Sinclair that the demolition of heritage buildings was a complex and time-consuming process. Correct?

A. Yes that's correct.

Q. So is that your opinion as an experienced Council planner?

A. Yes that's my opinion.

Q. And did you believe that, or do you believe that changes need to be made to streamline the process?

A. That was certainly my view and I signalled before that I was part of, of the report that went to the regulatory and planning committee which was recommending a streamlining of demolitions which would effectively take out the notification process.

Q. But that view, your view obviously was, wasn't shared by others higher up in the Council (inaudible 10:58:39).

A. It was not accepted by the regulatory and planning committee, yes.

Q. And who's on the regulatory and planning committee?

A. It's a number of elected members, councillors.

Q. Council members?



A. Yes and community board members.

Q. Right so do you know why it wasn't accepted?

A. I, I can't recall exactly apart from what's recorded in the, in the minutes of the meeting and resolution.

5 Q. Why did you believe that the process needed to be changed?

A. We were obviously at the coalface dealing with the property owners and that was certainly the impression that we were getting from them, that it was a very time-consuming and complex process to go through for them and it, it was, you know in the circumstances we thought because we were talking about such a large scale and unprecedented situation that there needed to be a quicker response in terms of bringing these demolition of the heritage buildings to a decision.

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Q. But what, just to, for financial reasons or what?

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15 A. It wasn't just the cost involved but it was obviously, there was a number of examples where it was reasonably clear what the final outcome was going to be but because of the constraints to the RMA had to go through this three to six month process. So we were conscious of that and felt that we needed to address that and that was the purpose of the report going to the Planning Committee.

20

Q. And did public safety or the potential for danger to public safety play any part in your thinking?

A. It wasn't so much public safety because I thought there were a number of options available to address public safety as I've outlined there, there was, you know –

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Q. In that final paragraph are you talking about?

A. Yes so there was obviously the stabilisation works that could occur to the building. There was the cordoning and then the final option was the section 129 under the Building Act if it couldn't be cordoned sufficiently.

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Q. When you said you thought that the process should be streamlined, are you just saying it should be quicker for more obvious cases?

A. Yeah because we were, um, yeah, not just for more obvious cases but there were a lot of these cases coming through so it was partly about

our ability to be able to sort of get these through the system but it was also a lot of stress to people out there trying to resolve these issues around their heritage buildings so we were conscious of that as well.

5 Q. And we heard from one of them, Mr Sinclair. He expressed frustration didn't he?

A. Yes about the process, yes.

Q. Not only about 626 Colombo. He mentioned other buildings that he had had difficulties with. Do you accept that?

10 A. Yes. That's a general statement that I've made about the demolition of heritage buildings generally.

Q. And so in lessons learnt from this you agree there have to be legislative changes to change the process dealing with post, a significant earthquake or emergency situation?

15 A. That would be my view that there needs to be some consideration of streamlining of processes in an event like this.

Q. But just dealing with this building though that we are concerned with in this hearing it seems clear from what you've said and Mr Ward that notification in terms of the resource consent application for demolition, notification was going to be required?

20 A. The words I've used is "highly likely" and I say that because there was a case in Colombo Street where it did go through non-notified, for the demolition of a heritage building and also conscious that Council officers are not making the ultimate decision on these applications.

25 Q. I accept that but what I'm saying is the reality from your experience and what you know about this building is that notification was going to be required, wasn't it?

A. From what I know about this building and I don't know it intimately because I wasn't involved directly, but it was highly likely that's all I can say, highly likely.

30 Q. And it was going to take up to six months?

A. Yes that's highly likely as well.

Q. And wasn't it highly likely that section 129 would not be able to be used in this case?

- 5 A. I can't answer that. I would have thought that there were options available that hadn't been explored and you're probably aware of them. There were other parts of the city where there were two containers stacked high which effectively acted as a barrier from falling so, you know, there were those options available.
- Q. Well hold on, just deal with 129. Do you agree with me that that was extremely unlikely in this case?
- A. I think so because of the other options available, yes.
- 10 Q. And so what you're left with is a situation where it's going to take some months to resolve because the owner clearly wanted to demolish?
- A. Yes.
- Q. For financial reasons in particular?
- A. Yes.
- 15 Q. And that owner of this building wouldn't be alone in the city about that time in that situation would he?
- A. No, no he wouldn't.
- Q. So it's almost a stalemate isn't it for some months?
- A. It's not a stalemate. They have to go through a process to demolish that building.
- 20 Q. And in the interim, however long it takes, there are issues of public safety aren't there?
- A. Yeah there are.
- Q. So it comes back to this issue of some kind of barricade or cordon erected by the Council?
- 25 A. That's one possibility if it's required, yes.
- Q. I thought you were starting to mention that as one of the options?
- A. I said it's an option but, like I said, I wasn't directly or heavily involved in this particular case.
- Q. I understand that. What were the other options that you are referring to then?
- 30 A. The other option was the repair of stabilisation of the building.
- Q. But as I think Mr Elliott put to Mr Ward in some cases that was probably not going to happen if it was going to cost, the quote here was

something like 200,000. The owner wasn't going to spend that if the owner was applying to demolish?

A. Yes that sort of money would have been unlikely, yes.

5 Q. So hence the importance of ensuring public safety in the interim while these cases were sorted out?

A. Yes.

Q. Particularly in busy streets such as Colombo Street?

A. Yes.

10 Q. And it really comes back then to this issue of cordons or barricades of some sort?

A. While that process is –

Q. – is being sorted out?

A. Yeah that's correct.

15 Q. And do you accept, it's not your department, but do you accept that that was ultimately the Council's responsibility to ensure that public safety was achieved or that the risk to public safety was mitigated by such things as cordons – well public street or footpath?

A. Yeah obviously the Council has a role to play in public safety, yes that's for sure.

20 **CROSS-EXAMINATION: MR ELLIOTT**

25 Q. Mr Higgins just a couple of questions about section 129. I'm just going to ask for it to be displayed as it's being discussed. This is the legislation website. Can I have document ENGCCC0002F.177 please. If it's possible just to highlight section 129 at the bottom and if possible the section on the next page. Could we highlight the top section please. As it's being discussed just to try and orientate people I'm just going to note some of these sections and if I'm trespassing into the area of asking you to comment on the legal implications I'm happy for my friend to intervene but we just note that "section 129 applies if, because of the state of a building – immediate danger to the safety of people is likely in terms of section 121 or 122 or 123" and then "the Chief Executive of the Territorial Authority is given the power to issue a warrant to cause action

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to be taken” and we don’t necessarily need to bring it up but the remainder of the section deals with the possibility or the actuality of costs of such action being passed on to the owner upon the satisfaction of certain events. So in terms of the power we’re discussing it’s essentially clauses 1 and 2 there and then the immediate danger referred to in sub-section (a) refers back to section 121 which is the definition of a dangerous building and section 122 which is the definition of an earthquake prone building and section 123 which is an insanitary building or insanitary, insanitary?

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10 1110

A. Insanitary.

Q. An insanitary building, all right and then I’ll just refer you to section 121 ENG.CCC.0002F.172.

**WITNESS REFERRED TO SECTION 121**

15 Q. Actually just highlighting the bottom of the page the section provided that a building is dangerous in certain situations, the first being the ordinary course of events excluding an earthquake with the likelihood of causing injury or death, then if we move on to the next page, 173, and highlight the top section please, that is the remainder of the section and are you aware the sections in red are those which were added by the Canterbury Earthquake Building Act Order 2010? You may not, that’s according to the Council’s submission to the Royal Commission.

20

A. Okay.

25

Q. And so (c) is added as a definition of a dangerous building where “there’s a risk the building could collapse or otherwise cause injury or death to any person in the building as a result of an earthquake that generates shaking that is less than a moderate earthquake”? And subsection (d) dealing with risk of other property collapsing and (e) “Territorial authority has not been able to undertake an inspection to determine whether the building is dangerous”?

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**JUSTICE COOPER:**

Under paragraph (a)

**MR ELLIOTT**

Under paragraph (a) I'm sorry.

**JUSTICE COOPER:**

I mean those words have to be taken into account obviously.

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**MR ELLIOTT:**

Well yes Your Honour.

**JUSTICE COOPER:**

And they're rather surprising aren't they.

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**MR ELLIOTT:**

Well they are.

**JUSTICE COOPER:**

Having regard to the purpose of the amendment.

15 **CROSS-EXAMINATION CONTINUES: MR ELLIOTT**

Q. All right so Mr Higgins that's the section, section 129. I've referred you to section 121 and I won't go into section 122 but just note that that refers to earthquake prone buildings as I've already said. The, again Mr Laing may prefer to comment but it appears that Parliament's intention in dealing with the order and its terms was to give the Council a mechanism to cut through the resource consent process but in particular where because of the state of a building there is immediate danger to the safety of people in terms of those other sections. Would you agree?

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25 A. Ah, yes I do agree.

Q. And you say in your evidence you heard our discussion earlier on about the word draconian?

A. Yes.

Q. Your statement was “because the section 129 powers are broad and potentially draconian they were likely to be exercised sparingly by the Council”, I won't debate draconian with you but why do you say that they were likely to be exercised sparingly. Isn't it possible that they would be exercised potentially widely if that requirement of the state of the building presenting immediate danger was satisfied?

A. Mhm. I, I suppose I was, um, I was using those words in the context of it overrides the Resource Management Act and the City Plan so they should be used sparingly in that regard. I was also using my experience of what we'd seen and the various methods available to manage a dangerous building and there were various examples where buildings had been cordoned off you know by two high containers and protected the public safety quite well. So that was really the context of that comment yeah.

Q. Can you point us to any guidelines or memoranda within the Council about the circumstances in which the section should be considered for use?

A. I can't myself but that might be a question better directed to Mr McCarthy.

Q. And the section appears to assume, again this is an observation which you perhaps can't comment on but the section does appear to assume that the Council will have information about the state of a building so as to answer the question whether there is immediate danger?

A. Mhm I...

**25 CROSS-EXAMINATION: MR MCLELLAN AND MR MCINTYRE AND MR LAING – NIL**

**RE-EXAMINATION: MR LAING - NIL**

**QUESTIONS FROM COMMISSIONER FENWICK - NIL**

**QUESTIONS FROM JUSTICE COOPER:**

Q. Mr Higgins I observe from your evidence that one of the problems that the Council had to grapple was that its District Plan didn't contain any provisions whether as to notification or dealing with the issue of consent substantively which reflected the situation that might apply after a significant earthquake is that right?

5

A. That's correct, yes.

Q. And Council officers recognising that problem recommended to the Council that the effect of the September earthquake ought to be a matter that was able to be taken into account on the notification issue?

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A. That is correct.

Q. And also substantively in making decisions on whether applications should be granted?

A. Um, the, the view of Council officers was more around the notification and, and also the appeal provisions.

15

Q. Right.

A. There may, I'm just trying to recall, there may have been something in regard –

Q. Yes I thought, I thought I did see something, if you have a look at your appendix 4 at paragraph (d) with its – WIT.HIG.0001.23.

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**WITNESS REFERRED TO APPENDIX FOUR PARAGRAPH (D)**

A. Yes, yes, that's correct, so there was.

Q. Just highlight the first paragraph there. Now I take it the purpose of the Council officers in making these recommendations to the Council was to enable streamlining of process amongst other things?

25

A. That is correct and to recognise the earthquake.

Q. Yes. Well they went hand in hand didn't they?

A. Yes they did.

Q. Now did the, did the Council not accept those recommendations?

A. Um, they, as I understand it they did not and they may have, it's in, if we can go to appendix, it's a little bit hard to follow from this, I'm just trying to find the right, so it sort of starts on WIT.HIG.001.39.

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Q. 39.



A. And I think that is where it got to, this matter.

Q. Well that doesn't tell me much, had the Council really not adopted a policy position on these two issues is what you're saying?

5 A. I think it is, it's the committee recommendation at the bottom of .39, that page, are we able to highlight that.

Q. That is, we're on page 39.

**MR ZARIFEH ADVISES .38.**

10 A. Sorry, my page numberings.

Q. So the committee –

A. Recommendation down the bottom.

Q. The committee had recommended that there not be any such provision in the District plan?

15 A. Correct.

Q. May I infer from your evidence that you disagreed with that?

A. Like I said, I was involved in the report that went to Council and the view expressed in that is that an order-in-Council would have been desirable.

20 Q. I don't think that you've referred me to the criteria which existed for either notification or substantive decision making on applications to demolish heritage buildings, or if you have I've missed it.

A. No, I have not. So are you talking about the Resource Management Act or –

25 Q. No, whether the Council itself had policies under the Resource Management Act governing the exercise of those decisions that would have to be made.

A. No, there were no policies. It was simply the city plan provisions and the statutory tests set out in the Resource Management Act.

30 Q. Well were there no, that's what I'm asking I suppose, what were the policies in the District plan then? You've referred us –

A. I can't say off the top of my head, but there are a number of policies relating to objectives and policies relating to the inner city plan relating to heritage buildings.

Q. Well in your appendix 2 which is WIT.HIG.0001.14, you've set out city plan definitions and rules.

A. Yes.

5 Q. And right at the bottom of that page if that could be highlighted, there's a Development Standard B which speaks of removal of a group 4 building amongst other thing. It says it's a discretionary activity with the exercise at the Council's discretion limited to matters concerning the heritage values of a protected building, place or object.

A. That's correct.

10 Q. So that was the criteria that the Council would apply.

A. That's the rule, there's also a set of associated assessment criteria as well which are not included here, but there is a list of relevant matters to take into account when assessing an application of this sort which contravenes this rule.

15 Q. Well are they summarised by those words there?

A. It goes much beyond that.

Q. Does it?

A. Yes.

Q. Does it reach the safety of the public?

20 A. No. From recollection no. I suspect it's been developed not with an earthquake in mind.

Q. Well I suppose buildings deteriorate and fall into disrepair for reasons other than earthquakes don't they?

A. Yes.

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**JUSTICE COOPER ADDRESSES MR LAING:**

Mr Laing I think we should have those criteria.

**MR LAING:**

30 We could certainly file a memorandum.

**JUSTICE COOPER:**

In fact we probably should have the District Plan shouldn't we?

**MR LAING:**

I'll get a truck around to you Sir.

5 **JUSTICE COOPER:**

Is it as big as that is it?

**MR LAING:**

I can provide that and do you want a memorandum on this topic or –

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**JUSTICE COOPER:**

Well it's just that the position appears to be emerging that there was, and the timing was going to be difficult I know, but the Council officers were wanting to be able to streamline the process and to include earthquake damage related provisions into the heritage rules. That's rejected and it seems to me the consequence may well have been to leave the Council in the position as the planning authority, that the earthquake was irrelevant is a matter of decision-making.

20 **MR LAING:**

Well Sir can I just point out that as the committee made a recommendation. There was no Council meeting, it's only a speculation as to whether that recommendation would have been adopted. Just also mention to you there seems to be a glitch in the numbers on the secure website, pointed out by my friend Mr McLellan is that the numbering's one out so just be aware of that, there is – the numbering seems to be one out. But coming back to my earlier point though, no Council decision was made and it's not inconceivable the full Council would not have accepted that recommendation. We just don't know.

30 **JUSTICE COOPER:**

Well I understand that, but I'm thinking also of the future and for the desirability of District Plans here and elsewhere, having regard to the possibility of earthquake damage.

**MR LAING:**

I don't want to give evidence from the bar but over that period after  
 4 September there was a lot of discussion as to whether the appropriate fix  
 5 was one which would be in the Building Act which would then exempt certain  
 works from RMA approval, whether it should be in the RMA, whether it should  
 be a transitional provision and there was a lot of discussions with MFE over a  
 period of time leading up to these Council's reports in February, and that was  
 the culmination of quite a long debate at a sort of a central Government level,  
 10 Council level as to what should be done, and finally by February there had  
 been a sort of a measure of agreement with MFE about what should be done  
 and that, the reason for that report.

**JUSTICE COOPER CONTINUES:**

15 Q. Right, agreement at officer level.  
 A. Agreement at officer level?  
 Q. Yes.  
 A. Yes.  
 Q. Now I want to ask you about something in your – one of the letters that  
 20 you've attached in your appendices which is appendix 6 and on my file  
 the suffix is 1.40, if that can be displayed.

**WITNESS REFERRED TO LETTER**

Q. And I'm interested in the paragraph headed "consent for making safe  
 works", and the first paragraph there says "for earthquake damaged  
 25 heritage buildings the Council have been allowing some works insofar  
 1130  
 as they are required for making the building safe (for immediate danger  
 to persons and property) to occur before consent is granted. The  
 requirement to obtain resource consent still remains but in some cases  
 30 it may be applied for retrospectively if this is agreed to prior to the works  
 commencing," and I think you mention that approach being taken in your  
 evidence.  
 A. Mmm, that's correct.

Q. Now where does that power come from?

A. There probably isn't the legal power to apply the law in this way. We were trying to be pragmatic and sensible in terms of safety in the circumstances. We felt if we didn't allow those works to occur then that would be detrimental to the reason they were heritage protected buildings and also to public safety as well. So it was really a, a pragmatic response to the situation. Also just to add to that, that in most cases these were, alterations, were controlled activity consents meaning that consents, consent had to be granted and we felt the risk was, was small in allowing these works. So in answer to your question there probably is no legal authority to apply this approach.

Q. And you, the Council's quite conscious of that at the time?

A. Yes.

Q. All right and were there any, could one go anywhere to find a definition of the circumstances in which the Council would exercise these non-legal powers?

A. No there is, there's no set criteria.

Q. I suppose that's one of the difficulties if you stop –

A. Yes.

Q. – applying the law isn't it?

A. Yes.

**QUESTIONS ARISING: MR LAING – NIL**

**WITNESS EXCUSED**

**COMMISSION ADJOURNS: 11.32 AM**

**COMMISSION RESUMES: 11.48 AM**

**MR LAING CALLS**

**VINCIE BILLANTE (SWORN)**

Q. Yes, your full name is Vincie Maria Billante?

A. Yes.

Q. And have you prepared a statement of evidence?

A. Yes.

Q. Do you have it with you?

5 A. I do.

Q. Could you start reading from at paragraph 1 please?

**WITNESS READS STATEMENT**

10 A. "My name is Vincie Maria Billante. I am currently working as an environmental policy consultant. I have previously worked for the Council since 2007. During the state of emergency following the earthquake of 4 September 2010, I was a policy analyst working in the recovery team led by the Council's Strategy and Planning unit. From November 2010 until the 22<sup>nd</sup> of February 2011 earthquake, I was the team leader of the Council's Building Recovery Office for dangerous

15 buildings. I have worked at various levels of management in the education, health and local government sectors for the past 18 years and am currently working on my fourth University qualification, an MBA. I started working for the Council whilst working on my Masters of Health Sciences focusing on healthy urban planning. During my time at

20 Council I have been employed as an education adviser, a policy analyst for by-laws and as the Building Recovery Office, dangerous buildings team leader, leading a team of case managers to effectively deal with the Building Act 2004 section 124 notices issued after September's earthquake and the December aftershock.

25 I have been asked to provide evidence to the Royal Commission in relation to two matters. First my involvement with the buildings at 603 and 605 to 613 Colombo Street. Secondly the general process and factors taking into account when Building Recovery Office engineers reviewed the need for and location of cordons.

30 My evidence relates and responds primarily to issues raised in evidence of Marton David Sinclair and Matthew J Bushnell. While their evidence is specific to buildings at 603 to 615 Colombo Street and meetings that they had with Council officers regarding those buildings, they also make

more general statements about the Council's process in relation to the management of damaged buildings to which I intend to respond. I understand that separate evidence was provided by John Higgins in relation to the Resource Management processes for demolition of a heritage building and so I have not addressed this matter.

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My first involvement with the buildings at 603 and 605 to 613 Colombo Street occurred on 19 January 2011 when I received a telephone call from Matthew Bushnell. Mr Bushnell advised that he had been engaged as the builder in relation to 603 Colombo Street, that Buchanan and Fletcher Limited were the engineers and any contact with the owners should be through their lawyer, John Dallison. He also advised that Marton Sinclair had been engaged to deal with other properties owned by the Yee Brothers who also owned 603 Colombo Street. He mentioned that there was inadequate insurance for the property with the

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file note. As noted I passed my file note of the telephone call to John Berry, the Building Recovery Office case manager responsible for this building. I do not recall having any further direct involvement with any of the buildings at 603, 605 to 613 or 615 Colombo Street. I understand a meeting was held with Council officers on the 1<sup>st</sup> of February 2011 in relation to the buildings. I did not attend this meeting. Mr Bushnell also states that I attended a meeting on the 17<sup>th</sup> of February 2011 in relation to these buildings. I was on annual leave from the 7<sup>th</sup> to the 21<sup>st</sup> of February 2011 and did not attend any meeting on the 17<sup>th</sup> of February 2011. I did not attend any other meetings with Mr Bushnell and/or Mr Sinclair concerning these buildings. However I was involved in a number of discussions and meetings with both parties in relation to the Ascot TV buildings on the corner of Wordsworth and Colombo Streets which was 402 to 406 Colombo Street.

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Our general process in relation to the management and review of cordons is set out in part 6 of the Council's report into building safety evaluation processes in the central business district following the 4<sup>th</sup> of September 2010 earthquake, or the Council's report. As I was the team leader of the Building Recovery Office the engineers on the team

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reported to me. This included the engineers contracted by the Council from Opus and Mr Neville Higgs. Mr Sinclair states in his evidence in relation to 603 to 613 and 626 Colombo Street that the Civil Defence decision on the extent of safety barriers may have also been influenced by the fact that Colombo Street was a major thoroughfare giving access to the city centre. Similarly Mr Bushnell states in relation to 605 Colombo Street that minimising risk to the public seemed to be a lower priority than attempting to prevent or delay demolition of damaged heritage buildings. Public safety was always the predominant factor in the case management of damaged buildings and this was the key message given to the engineers working for the Building Recovery office, both by myself and by Neville Higgs. This applied regardless of whether the buildings concerned were heritage buildings and regardless of whether they were situated on busy traffic routes. Appendix 25 of the Council's report includes a set of general guidelines that were prepared by Neville Higgs in relation to the monitoring and reviewing of barricades. The first line of these notes states, "Barricade purpose: protect people from dangerous buildings." While there was considerable pressure from a number of sources concerning the removal of cordons and barricades, the Council's response was to consider a number of options before making a decision. These options included for example, temporary propping of verandahs, the use of containers to restrict the likely fall zone of a damaged building and temporary bracing and propping of damaged buildings. In many cases these measures were implemented at the Council's expense. The process followed by the Council in relation to the Manchester Courts building at 160 Manchester Street is an example of action taken in relation to a building that was considered to be of an immediate danger. While the building was a heritage building and the necessary cordons in the area were disruptive to neighbouring businesses, the public safety issues relating to the building were the priority for the Council. I understand that the Council's process in relation to this building is set out in the evidence of Mr John Higgins. In the period following the



Boxing Day aftershock, CPEng engineers working for the Building Recovery Office regularly reviewed existing cordons by visiting the relevant sites on foot and from vehicles. The engineers were required to consider whether any work had been carried out which would allow a reduction of a cordon and to review the state of the building by an exterior inspection to determine whether the existing cordons were adequate in the context of ongoing aftershocks. Not all of these reviews would have been documented. CPEng engineers were engaged for the purpose of reviewing the positioning of the cordons based on the existing status of the particular building they were considering. The engineers were required to apply their professional expertise about protecting public safety when making decisions about cordons, based on the likelihood of a building's fall zone in the event of an aftershock. In my experience all of the engineers viewed public safety as the paramount consideration when determining the need for and the extent of required cordons. Mr Bushnell also refers in his evidence to the requirement for buildings to be propped, braced temporarily prior to demolition. Mr Bushnell says that this process was flawed and a waste of money for owners. The main purpose of suggesting propping from a case management perspective was to address the section 124 Building Act notice and to prevent further damage or collapse of a building under its own weight, to maintain the integrity of the building and to mitigate the danger it posed in its current state. It was seen as an interim measure to allow building owners to commence repairs if necessary or to allow owners to undertake any necessary legal processes such as applying for resource consent for demolition. The Council's view and the purpose of the section 124 Building Act notices was that any safety issues needed to be addressed immediately regardless of the owner's long term intentions for a building".

30 **CROSS-EXAMINATION: MR ZARIFEH**

Q. Miss Billante, you said that you were the team leader of the Building Recovery Office. So in the period that we're concerned with in relation to this building between September and February.

A. Yes.

5 1158

Q. That would have been your role I think from late October was it?

A. Yep from late November sir.

Q. And you said that the engineers on the team reported to you?

A. Yes sir.

10 Q. So that's the two Opus engineers we've heard from, Mr Campbell and Mr Ryburn would have reported to you?

A. When Mr Ryburn was contracted for us for a period of time yes.

Q. And Mr Campbell?

A. Definitely, yes.

15 Q. And we've had reference to Mr Barry.

A. Yes.

Q. Case manager.

A. Yes.

Q. So would he report to you?

20 A. Yes he did.

Q. So they're all part of the Building Recovery Office?

A. Yes sir.

Q. So what was Mr Barry's role as a case manager? Just explain that to us please.

25 A. The concept of case management was introduced to allow building owners and external engineers and building professionals to have a one stop shop for the Council. So the case manager was the person who facilitated access to the other areas of the Council, for instance the building consents, the resource consents, waste management, traffic management et cetera.

30

Q. So in relation to a building damaged by the September earthquake.

A. Mmm.

Q. The case manager would liaise with the owners if necessary?

A. Particularly for all the owners who had section 124 notices served upon them, yes.

Q. Okay and would be aware and follow-up presumably if required things such as, things that were –

5 A. Missing.

Q. – highlighted by rapid assessment say and required to be done following that?

A. Yes.

Q. That would be part of the role?

10 A. Yes.

Q. And presumably Mr Barry attended the meeting on the 1<sup>st</sup> of February, I appreciate you weren't there, in his role as a case manager?

A. Yes sir.

Q. Because that building was being discussed, or those buildings?

15 A. Yes.

Q. So was he case manager for 605 to 613?

A. Yes.

Q. And presumably 603 as well.

A. Yes.

20 Q. And also 626?

A. Yes and also 601 and 601A.

Q. Right and the BRO file -

A. Mmm.

25 Q. - is that the right way to describe it? He would have had obviously access to that and presumably had it with him at the meeting? Was that what you'd expect?

A. If the meeting was held at Council yes he probably would have had it otherwise it wouldn't be quite fit for him to take (inaudible 12:00:49).

30 Q. I understand the meeting was at the site. I don't know if we've looked at that but you don't know where it was?

A. No I did not attend.

Q. But in any event he would have a, a good knowledge of the file wouldn't he?

A. Absolutely.

Q. Right.

A. Can I just clarify something?

Q. Sure.

5 A. It would not include any of the historical property files such as plans or old consents or anything. It's only from the earthquake damage.

Q. But it would include documentation post the September earthquake?

A. Yes.

10 Q. Do you agree with me that follow-up is important in terms of the Building Recovery Office systems?

A. Absolutely.

15 Q. And I appreciate you weren't at the meeting but if you were at the meeting in your role as part of the Building Recovery Office and statements were made by the owner or owners' representatives about the state of the building or a building and concerns that they had with the façade, whatever the detail was, what would you do yourself if you heard those concerns. What would you expect?

20 A. Having attended similar meetings with Mr Bushnell and having heard him make similar comments about other buildings the general process was we would come back to the office, sent out one of our engineers to confirm who would liaise with their engineer because our engineers rarely had internal access to these buildings because they were responsible for assessing the external structures mainly for public safety reasons. So they'd have to liaise with their engineer and then make an agreed decision. If cordons were required they would actually set out where those cordons were to be if appropriate, if the bracing or propping or anything else couldn't be done immediately.

25 Q. So are you saying that's what you would do if you were in such a meeting?

30 A. And that was the general process that most of my case managers followed. They would come back and they would enquire and then set the process in motion.

Q. So in other words follow up those concerns that you'd received?

A. Yes.

Q. Now in relation to this meeting.

A. Mmm.

5 Q. You weren't there but do you recall some kind of follow up to the meeting?

A. The only follow up I had and this was indirectly was enquiries about possible Council funding for propping or bracing of 626 Colombo Street and that can be seen in –

10 Q. Okay, I don't want to cut you off but I just want to concentrate on this building that we're concerned with but did you have any follow up for 605 to 613?

A. There was, there were no concerns raised that warranted any further follow up aside from the need to get any information or a structural report because we'd received nothing.

15 Q. Okay there were no concerns raised with you are you saying?

A. None.

Q. Right.

A. And none in the case managers' files.

20 Q. So you're not aware of any follow up by anyone then following the meeting in relation to 605 to 613?

A. There was a great deal of follow up from John Barry where he was pursuing Mr Sinclair and Mr Cheng to try and get a structural engineering report and none had been produced.

Q. But following the meeting –

25 A. Mmm.

Q. – you're not aware of any discussion or inspection or consideration of cordons or anything like that?

A. As a result of that meeting?

Q. Yes.

30 A. None.

1205

Q. Now I just want to talk about 603 for a moment.

A. Sure.

- Q. And I'm not sure if you are aware from, I presume not from memory, but I presume you've seen the file –
- A. Yes.
- Q. – the Building Recovery Office file. Barricades don't appear to have changed in front of 603 from early on through to February earthquake?
- 5 A. That's correct.
- Q. And I think Mr McCarthy dealt with it in his brief and says that they didn't change from soon after but I think 12 October there's a, an assessment that has a diagram of what appears to be consistent with the barricades that are in place. So leaving aside exactly when, from early on after
- 10 September those barricades that we can see in that photograph were in place. Is that your understanding?
- A. Keeping in mind that October was prior to my commencement as the team leader but as I understand it at the time of the emergency in
- 15 September barricades were put up all around town at the time the town was closed through engineers putting dazzle on the road to indicate that and there wouldn't have been a lot of paperwork at that time. So when exactly those were erected as they are I don't know.
- Q. Well let's leave that aside but let's just assume for the purpose of this that they were in place around that date and remained there, remained
- 20 in that state according to Mr McCarthy.
- A. Yes they did.
- Q. We know that there was a rapid assessment on the 27<sup>th</sup> of December. I'll just get it brought up. It's 0038.22. So just while that's coming up.
- 25 The building had been yellow placarded before?
- A. Mmm.
- Q. Then you'll see 27 December –
- A. Mmm.
- Q. – this is a level 1 rapid assessment of 603 and you'll see in the comments, "Previously yellow."
- 30 A. Mmm.
- Q. "Tag now red."
- A. Yes.

Q. "Major cracks south wall."

A. Mmm.

Q. "Potentially more, more –

A. "Severe."

5 Q. "Severe at side street," I think it says. "Re-assess current barricades."

A. Mmm.

Q. "Current barricade," and then –

**JUSTICE COOPER:**

10 I think those words that you've said aren't "side street." To me they look like "since September." Is that a possibility do you think?

**MS BILLANTE:**

Possibly. I didn't write it Sir. (inaudible 12:08:17) Bransfield did.

15 **CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

Q. Well anyway, "Re-assess current barricade."

A. Mmm.

Q. [I'm not sure Your Honour]. And then further down we can go to the rest of it and the handwritten comments about two-thirds of the way down and "urgent attention", I think it says "main thoroughfare" –

20

A. Mollett Lane.

Q. "Mollett Lane. Urgent engineer assessment," with an asterisk. See that?

A. Yes.

Q. So the building inspector that completed this form –

25

A. Mmm.

Q. – was requesting a reconsideration of the current barricade?

A. And it was the thoroughfare to Mollett Lane that he's talking about.

Q. Right and what –

30 **JUSTICE COOPER:**

Q. Have you spoken to him?

- A. No, Sir. That's how I interpret this when he says, "Main thoroughfare Mollett Lane."
- Q. I don't see the word "to." The words "Mollett Lane" appear to me to be placed alongside "Barricades are needed."
- 5 A. Mollett Lane, "State location" – "Mollett Lane."
- Q. Yes.
- A. We had an issue around that time of people having moved barricades from the back of Mollett Lane to access that lane and so we had to put containers in to mitigate that, to make a more permanent barricade at
- 10 the rear of Mollett Lane.
- Q. Yes but the words "urgent attention, main thoroughfare," don't refer to Mollett Lane do they?
- A. Because it says, "Barricades are needed," "State location," "Mollett Lane," Sir I took that to mean that it would be.
- 15 Q. Mollett Lane is a main thoroughfare in your opinion is it?
- A. To the people accessing it, it may be. I don't know. I don't have the technical definition but it does not state Colombo Street. I'm sorry if I have misinterpreted that.

**CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

- 20 Q. Well okay, I appreciate you didn't write it.
- A. No.
- Q. So you're just trying to interpret it, but my question was where is there any record of a follow-up of a level 2, structural engineer's assessment as he requested which presumably was going to cover those issues of
- 25 cordon and the fact that he's upgrading it to red from a level 1 because of the potentially more severe cracks?
- A. The assessment that was upgraded to level 1 was the one done previously the day before so this was another inspector sent out the subsequent day to confirm that level red re-assessment.
- 30 Q. Well shall we just get that brought up, that's .21. Is that the one you're talking about?
- A. Yes.



Q. So that's on Boxing Day?

A. Yes.

Q. And that's presumably a Council inspector as well. It's Mr Nilsson is it?

A. Yes it is, yes it is.

5 Q. So he noted, "Southern wall cracking. Previous yellow. No new placard. Continuing from original." Correct?

A. Mr Nilsson would have actually recorded the assessment that was actually being done by Mr Raper at the day, on the day, yep and that was upgraded when they returned back to Council as there were, there  
10 was a process in place to review the assessments and if there was any question around some of the things, for instance, more cracks whatever, they could be upgraded to red and a person was sent out subsequently the next day to confirm or deny that.

Q. But are you saying Mr Raper, that's the CPEng engineer –

15 A. Yes was –

Q. He was involved in 603?

A. He was with Mr Nilsson that day, yes.

Q. So they did, because we're going to hear from him about 605.

A. Yes.

20 Q. But he did 603 as well did he?

A. He's saying that he, he did and I assumed he was with Mr Nilsson because they were side-by-side.

Q. Okay well we'll let him tell us if he did or not but just, can I ask you just to go back and tell us again what you said. There's an assessment on  
25 26 December by Mr Nilsson.

A. Yes.

Q. And perhaps others with him.

A. Mmm.

Q. And he simply notes the cracking and continues the yellow placard.

30 A. Yes.

Q. So he comes back, and are you saying that the Council wasn't happy with that so sent someone else out the next day?

A. If there was southern wall cracking and it said “unreinforced masonry” and given the state of what was happening on Boxing Day the person in charge of collating all of those and reviewing them indicated there and that’s “RG” who’s put the tick, Richard Gant, who was running the inspections, he indicated that he felt it should be unsafe and red and he would have done that in conjunction with talking to one of the engineers based back at the offices.

5

Q. And so Richard Gant said, “Well someone should go out and have another look?”

10 A. And they did subsequently the next day.

Q. All right I understand. Thank you. So 27 December –

A. Yes.

Q. – Mr Bransfield, did you say it was, he goes out, the building inspector –

A. Mmm.

15 Q. – and completes the form that we’re looking at, at –

A. The new form.

Q. Page .22 yes.

**JUSTICE COOPER:**

20 Q. Mr Bransfield, he is still employed by the –

A. No he’s not Sir. He works for Fletchers.

**JUSTICE COOPER:**

Have we made contact with Mr Bransfield, Mr Zarifeh?

25

**MR ZARIFEH:**

We have Sir about, I think about another one, not this one, another building.

**JUSTICE COOPER:**

30 I’m reaching the view that we should hear from him.

**MR ZARIFEH:**

Yes Sir.

**CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

- 5 Q. Well just leaving aside what Mr Bransfield may have meant by his, what he's completed there, my question for you as the team leader is once he does this inspection and this form comes back to the building review office, he clearly wants a re-assessment of the current barricade, correct? Re-assess current barricade?
- 1215
- A. For Mollett Lane, yes.
- 10 Q. Well leaving aside what it was, he wants that done?
- A. Mhm.
- Q. And he wants an urgent engineer assessment?
- A. Mhm.
- Q. And in fact he says ticks level 2 structural detailed engineering evaluation structural required? Correct?
- 15
- A. Mhm.
- Q. So he is asking or recommending that a level 2 be carried out, correct?
- A. (no audible answer 12:15:53)
- Q. And presuming then that level 2 which will be by an engineer?
- 20
- A. Yes.
- Q. The issue of barricades could be considered then?
- A. Absolutely.
- Q. As well as further cracking if that was the case, correct?
- A. (no audible answer 12:16:07)
- 25
- Q. You have to answer because it's being –
- A. Yes.
- Q. Yes?
- A. Yes, sorry.
- Q. So there doesn't appear from the council record to have been any level
- 30
- 2 assessment following this one?
- A. I don't have a record of it, no.
- Q. Can you tell us why that was?

- A. No, I can't.
- Q. So would that just be something slipping through the cracks?
- A. Possibly.
- Q. You can't explain why that wasn't followed up?
- 5 A. No, I can't sir, because that, well, no I can't.
- Q. And are you aware of other examples in relation to other buildings of this kind of thing happening?
- A. No, I'm not.
- Q. You're not? And would it surprise you to know that there were others
- 10 that the Commission may have come across in other buildings where things weren't followed up?
- A. No, I won't be surprised.
- Q. And when you say you wouldn't be surprised, just tell us why that is, tell us about what was happening then in the systems?
- 15 A. The structure on the 26<sup>th</sup> and 27<sup>th</sup> of December at the time. It was unclear whether or not an emergency was going to be called, so systems were set up under duress in a very rapid manner and the inspection side was very much separate, the co-ordination of all the inspections and the engineers from our case management office and we
- 20 were separated and put onto different floors in different sections of the building so there were inspectors coming in and out with all the volunteer engineers, many of whom we didn't have accurate records as to who was doing what inspection at the time because it was critical that they got out there. I do know that they were sent in teams of a building
- 25 inspector, where a building official from the council, an engineer, and a USAR person went with them.
- Q. But when Mr Bransfield comes back with this, from this inspection what would he do with the form?
- A. It would go back into the inspections team and as I said Richard Gant
- 30 who was in charge of all of that would review them and then they would be data entered into the system and scanned and filed on the property file.
- Q. And then in this example go out to a request for an engineer?

- A. And also section 124 notices would be generated from the ones that had been ticked 'restricted use' or 'unsafe', Building Act notices.
- Q. Right, and a Building Act notice was generated from this, wasn't it?
- A. Yes.
- 5 Q. So are you saying then that something did happen in relation to this form or could a Building Act notice have been generated from the form the day before?
- A. A Building Act notice would have been generated from this form.
- Q. From this form?
- 10 A. Yes, the red.
- Q. So something was done but that was something done internally with council in terms of the Building Act notice?
- A. Yes sir.
- Q. But no level 2 was set up or carried out?
- 15 A. Not to my knowledge.
- Q. That becomes important in this case because what seems clear from yesterday is that no-one ever went inside the building and inspected it?
- A. Correct.
- Q. And I think you were here yesterday –
- 20 A. Yes I was.
- Q. – and as I understand it, this inspection was exterior only by Mr Bransfield?
- A. Yes it would be.
- Q. And what he was calling for was a level 2 which would hopefully have ensured that someone went inside and confirmed the building and as you heard yesterday if that had happened then there may well have been a different view taken of the need for cordons on Colombo Street?
- 25 A. Yes sir. Building owner's engineers were also able to conduct level 2 assessments and many did and provided them to council.
- 30 Q. Okay, but my point is there was never any level 2 where either an engineer or here it would have been an engineer, wouldn't it, if it was a detailed engineering evaluation recommended? It wouldn't have been a building inspector?

- A. There's no way a level 2 inspection on structural inspection can be completed by a building inspector –
- Q. Okay so –
- A. – it has to be a CPEng engineer.
- 5 Q. Okay, so my point is that what Mr Bransfield was saying was needed was a structural engineer to conduct a level 2 –
- A. Yes.
- Q. – presumably internal as well as external?
- A. Yes sir.
- 10 Q. And at the same time re-assess the barricade issue?
- A. Yes sir.
- Q. And if you look at another form, we've got .31, 0038.31. This is from the council file. If that can just be enlarged so you can read it, thank you. That seems to be something completed on the 12<sup>th</sup> of January, would
- 15 that be right?
- A. It appears so.
- Q. And it says, "Building deemed dangerous". Is that the officer's name who completes the entry?
- A. The data entry person, yes.
- 20 Q. And that seems to repeat much of what was on this rapid assessment that we just looked at?
- A. Yes.
- Q. Just tell us what's the point of this events entry that we're looking at?
- A. That updates the property files that we have on our computer system,
- 25 our Work Smart System.
- Q. And is that a follow-up of this rapid assessment then?
- A. Only from the data entry management point of view.
- Q. So it's not showing some process where it was thereby going to an engineer or anything like that? It's just going on the system is it?
- 30 A. It's going on to the electronic system.

**JUSTICE COOPER:**

- Q. Do you have any idea why that form says 'complete'?

A. Event status completed.

Q. Yes.

A. No Sir.

**CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

5 Q. I presume though it doesn't relate to the, anything to do with a further assessment does it?

A. No.

Q. No.

A. No.

10 Q. Does it relate to the entry being made, that he's completed the entry?

A. Possibly but my specialty wasn't in the data entry of these forms so I couldn't answer that.

Q. Perhaps Mr McCarthy might be able to? We'll find out.

A. I can find the information form that he may answer that for you this  
15 afternoon.

Q. Okay, so the next thing that seems to happen on this building, 603, is, well you've talked about the Building Act notice but the next thing, in terms of any inspection, isn't till the 16<sup>th</sup> of February by Mr Ryburn. That's the information that we've got. Have you got other information or  
20 you don't agree with that?

A. I'm just trying to think if Mr Campbell had –

Q. Oh Mr Campbell went too but he thought it was about the same date because it's undated, his form.

A. Mmm –

25 Q. Do you know –

A. – it's questionable because his form is undated it's questionable as to when that happened but –

Q. I agree with that but he said that he thought just looking at the council records that it was probably on or about the 16<sup>th</sup> of February, although  
30 he wasn't sure why he and Mr Ryburn would be going on the same day or similar. Do you know why two engineers would have gone?

- A. The only thing I can explain is, possibly as an explanation, is 603 and 603A were listed as separate properties. Perhaps there were two files created because of that but other than that, no I wouldn't, but that's based on the assumption that they both went on the same day.
- 5 Q. Or a similar day wasn't it? It can't have been much different.
- A. We commenced the re-inspections at the end of January and they were being conducted over a four week period.
- Q. And I think their evidence was that they got the form with the address printed on it?
- 10 A. Yes.  
1225
- Q. And they've both got 603 but anyway we'll leave that issue. I don't think we'll resolve that but Mr Ryburn's visit if we can look at that on the 16<sup>th</sup> of February. He told us that was not a follow up to rapid assessments.
- 15 Do you accept that?
- A. Yes I do.
- Q. And his was not an internal inspection?
- A. No.
- Q. And generally they weren't he said?
- 20 A. None of them were.
- Q. What information did they get, the inspectors, the engineers doing these inspections?
- A. Generally the information that they had was any of the earthquake related material documentation such as copies of the s124 notices,  
25 photos if we had –
- Q. What's an s124 notice?
- A. Section 124 Building Act Notices. Any photos that we had on file if they were taken of what damage had occurred, any correspondence if we'd received anything on a lot of these buildings – most of them we hadn't,  
30 and the rapid assessments that were conducted that we could actually source.



- Q. And it seemed from what Mr Ryburn and Mr Campbell as well said that it would depend on the building and presumably the officer who prepared the file for them as to how much material they had?
- 5 A. Invariably what it really depended on was how much information we actually had available because we didn't have that level of information for all of the buildings.
- Q. And you might not have access to the rapid assessment forms then?
- 10 A. There were over 80,000 rapid assessment forms that were filled out post September. When I inherited the recovery office they were actually stacked in boxes so we had to go through and try and find them as much as possible.
- Q. And it seems that they didn't really have any instruction and you would have heard yesterday they didn't seem to be clear, they couldn't recall, why they were going to that particular property – whether it was to check up on work or check up on cordons. There didn't seem to be anything in writing anyway as to an instruction to them?
- 15 A. Neville Higgs was charged with briefing them every morning and they had meetings first thing in the morning when they received their files and then when they came back in the evening and the brief basically was to go and re-assess the building from the external basically to justify whether a new section 124 notice needed to be issued because they were doing it at the time of re-inspections 'cos all the notices were expiring on the 31<sup>st</sup> of January.
- 20 Q. How could they do that if they weren't going inside?
- 25 A. Because this was based on external inspections, visual inspections of danger to the public. It was a damage assessment. It was not a structural assessment. There are very distinct differences. We are looking at the damage assessment from a triage point of view externally to public spaces.
- 30 Q. Okay but this 603 that we're looking at as we discussed just a moment ago because there was never any or appears to have never been any internal inspection it may be, we'll never know, but it may be that such

an internal inspection may have revealed internal cracks that were of a concern to the Colombo Street façade?

A. Yes and the building's engineer may be able to answer as to why he didn't go inside to do that.

5 Q. I'm talking about the Council.

A. The Council rarely went inside buildings to conduct full internal inspections unless we had been alerted by the building owner or engineer that we needed to and we hadn't in this case.

Q. Or a Level 2 requested?

10 A. Even with a Level 2 assessment unless we had full access to the building we weren't able to get inside.

**JUSTICE COOPER:**

15 Q. Mr Bransdale was it though when he went on the 27<sup>th</sup> of December he said that an internal assessment was needed, didn't he?

A. He did say that Sir.

**CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

Q. What was your understanding of a Level 2 assessment?

20 A. A Level 2 assessment is one that takes about an hour to an hour and a half. You have to go inside. You look in between the floor spaces. You look in the roof. You actually look at the joins behind the wall if you can get access to them.

Q. So a Level 2 implies internal and external?

A. Yes it does but you have to have access to get internal.

25 Q. Right but Mr Bransfield was wanting an internal wasn't he?

A. He was recommending that it needed to happen, yes.

30 Q. And do you think that, and I appreciate the pressures the Council were under and your office at the time, but looking ahead and lessons learnt, can you make any comment about the systems that were in operation and the systems that might have contributed for example to in this case no Level 2 being followed up, the systems that might have contributed to

the engineers perhaps not having specific enough instruction or material when they did their re-inspections?

5 A. You raise a few issues there. The first one that I'll try to address were the systems at the time immediately after the earthquakes and aftershocks. As we had very little guidance or a framework on which to go on because nobody in New Zealand had experienced something to this degree it would be fair to say that there was a certain amount of chaos immediately afterwards while the systems were being put into place but of greatest priority was to get out there and just to try and do whatever emergency measures were necessary to protect the public immediately or to deal to the injured if there were any at those times.

10 Q. Are you talking immediately after September?

A. September and December and consequently also for February but –

15 Q. Are you talking about throughout the whole period between September and February are you?

A. Through September and February we still had no guidelines on which to go on. Nobody has actually done anything on this scale and with the regulations that we were following through the section 124 Building Act Notices and then you've also heard my colleagues talk about the resource management procedures. From a case management perspective there were some complications there but from the engineering reviews if we could have more clear direction as to Council's jurisdiction for taking action immediately on dangerous buildings because it does say that we may erect a cordon, we may give notice to the building owners and we did give notice to building owners. It is the responsibility to try and address those dangerous aspects of their buildings.

20 Q. So, say with 603, how would that have helped your office then to overcome any problems that might have arisen?

30 A. As they did not receive a Building Act Notice until I believe it was after, they received the Building Act Notice that gave them until the 31<sup>st</sup> of January. We had very little recourse to try and address things prior to that expiry date. We did try to actually get some reconciliation but there

was very little motivation on behalf of the building owners to try and reconcile any of these things to our knowledge and there was no evidence of any up-grading or strengthening or any repair work and as you heard yesterday some of those cracks were very old in the southern façade and they got bigger subsequent to the earthquakes. Having more jurisdiction to actually force owners to up-grade their building would help us and more resources available to enable us to do that.

5

Q. Because at the end of the day the issue of public safety on a street such as Colombo Street was ultimately the responsibility of the Council wasn't it?

10

A. Yes.

Q. So you the Council couldn't wait for an owner to provide effectively a Level 2 and then decide from that the issue of cordons could it?

A. We had no indication, our indications and that was repeated throughout all of the assessments was the southern wall was what created the issue so we isolated the area immediately adjacent to the southern wall by closing off Mollett Lane but we had no information indicating that the front façade was compromised.

15

1235

20 Q. Right but that might have come if a level 2 had been carried out. We won't know.

A. Mmm.

Q. You accept that I presume?

A. Yes.

25 Q. All right. Just dealing briefly with 605 to 613.

A. Yep.

Q. Was Laura Bronner in the Building Recovery Office?

A. Building Recovery Office, yes.

Q. And what was her role at the time?

30 A. She was also a case manager but at that time she was helping us a lot with the administrative assistance.

Q. Right but she wouldn't have been case manager for this building?

A. No.

Q. No.

A. No.

Q. We've got a Work Smart Details Record I think it's called?

A. Yes.

5 Q. Of the Council, 0001.24.

A. Mmm.

Q. I don't know if you've seen it but it's a customer service request record and there it is up on the screen.

A. Yes.

10 Q. And it's, obviously the owner of 605 is, has called in saying that a wall has gaps over 40 millimetres after the 4.9, so Boxing Day.

A. Yes sir.

Q. And it looks like Laura Bronner's name there is – what, what does that signify that she did, received it?

15 A. Yes. So it went to the Civil Defence Rescue, or the CDR mailbox. So Laura Bronner was the receiving person who got that from that mailbox to respond to it.

Q. So she's in the same office that Mr Barry's in?

A. Yes.

20 Q. And would you expect something like that to be followed up in some way or not?

A. Yes and that follow-up may involve a phone call to the owner to verify what it was he was after.

25 **JUSTICE COOPER:**

Q. Just in relation to this, you're familiar with this form are you?

A. Yes I am Sir.

Q. On the, a few lines down on the right-hand side there's the word "priority" –

30 A. Yes Sir.

Q. – and next to that there's a tick and the letter "H."

A. High priority.

Q. High priority?

A. Yes Sir.

Q. And then alongside that it says, "High Civil Defence." Is that, is that right?

A. High priority Civil Defence Sir, yes.

5 Q. And under that it says, "Subtype colla." Is that the way the computer spells collapse?

A. I'm not sure what that will be. It's possible.

Q. And then alongside that it says, "Dangerous or –"

A. "Dangerous or –"

10 Q. Something?

A. Yes.

Q. So why was all that information recorded on this form?

A. The reason why, when we have CSRs or customer service requests come into the Council we need to have different priorities in subtypes in order to do some reporting. So it was for reporting mechanisms afterwards.

15

Q. Did you say reporting or recording?

A. Both actually. It's reporting mechanisms afterwards so we can actually see how many buildings and we're able to actually filter out the information based on those priorities or those subtypes as to what buildings need addressing.

20

Q. I was going to say, for what purpose are you doing this?

A. It would be for the data management Sir.

25 **COMMISSIONER FENWICK:**

Q. Would that not have triggered a, a level 2 inspection? It sounds pretty urgent.

A. Not necessarily because it depends on what it was, it was that the owner was after. Please keep in mind at that time we had very few engineers available to us and owners were required, if they'd already had an inspection, a rapid assessment, they were required and instructed to get their own structural engineers to assess their buildings

30

and Mr Cheng had had structural assessments done of his building but we'd never received anything from him.

Q. Level 1 assessments only?

5 A. We as a Council did level 1 assessments but the owners were instructed immediately when they had a section 124 notice that they had to engage their own structural engineer to give them a full structural assessment of their building.

**CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

10 Q. Right but I think the point that's being made is that as it transpires in this case the owner's engineer did an external inspection, I think initially anyway. But what I was going to put to you is, the Council, you're saying that the Council has to rely on the owner getting an engineer's report?

A. Yes Sir to reconcile the s 124.

15 Q. But what happens if you have an owner who say just doesn't bother and doesn't do anything?

A. Then that was when case management came in and then we can go through enforcement procedures if we needed to.

20 Q. But how can the Council on this issue of cordons, how can the Council be sure about where or if a cordon should be placed if it can't get the kind of information that's necessary, such as a level 2 assessment?

A. We have to actually rely on the external assessments as to where to place the cordons using their best judgment – of our engineers.

Q. All right but we've just seen in 603 that –

25 A. Mmm.

Q. – perhaps what was required and certainly what was being asked for was a level 2 to assess the cordon issue and the building properly.

A. Yes.

Q. And that wasn't done.

30 A. No.

- Q. With this one, with 605, you've got the owner asking for an inspection. "Please inspect building." Well that might be presumably Laura Bronner's words or whoever entered that?
- A. Mmm.
- 5 Q. But that was conveying what the owner wanted wasn't it or what someone at the Council thought should happen, correct?
- A. This would have come from the owner and as he said yesterday it was because he couldn't get his own structural engineer because he was on holiday.
- 10 Q. Okay but what I'm interested in is what's happened with that request from the Council's point of view and it seems, I think Mr McCarthy's dealt with it in his written brief, that there's no record of that being followed up. Is that correct?
- A. No sir there isn't on record.
- 15 Q. And you don't know why?
- A. No I wouldn't but I don't know that Laura didn't call the man anyway.
- Q. Okay well my impression from Mr Cheng was that nothing happened as far as that request.
- A. He said that the Council did not send an engineer to inspect his building.
- 20 Q. Well let's just go back a week or a bit over a week to the Boxing Day aftershock –
- A. Mmm.
- Q. – that he was talking about.
- A. Mmm.
- 25 Q. And we've got an assessment carried out on Boxing Day, haven't we? We're going to hear from Mr Raper about that.
- A. Mmm.
- Q. Point 17 – 000.17. So I won't go into all of that form because we're going to hear about that in a moment but it's clear that he, this is
- 30 another example of those ones where it's restricted use, yellow, initially.
- A. Yes sir.
- Q. And this Richard Gant is it?
- A. Yes.



Q. Changes it to red back in the office?

A. Yes.

Q. So it's clearly come back to him after Mr Raper's inspection and Mr Raper has put, "Front façade leaning out, question mark."

5 A. Yes.

Q. So obviously some concern about that and querying it and then he's recorded about the parapets below that and then he's put in the bottom section, "Needs check from upper floor interior of transverse outer façade."

10 A. Yes sir.

Q. So obviously something further needing checking.

A. Yes sir.

Q. And then he's ticked that it needs a level 2 structural?

A. Yes, or a detailed engineering evaluation.

15 Q. All right. Sorry. So he's obviously, as we can see from the comments, got concerns about the building?

A. Yes sir.

Q. And he wants it looked at for an internal, obviously level 2 or detailed engineering evaluation.

20 A. Yes sir.

Q. So did that happen?

A. We did not send out anybody to do any detailed engineering evaluation structural for any building owner because we don't have the resources and it's up to the building owner to do that.

25 Q. But I thought that you said where an inspector recommends a level 2 or a detailed evaluation that that's a recommendation that's going to the Council isn't it, to the BRO?

A. It's a recommendation that that needs to happen. It's not a recommendation that the Council needs to do it. That needs to happen.

30 Q. Well how could the Council in its responsibility to ensure public safety –

A. Mmm.

1245

- Q. - simply rely on that happening in the future at some stage, presumably you mean on the part of the owner?
- A. That's the purpose of the Building Act notices. We give them a finite time to actually get that done.
- 5 Q. So there was never any intention for the council to follow this up? I'm talking about the council engineer.
- A. A council engineer will not go do a detailed evaluation on a building.
- Q. Okay, so I might have misunderstood you. So going back to 603 that we are talking about where the level 2 was required –
- 10 A. Mhm.
- Q. – you're saying that wasn't necessary for the council to do?
- A. Not always in every case, no. A level 2 –
- Q. How do we know which case?
- A. – because a level 2 or a detailed engineering valuation which requires  
15 internal access, if we were able to get internal access we could do a level 2 but that's different from a detailed engineering evaluation. They're much more comprehensive. A level 2 is another form of a rapid assessment, takes about an hour, an hour and a half. A detailed evaluation can take weeks depending on the size of the building.
- 20 Q. Right, so are you saying that this form then and what was being recommended was different from the 603 one we looked at?
- A. No, because it says the same wording, either a level 2 or a detailed engineering evaluation is needed.
- Q. Okay.
- 25 A. It doesn't say who needs to do it.
- Q. Right, but I thought with the 603 that we just looked at that you said that that was a recommendation that would be followed up with a level 2?
- A. Yes.
- Q. And that didn't happen, for whatever reason?
- 30 A. The council did not do it, no.
- Q. Right, but you couldn't explain why the council hadn't done it?
- A. Well, no, I have no record as to what follow-up ever happened.
- Q. And in relation to this form then?

A. Yes.

Q. The inspector was recommending that there be the same kind of follow-up?

A. Yes.

5 Q. That didn't happen from the council's point of view did it?

A. No.

Q. And you can't explain why it didn't?

A. Aside from the fact that by and large we did not have the resources to go out and do those type of inspections.

10 Q. Right, so is that perhaps a problem that existed at the time? The inability to go out and do level 2's where they were required such as for these two buildings that we've looked at?

A. Keeping in mind that we relied upon the voluntary capacity of the engineers working by and large at the time of these emergency events,  
15 yes.

Q. The people like Messrs Campbell and Ryburn that we've heard from, would they not have been requested to go and do level 2s if they were required as we saw in 603 and this one?

A. Mr Campbell did on a few occasions and I can think of them. They were  
20 in occasions for example heritage buildings who were considering section 129 notices or if we were actually considering putting up more extreme measures to mitigate the risk such as the containers that we put up in front of the Basilica, in front of 192 Madras Street and in front of Charlie B backpackers.

25 Q. So just so, I might have got misunderstood it, are you saying that when an inspector, engineer or building inspector, goes out as we've seen with 603 and with this building and does an exterior inspection and then ticks either level 2 or structural detailed –

A. Detailed –

30 Q. – evaluation?

A. Yes.

- Q. That that, and that goes back to your office, or went back to your office, that was not taken by your office as a recommendation that the council get a level 2 done?
- A. It was not taken as a recommendation that we had to do the inspection,  
5 it was taken as a recommendation that one was needed and that could be conveyed to the building owner.
- Q. And would you say that with the follow-up for these two buildings anyway was a Building Act notice?
- A. And contact from the case manager.
- 10 Q. And so that was dealing with that request or not?
- A. Yes it was, asking them for those engineering assessments.
- Q. So it's not a matter then of these recommendations for the level 2 somehow falling through the cracks then?
- A. In some cases it may have been if they warranted something –
- 15 Q. How do we know which then?
- A. Um –
- Q. Do you see what I mean?
- A. – depending on the severity of what they actually were talking about. In the case of 603 because they said that the barricades for the  
20 thoroughfare to Mollett Lane needed addressing, Mollett Lane was already sealed off and it was always the southern wall, those risks have been mitigated. We had no evidence to suggest in any report or evidence from the building owner, the building's engineer, or our inspections that it was the front wall or the Colombo Street eastern wall.
- 25 Q. You've looked at all the file presumably. Is that your explanation for it now or are you recalling what was happening at the time?
- A. Well sir I wasn't directly involved with those at the time. I do recall the Mollett Street lane –
- Q. The issue about the other end?
- 30 A. About the containers 'cos that's what we discussed with the traffic engineers.
- Q. But I was just trying to understand when a building inspector says, "I want a level 2 done", when the council considers that it should do it or it

can just be the owner, we'll send out a Building Act notice and they can get it done, you say well it depends on what is put on the form?

A. It depends on the type of damage that's been recorded –

Q. And who assesses that then –

5 A. And the location.

Q. – as to whether –

A. A combination of the engineers and the building inspector like Richard Gant which is why he sent out another inspector the following day.

Q. Right, but this was the following day, sorry.

10 A. Okay.

**JUSTICE COOPER:**

Q. This form that's now displayed which says, 'Parapets above roof line appear to have separated from cross walls.' These are about 605?

A. Yes.

15 Q. Not 603?

**Mr ZARIFEH:**

No Sir, well I am just dealing with both of them as we go.

20 **JUSTICE COOPER:**

Yes I know but I was just, the answer seemed to be all about 603. This is somebody saying that he's viewed it from the other side building, whatever that means, on a fire department hoist, and he says he needs to check from the upper floor interior of the transverse outer façade. That's about a building,  
25 that's not about the building at 603, it's about 605.

**MR ZARIFEH:**

Correct, yes Sir. My point Sir is that in each case, on the following Boxing Day, 603 and 605, there was a request for a follow-up, a level 2 or a detailed  
30 evaluation.

**JUSTICE COOPER:**

I understand the point you are making. My observations are more directed to the witness than to you Mr Zarifeh.

**CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

- 5 Q. Can we just get that 603 form, .22 please brought up again? I was just trying to understand the system as you'd appreciate, and when the council would consider that it should conduct a level 2 rather than get the owner to, you said depends what's on the form, so looking at the 603 form, where he's put \*urgent\* is that something that would be taken into account?
- 10 A. I would hope so, yes.
- Q. And you would think that what the council would then do it rather than just leave it for the owner in terms of a Building Act notice getting that out?
- A. Or contact the owner immediately asking for them to get their engineer in.
- 15 Q. And because the Building Act notices and letters, correct me if I'm wrong, but they don't address the issue of cordons or barricades, do they?
- A. No, they don't.
- 20 Q. So for this form it would really require the council to follow it up, wouldn't it?
- A. From the manner of looking at the Mollett Street barricade.
- Q. Well to re-assess current barricade couldn't be left to the owner?
- A. No.
- 25 Q. No. So that is one that is for whatever reason fell through the cracks, is that fair?
- A. Possibly.
- Q. But you say in relation to 605, you're saying that that didn't necessarily mean that the council had to get, do the level 2?
- 30 A. No, and there isn't anything on that form that indicates that there was an urgency or barricades were needed.
- Q. So is it the barricade issue that might involve council?

A. The barricade issue was very critical from the public safety aspect, yes.

Q. Okay.

A. The barricades are what we managed.

5 Q. And the, what followed with 605 what appears to be the next or the next point where an engineer looked at the building was again the re-inspection (inaudible 12:54:52)

A. But the council engineers looked at the building –

Q. Yes, yes.

A. – they have their own engineers.

10 Q. But I can only ask you about the council point of view?

A. Mhm.

1255

Q. Was the re-inspection by Mr Campbell?

A. Yes.

15 Q. And I've talked to you briefly about those forms, what would happen to the re-inspection form once it came back to your office?

A. They would come back and they would be data entered, they would be scanned, contact would be made with the building owner depending on what the forms actually said to find out the status of where they were at whether plans for the building, so that we could help to determine a new negotiation date for the S124 notice if it was warranted.

20

Q. Okay and Mr Campbell's form said that there was no evidence of work being carried out and that he relied, he couldn't get in because there was barrier, because –

25 A. Are we talking about 605 or 603?

Q. No I'm talking about 605.

A. Right.

Q. We'll get it put up .27.

**WITNESS REFERRED TO DOCUMENT .27**

30 Q. See that form?

A. Yes he doesn't make mention that he couldn't get in.

- Q. No, no you're right but he didn't go in, well he says access, no roof access available so he'd just trusting the report we've just been looking at, 26<sup>th</sup> of December?
- A. Mhm.
- 5 Q. So I can assume from that that there was no report between 26 December and February when Mr Campbell went?
- A. From the Council?
- Q. From the Council yes?
- A. No.
- 10 Q. Right so in relation to the protection fencing this was covered yesterday you'll recall there was a question mark, you see at the bottom?
- A. Yes.
- Q. So how was, well can you tell us how your office dealt with that or how it would've if...?
- 15 A. A conversation with the engineer.
- Q. With?
- A. Who filled out the form like Mr Campbell at the time.
- Q. Right and that –
- A. If, if he felt it warranted, a protection fencing but I believe he answered that question yesterday.
- 20 Q. Right. So there's no record of any follow up though from this form, from the Council point of view?
- A. For fencing?
- Q. Yes.
- 25 A. No.
- Q. No. And if there was something done about fencing whether or not the fencing was put in place or not but some consideration given to it you'd expect for there to be a record?
- A. Yes there would've been.
- 30 Q. Right so we can assume that there was no follow up from that?
- A. There was no follow up for fencing for this no.
- Q. Well and there was no follow up in terms of any inspection from the 26 December from the Council point of view was there?



- A. Between the 26<sup>th</sup> to this one, no there was no further Council inspection.
- Q. Yes, so again as with 603 the inspection on 26 December?
- A. Mhm.
- Q. Which recommended a further detailed inspection?
- 5 A. Mhm.
- Q. Mr Campbell's visit in February was not a follow up of 26 December?
- A. No it was not.
- Q. No, and there was no follow up of the 26<sup>th</sup> December from the Council point of view?
- 10 A. Not for an inspection no.
- Q. Right and there was no follow up of the re-inspection form in February?
- A. Ah, for the?
- Q. For barricade issue?
- A. No not, there was no clear indication that there was a barricade needed
- 15 no.
- Q. So is that why you think there was no follow up because it's, there had been a question mark? Or you don't know?
- A. I don't know.
- Q. Okay, just on this issue of barricades you said in your brief that while there was considerable pressure from a number of sources?
- 20
- A. Yes.
- Q. Concerning the removal of cordons and barricades?
- A. Mhm.
- Q. The Council response was to consider a number of options before making a decision?
- 25
- A. Yes.
- Q. When you say pressure, are you referring to public pressure, retailers, like things like that –
- A. There was a –
- 30 Q. – to not have cordons or what?
- A. There was a great deal of pressure for us to remove cordons to enable business recovery and traffic.
- Q. Right so that's once they were put in place?

- A. Yes Sir.
- Q. Right but what do you mean so there was no pressure not to put them up in the first place or presumably would the same pressure apply?
- A. Could you rephrase that sorry? There was?
- 5 Q. Well was there pressure by retailers not to erect cordons. Did you talk to retailers in an area where you were going to erect cordons?
- A. Invariably they weren't given forewarning if a building was dangerous or if a cordon needed to go up but they could see the inspectors there if, if they were still operating and so they would know that something was coming but nine times out of 10 retailers would be grateful that we would
- 10 I would think that we were actually taking measures to protect.
- Q. Okay well you said that the options that might be considered before making a decision included for example temporary propping of verandahs?
- 15 A. Mhm.
- Q. As one of them?
- A. Mhm.
- Q. So was that used quite commonly, propping of verandahs?
- A. It was used in a few instances and that was to enable businesses to still
- 20 operate while, instead of completely closing them.
- Q. Okay, well in 605?
- A. Mhm.
- Q. The verandah was propped by the owner's -
- A. The owner.
- 25 Q. – engineer?
- A. Mhm.
- Q. Right, was propping seen as a potential alternative then to cordons?
- A. If the danger was only presented by the verandahs themselves yes.
- Q. Right but not, not by the façade –
- 30 A. No.
- Q. – in the connections?

- A. No propping a verandah would not stop, I'm not an engineer you'll have to get an engineer to clarify but in my view I don't think propping a veranda would stop a façade falling.
- Q. Right. And the property at 626 that was mentioned –
- 5 A. Yes.
- Q. – yesterday on the corner of Tuam and Colombo?
- A. Yes.
- Q. That was cordoned after the meeting of 1<sup>st</sup> of February were you aware of that?
- 10 A. Yes. Yes.
- Q. And there was concerns about the façade of that building and particularly concerns I think from Mr Sinclair because it was three storey?
- A. Yes.
- 15 Q. Can you tell us the extent of the cordon on that around, in front of that building at that time?
- A. No I cannot Sir.
- Q. Right. Did it block some of Colombo Street or not?
- A. Possibly into the parking bay going along Colombo Street towards
- 20 Sydenham but not all of Colombo Street was blocked off at that juncture no.
- Q. Do you agree with me that if you'd had cordons in front of 605 to 613 and 626 a lot of Colombo Street would have been blocked off?
- A. Oh yes definitely.
- 25 Q. Was that something that was ever considered that issue of the extent that Colombo Street might be blocked off if cordons were erected?
- A. Not from the engineering assessment point of view because we rarely discussed anything in that detail to them that wasn't –
- Q. Well from any point of view?
- 30 A. Um, only from a traffic management point of view from the aspect of if anything like would ever have to happen and there were instances where we did have to close off sections of Colombo Street, how we needed to redirect things like buses and traffic.

Q. Was that down in Sydenham wasn't it?

A. Down in Sydenham and in front of the BNZ bank in December prior to the Santa parade we had an issue.

Q. Right.

5 A. For a very short period of time.

Q. Was there ever any discussion about this area of Colombo Street that we're talking about?

A. We've never had any indication that the front of the buildings from 605 to 613 presented or posed an issue, we had no information received.

10 **CROSS-EXAMINATION: MR ELLIOTT – NIL**

**COMMISSION ADJOURNS: 1.03 PM**

**COMMISSION RESUMES: 1.46 PM**

**VINCIE BILLANTE (ON FORMER OATH)**

15 **CROSS-EXAMINATION: MR MCLELLAN**

Q. I represent Opus. I just want to ask you some questions about the period after the Boxing Day inspections of 603 and also 605 Colombo Street just to try and fill in a couple of gaps in what happened? Could I have 603.0038.21 please. So that's the Boxing Day inspection filled out  
20 by Michael Nilsson and if we could focus on the lower box which has "previous yellow" written in it?

A. Yes Sir.

Q. Now you can see something's been written in the yellow box?

A. Yes.

25 Q. Can you work that out. Do you think that that had been ticked yellow.

A. It had been ticked yellow from the appearance, by Michael.

Q. And in the right-hand box we've got the initials of who we now know to be Richard Gant. Is that right?

A. Yes sir.

Q. And he's contradicted that yellow recommendation and up-graded it to red?

A. Yes sir.

5 Q. And if we go to the next page, .22, which is the report of an inspection done by DB or Mr –

A. – Bransfield.

Q. – Bransfield on the 27<sup>th</sup>, the following day. Is it a fair inference that Mr Gant has looked at that and decided that it should be red, not yellow, on the basis of Mr Bransfield's recommendation in the lower box?

10 A. Yes.

Q. Did Mr Gant do inspections himself?

A. Mr Gant was based in the Council building co-ordinating all the inspections in the engineers.

**JUSTICE COOPER ADDRESSES MR MCLELLAN**

15 But Mr McLellan the author of this form now says, "previously yellow tag, now red".

**MR MCLELLAN**

You're looking at .21 Your Honour.

20

**JUSTICE COOPER**

No, I'm looking at .22 under the heading "Comments" half way down the page.

**VINCIE BILLANTE**

25 Previously the yellow tag now red, from the day before.

**MR MCLELLAN**

Yes I think that's helpful Your Honour.

**CROSS-EXAMINATION CONTINUES: MR MCLELLAN**

30 Q. The inference then probably is that Mr Gant changed the yellow to red before Mr Bransfield's inspection. Is that what you would infer because of what's under "Comments"?

A. What I would actually infer is that because of the timing of these Mr Gant changed the tag from yellow to red and then perhaps sent Mr Bransfield out on the following day to confirm that.

5 Q. Now if we turn our attention to 605 and if we could have .0001.17 and we can see a similar process appears to have been followed here. This is in Mr Raper's evidence. He said that he recommended a yellow placard for it when he inspected this building with Mr Nilsson?

A. Yes.

10 Q. And we can see that Mr Gant has put his own recommendation, he's changed it to red?

A. Yes he has.

Q. But what I can't find is a report of a further inspection after Mr Raper and Mr Nilsson inspected it?

A. It doesn't appear to have a record of one, no.

15 Q. So can you infer whether there would have been a further physical inspection of 605 to change the yellow to red?

A. I can't from this information.

Q. Is Mr Gant still employed by the Council do you know?

A. Yes he is.

20 Q. The process of changing the placard from yellow to red I think would then allow the Council to issue a Building Act Notice?

A. Yes sir.

Q. And of course what Mr Raper has recommended in that box is a structural assessment?

25 A. Yes sir.

Q. So I suppose that if a Building Act Notice was served, as of course it was wasn't it?

A. Yes it was.

30 Q. And if the building owner did those works required by the notice the placard wouldn't be downgraded to green until there had been a CPEng sign off of those works is that right?

A. Agreed.

Q. Just one other question. We've heard I think Mr Ryburn and Mr Campbell say that sometimes the inspections they were asked to do were for specific purposes, for example, to go and check whether works that had been required of the owner had been carried out. Is that your...

5 A. That's correct.

**CROSS-EXAMINATION: MR MCINTYRE – NIL**

**RE-EXAMINATION: MR LAING**

Q. Just one question Ms Billante, you stated in evidence that there was no state of emergency declared on Boxing Day 2010. Is that correct?

10 A. Correct.

Q. Can you explain, therefore, why the rapid assessment forms were being used?

A. To the best of my knowledge I think the reason why rapid assessment forms are used is because they provide an immediate accepted standard that is actually used nationally and internationally as to the type of visual inspections required in these emergency situations.

15

Q. In this case there had been no state of emergency declared yet the forms were still being used. Was there any particular reason why that was occurring?

A. My understanding is because they provide a good basis in the cases of rapid assessments for which the engineers can exercise their professional judgment for basing cordon placement if necessary and it was an accepted standard.

20

Q. But as at Boxing Day with no state of emergency so I take it your evidence therefore was that the key technique was the section 124 notice?

25

A. The section 124 notices are where the Building Act was in effect at the time of December 26<sup>th</sup> as there wasn't a state of emergency so the Civil Defence Emergency Management Act did not come into effect at that time.

30

**QUESTIONS FROM THE COMMISSION – NIL**

**WITNESS EXCUSED**

**MR ZARIFEH ADDRESSES THE COMMISSION**

- 5 Mr Dalley is not going to be called. Your Honour might recall he gave brief written statements in the records dealing with an issue of the phones being inoperative and I think given Mr Bushnell's evidence yesterday that is not required now. So we move to Mr Fletcher from Buchanan and Fletcher.



1356

**MR McINTYRE CALLS**

**MICHAEL RONALD FLETCHER (AFFIRMED)**

5 Q. Your name is Michael Ronald Fletcher and you are a director of Buchanan and Fletcher Limited, consulting engineers in Christchurch. Is that correct?

A. Yes.

10 Q. You prepared a brief of evidence in relation to the buildings at 603 to 615 Colombo Street in your involvement?

A. Yes I have.

Q. Could you please begin reading your statement, or your brief, at paragraph 1.1 from the second sentence, "I hold a Bachelor of Engineering."

15 **WITNESS READS BRIEF OF EVIDENCE**

A. "I hold a Bachelor of Engineering Degree and I'm a chartered professional engineer. I'm a member of the Institution of Professional Engineers New Zealand and the New Zealand National Society of Earthquake Engineering. I have practised as a structural engineer in Christchurch since completing university studies in 1972. I was a co-founder of Buchanan and Fletcher Limited in 1986.

20 Building Description. The building at 603 to 615 Colombo Street was on the west side of the street and extended from Tuam Street south to Mollett Street. It was a single building but had possibly been built in stages. It was divided into three separately owned parts. 603 at the south end was occupied by Tea Net. We had no involvement with this part. 605 to 613 was owned by Benson Chen Holdings Limited and occupied by the Khmer Satay Noodle house at 605 and Kiwi Disposals at 611. Number 615 at the north end was owned by S Yee and occupied by Leather Direct. The 605 to 613 part of the building was about 26 metres long, that's parallel to Colombo Street, and 12 metres deep and divided into five equal units each about five metres long. This section of the building had a steeply pitched roof, predominantly clad

with clay tiles but with some areas of corrugated steel. The first floor was timber framed and there was a partial mezzanine which was also timber framed over 605. The perimeter walls and the dividing walls between units were of unreinforced brick. There was a brick parapet estimated to be 1200 millimetres high by 450 millimetres thick on the Colombo Street frontage.

5

Our engagement at 605 to 613. We were initially engaged by Bushnell Builders Limited in September 2010 to carry out a visual inspection of the building.”

10 Q. If I can just interrupt you there Mr Fletcher. That was after the 4 September quake was it?

A. Yes it was.

Q. Okay just carry on at 3.2.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

15 A. “In late October 2010 we were engaged by the insurers, China Taiping Insurance via Mainland Claims to carry out further inspections and to report to them and at 615 Colombo Street we were engaged directly by the owner, Simon Yee.

20 So the history of our involvement at 605 to 613. Our first inspection was made by my co-director, Dave Eaton, on 14 September 2010. He noted cracking in the east-west walls. Those are the walls running at right angles to the street, particularly on the first floor and adjacent to the east wall, the Colombo Street wall. He recommended propping of the front edge of the verandah along the Colombo Street frontage and this work was carried out by Bushnell Builders. I first inspected the building on the 27<sup>th</sup> of October 2010 accompanied by Peter McLeod of Mainland Claims.”

25

**JUSTICE COOPER:**

30 Q. Did you say, “I first inspected the building?”

A. Yeah well I've added the “first” bit. It was the first time I went there.

Q. So the visual inspection that you referred to at paragraph 3.1 was not carried out by you?

A. Correct. That was carried out by Mr Eaton of our company, yeah.

**MR McINTYRE:**

It's covered at 4.1 Sir.

**5 EXAMINATION CONTINUES: MR McINTYRE:**

Q. Just carry on please at 4.1 from the words "I found" please Mr Fletcher.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "I found that there did not appear to be any new cracks in the cross walls near the eastern frontage but existing cracks had widened.  
10 The east wall had separated from the cross walls at each end of the building but the parapet and east wall itself showed no signs of damage. Following this inspection I prepared a report dated 5<sup>th</sup> November 2010. The report recommended tying the east wall and parapet back to the east-west cross walls with steel ties, using a building contractor to  
15 investigate apparent separation between the main building and the lean-to buildings to the west and the lean-tos themselves. Now out the back of this building there were some smaller buildings around about one storey high that had been built as lean-tos onto the main building and I advised that the building was likely to be earthquake prone and to  
20 require earthquake strengthening in accordance with the Council's current policy. We then designed and sketched steel ties for tying back the east wall and parapet and forwarded these to Mainland Claims on the 23<sup>rd</sup> of November 2010. On the 30<sup>th</sup> of November Mainland Claims emailed us asking us to arrange for a quote from Bushnell Builders for  
25 installing these ties. On the 2<sup>nd</sup> of December 2010 I met with Russell Keast of Bushnell Builders on site to brief him and to establish the number and extent of the tie-backs that would be required. Bushnell's budget estimate was sent to Mainland Claims on 13 December. On the 13<sup>th</sup> of January 2011 Peter McLeod of Mainland  
30 Claims emailed the owner with a copy to us saying that the building had probably been further damaged by the earthquake of 26 December 2010, a further engineering inspection would be required and raising the

possibility of demolition. We agreed to inspect the building on 17 January. On 17 January 2011 I carried out a further inspection accompanied by Robin Cheng the owner, Matthew Bushnell, Bushnell Builders and Peter McLeod. I found that the existing cracks  
 5 between the east wall and cross walls had widened and some new cracks had appeared. At the south end where the separation was biggest there was a gap of 50 to 60 millimetres. After discussion it was agreed that demolition was probably the best option but that this would have to be co-ordinated between the three owners, the owner at 603,  
 10 603 to 613 and the owner of 615. It had to be co-ordinated between the three of them and take into account heritage requirements. Matthew Bushnell undertook to talk to the owners and the City Council to establish the process for getting permission to demolish. Following the meeting I emailed Mainland Claims summarising verbal advice I had  
 15 given during my visit to site. In the email I advised that it was becoming urgent that a decision be made to either secure or demolish the building.”

Q. Just pause there please Mr Fletcher.

20 **MR McINTYRE:**

Sir I unfortunately don't have the reference in the system to that email. It may be a document – thank you Mr Elliott. It may be a document that the Commission's not yet focussed on. It's BUI.COL605-613.0004.37.

**EXAMINATION CONTINUES: MR McINTYRE**

25 Q. Mr Fletcher is that the, and just perhaps highlight that –

A. Yes that's my email.

Q. Is that the email to which you refer in your paragraph 4.7?

A. Yes it is.

Q. Pause a moment and allow the Commissioners a chance to read that.

30

**JUSTICE COOPER:**

Q. Mr Fletcher when you said in that email, the 17<sup>th</sup> of January, “The separation gets worse as you move from north to south along the building but there are now signs of separation at every cross wall, were you embracing with those words the building along its entire length?

5 1406

A. Ah –

Q. From 605 to 613 Colombo Street?

A. Yes, well yes, and in fact from north to south I'd guess we'd be saying from 613 to 605 the 613 at the end would be, the signs, well they were just relatively minor cracking that perhaps just some sort of disturbance of the plaster, ah, where right down to the 605 end where there was a considerable gap.

10

Q. I just noticed the heading which says “3841” I don't know what that means but then there's an address –

15

A. Ah –

Q. – 605 to 611?

A. Oh okay so 3841 is our file number.

Q. Right.

20

A. I, yes until I started reading evidence for the hearing I always thought that it was 605 to 611 but, but I've gone along with the 605 to 613 in preparing for the, this hearing.

Q. So notwithstanding the heading you are referring to 605 to 613?

A. Yes.

Q. And the recipient of this letter would have understood the –

25

A. Yes.

Q. – this email would have understood that to be the case?

A. Yes so that's Peter McLeod at Mainland Claims.

Q. Yes.

30

A. Yes he, he would have understood we're talking about the whole building.

Q. And in the last bullet point where you say, “It's now becoming urgent that a decision is made to either secure or demolish the building”, that was your professional view was it?

- A. Yes. I'd, I'd become, I was becoming concerned that there was some deterioration was happening that the securing work that we designed in November was still, was not underway and it seemed as though it was going to be unaffordable so that didn't leave too many, well I think that was still a possibility they could still have secured it but if they weren't going to do that they had to demolish it in the, at least in the medium term, the decision had to be made, it couldn't just keep rolling on.

**EXAMINATION CONTINUES: MR MCINTYRE**

- Q. 4.8 please continue reading Mr Fletcher.

**10 WITNESS CONTINUES READING BRIEF OF EVIDENCE**

- A. "On the 2<sup>nd</sup> of February 2011 Matthew Bushnell phoned me to say that the meeting with the City Council had taken place the day before and that resource consent would be required in order for the building to be demolished. This would require an engineering report or reports covering the whole building, ie from 603 right through to 615 inclusive. As I recall I was not instructed to prepare any report at that stage. On the 17<sup>th</sup> of February 2011 Matthew rang me to ask to prepare, rang to ask me to prepare a report covering demolition of the whole building and this was the first time I had any instruction to be involved with 603 Colombo Street".
- So just, I've, the history of involvement in 615 so this is the building at the very north end at Tuam Street. Although this part of the building is not included in the Royal Commission enquiry it formed part of the larger building so we think it's worth recording our involvement here.
- "Our staff engineer Malcolm Brown first inspected the building on 4<sup>th</sup> of October 2010. He found mostly cosmetic damage inside the building although many of the brick walls are obscured by linings. He noted some minor strengthening work had been carried out in the roof space and that mortar in the brick work was in poor condition in places in that roof space. He was concerned about cracking visible in the parapet from outside and recommended closer inspection of the parapets. On 19 October 2010 the owners' representative Nigel Yee emailed photos

of damage above roof level. Malcolm returned to the building on 27 October 2010 to inspect the roof and parapets. Following this visit he designed and sketched repair work for the parapet and issued those, these sketches to Nigel Yee and to Bushnell Builders on 5 November.

5 The sketches included details for a steel tie to connect the east wall of 615 to the party wall or cross wall between 613 and 615 Colombo Street. Following an onsite discussion with Bushnells the detail was amended and a new sketch issued on 13 January 2011. Repair work was complete by 27 January. Malcolm inspected the work on

10 31 January and issued a site report saying that the work was in accordance with our sketches and appeared to be of a high standard. Photographs taken after the earthquake of 22 February 2011 show that while some of the east wall parapet fell, most of the upper east wall remained in place. The parapet in the vicinity of the tie, that's the tie

15 that we installed, appears to have collapsed inwards and was sitting on the roof."

**CROSS-EXAMINATION: MR ZARIFEH**

Q. Mr Fletcher, I just want to ask you about the damage that was observed in the building and firstly looking at Mr Eaton's inspection on the

20 14<sup>th</sup> of September it's BUI.COL.605-613.0005.12.

**WITNESS REFERRED TO INSPECTION REPORT**

Q. The second bullet point he said, "Evidence of fresh cracking in first floor brick walls running east/west particularly noticeable adjacent to east street front wall"?

25 A. Yep. Yes.

Q. Now he didn't measure the cracks?

A. No.

Q. Doesn't appear to have?

A. No.

30 Q. Right and he recommended propping of the front edge of the verandah to reduce tension loads on upper brick walls and minimise the risk of the east/west wall being pulled into Colombo Street, correct?

A. Yes.

Q. Now I appreciate you didn't, it wasn't your recommendation but when you inspected the building on the 27<sup>th</sup> or 29<sup>th</sup> of October whenever it was did you, the propping was in place by then?

5 A. Yes it was.

Q. Right and did you agree with that being carried out or having been carried out?

A. Ah, yes it would, the propping if I go back up the truck a bit verandahs cantilever out of front walls of buildings of that age and they're held back usually by like just a diagonal tie that goes back to the brick wall at some level so at one level it's either pushing, pushing or pulling on the wall in such a way that it would tend to tip it into the, towards the street and it's doing that permanently so by propping the verandah you take away that permanent load on the wall.

10 Q. Pressure. Right, but would you agree with me that it's not a means of tying back or preventing the façade from falling out if that's what becomes at risk?

A. It, it's definitely not a solution to the whole problem. It's simply mitigating it to some extent.

20 Q. All right. Now you then inspected on the I think you said 27<sup>th</sup> –

A. Twenty-seven –

Q. If we look at 0005.25, .24's the first page.

#### **WITNESS REFERRED TO REPORT**

Q. Is that the report that followed your inspection?

25 A. Yes it is.

Q. Right and if we go to the next page .25 under "Re-inspection on 29 October"?

A. Yeah I think that's a typo.

Q. Okay so it's 27? Correct?

30 A. What, yeah well looking at my notes say the 27<sup>th</sup>.

Q. All right, 27?

A. Yeah.



Q. The second paragraph under that heading, "There did not seem to be any new cracks in the cross walls near the S frontage"?

A. Yes.

5 Q. "However the existing cracks appear to be widened since our first inspection". Now what were you going on to say that, was the, were the photographs that I think you've sent into the Commission were they taken by Mr Eaton or –

A. There are some photos taken by Mr Eaton on his visit.

Q. Right.

10 A. And some taken by me.

Q. So were you –

A. So well I, well I can't remember exactly how I came to reach that conclusion but I think I would have gone back to the office and discussed it with Mr Eaton and looked at the photos and...

15 Q. Okay well I'll come back to that in a moment. You said, "Above the roof there is clear evidence that the east wall has separated from the cross walls at each end of the building with a gap in excess of 20 millimetres".

A. Yeah.

20 Q. "There's no visible damage either to the parapet or to the east wall below", okay?

A. Yes.

Q. So was that a new finding in terms of damage?

A. Um, Mr Eaton hadn't been able to access the roof.

Q. All right so it might have been –

25 A. So that we were able to get –

Q. Okay.

A. – to look at the roof on that visit.

Q. So that was the first occasion that –

A. Yeah.

30 Q. – that your firm was able to establish that separation.

A. Yep.

1416

Q. All right, just going back to the photographs then, can you direct us to which ones were taken of, on 14<sup>th</sup> of September, and perhaps I'll refer you to page 0005.41? Now they might be later because you can see –

A. Yeah.

5 Q. – the red sticker, is that correct?

A. Yes those are the 17<sup>th</sup> of January so the date, there is a date on each photo.

Q. Oh you're right.

A. Where it says photo 01 and then it says the date 20110117.

10 Q. Okay.

A. That identifies the date the photo was taken.

Q. So should be able to find, so have you sent in all the photos?

A. Yes.

Q. You have? Right.

15 A. There's four (inaudible 14:17:21) or whatever those photos. That's the last, that's the latest of them.

**JUSTICE COOPER:**

Q. Well did you take photographs on the 27<sup>th</sup> of October?

A. Yes I did.

20 **CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

Q. And did you take them of the crack or cracks in that eastern end of the transverse walls?

A. Yes.

Q. And had Mr Eaton taken photos of the same crack?

25 A. In some cases, he had, yes.

Q. And could you tell from the photographs whether they've increased or not?

A. I have to say the photographic evidence is not as conclusive as all that. It's very difficult but, some, well, we've looked at a lot of cracks and  
30 photographed a lot of cracks and I have to say that they always look a lot better in a photograph than they do in real life, as in not as bad.

- Q. They don't look as bad? All right.
- A. And yes so the photographs don't look hugely of that inside the building they don't look hugely different but –
- Q. Well let's look at the photo that's on the screen in bottom left.
- 5 A. Yep.
- Q. If that can be expanded please? See that photo?
- A. Yes.
- Q. So is that taken, that's one you took?
- A. That's one of mine on the 27<sup>th</sup> of –
- 10 Q. 27<sup>th</sup>?
- A. Yep.
- Q. So does that, that shows the crack as you saw it and that's the wall separating 605 and 603?
- A. Yes it is, yep, at the Colombo Street end.
- 15 Q. And you say that you, you say it doesn't look as bad as it was?
- A. Um –
- Q. Is that what you're saying or does it reflect?
- A. I'm saying that typically that they don't and that the difference, yeah, you've only shown me one photo but even looking at my ones here, that
- 20 doesn't look to be an enormous difference but certainly when I was on site it, I thought there was a difference. There was a bit obviously between the 27<sup>th</sup> of October and Mr Eaton's photographs as more relying on description.
- Q. Description?
- 25 A. Yes.
- Q. Can we have a look then at what's the next photographs you took then? Were they the January ones?
- A. I took a small number of photographs on the 2<sup>nd</sup> of December but they don't show, they were of different parts, different aspects.
- 30 Q. Just before we leave the 27<sup>th</sup> of October, perhaps were there other cracks that we should be looking at in your photographs? There's one 09, if you look in your records, that's on page .21.
- A. Well I can only look in my own unless –

- Q. I'll just get that page brought up.
- A. 09, that's, oh I have got it, I've got a copy of that there, that's on the roof. Is that the one you're looking at?
- Q. Just going to come up in a minute. That top left photo, what's that of?
- 5 A. That is upside down. That's, it is where the wall between 605 and 603 meets the Colombo Street parapet so, yeah, the photo's actually –
- Q. How should that be turned round?
- A. Should be 180 degrees. Yeah.
- Q. So –
- 10 A. So, yes, so on your left is the parapet, on the left of the photo is the parapet and the top of the photo was the roof of 603 and the corrugated iron you can see as a patch, a repair patch, on 605.
- Q. So that's the separation that you saw on that day?
- A. Yes.
- 15 Q. So now you said that the, you took some in December?
- A. Yeah but the ones I took in December were of a, perhaps, well I was there with a builder and we were trying to scope the repair work and I took two photos of a place where we, where one of the inside upper walls had been virtually removed. There was only a short section of
- 20 brick left and we were going to have to do some special work there, and another one which is at the rear of the building, the west end of the building which I think I mentioned in my brief that I was, well I'd asked for some building work to be, a builder to inspect some of those lean-to buildings and try and understand what was going on there so that is
- 25 where I think at the west end of the building, that's called photo 1 and that's at the, yeah, that's the end, the side of the building remote from Colombo Street. Photos 2 and 3 are of an internal cross wall that had been largely removed.
- Q. And if we can just have page .16 please? What's that photo showing top
- 30 left and bottom left? First the top left?
- A. So photos 1 and 3.
- Q. Where's that cracking?

- A. That is down towards the north end of the building, in the offices of Kiwi Disposables.
- Q. Did that give you any concern, that cracking?
- A. Well that's a Mr Eaton photo but I've got the impression that a lot of that cracking was pre-existing.
- 5 Q. But it wasn't your inspection anyway?
- A. It wasn't, but I have photographed those cracks later on.
- Q. And had they got worse or not?
- A. Well I thought I'd photographed those cracks later on.
- 10 Q. But you hadn't or?
- A. I'm just looking at the photos I took on the 17<sup>th</sup> of January, it doesn't look like it.
- Q. Let's move to the 17<sup>th</sup> of January, .41. Bottom left please. Now is that the south wall again between 605 and 603?
- 15 A. Yes.
- Q. So is that the same cracking that you had photographed on the 27<sup>th</sup> of October?
- A. Yes it is.
- Q. And you said in your report or your email of 17 January to Mr McLeod, "Separation between the east Colombo Street wall and cross walls has definitely worsened since our last visit," and you talked about that separation. Oh I thought you'd mentioned the cracks. Well tell us –
- 20 A. I think I did. Yeah.
- Q. Did you?
- 25 A. I think they were possibly in that email was it?
- Q. It's definitely worsened.
- A. Yes.
- Q. But were you talking about this cracking though?
- A. Yes.
- 30 Q. So were you saying that this cracking had worsened since October?
- A. Yes.
- Q. And again do the photos reflect that? Reflect what you saw?

A. Well I saw some evidence yesterday about these cracks and I went back to the office and blew the photos up on a slightly less fuzzy screen and there is a difference, perhaps not, yeah.

1426

5 Q. You said at the south end where the separation is biggest there is now a gap of 50–60mm?

A. Yeah.

Q. That's what you said on 17 January?

A. Yes.

10 Q. Did you measure the gap back in October?

A. No, where the crack is widest up there is about five metres above the floor. I didn't get up there and measure it.

Q. And you didn't measure it in January either?

A. No.

15 Q. So it was just an estimate. Is that fair?

A. Yes that's right.

Q. So leaving aside the exact figure it had definitely increased. Is that what you're saying?

A. Yep, that's what I've written in my notes on that visit.

20 Q. So just dealing with the 17<sup>th</sup> of January then, you noted that cracking was in each transverse wall along the building?

A. Yes there was either cracking at the joint or slightly back from the joint and, as I say, varied from that wide crack that we're looking at there to perhaps just the beginnings of distress of the plaster.

25 Q. So widest at the south end?

A. Yes.

Q. And there was the separation of the parapet from the cross wall above the roof that you noted on 27 October?

A. Yes.

30 Q. And you referred us to that photograph. Had you re-inspected that in January?

A. I can't remember. I think we possibly did but I haven't made any note about it. So I can't say. There was access to the roof when you're up in

the building up in this part of the building you could get up, push a hatch up and get onto the roof and it may appear through the hatch.

Q. But you can't remember so you can't say if it was worse or the same?

A. No I can't. I don't think so. There's no photo of it there is there.

5 Q. So the main concern you had, am I right in saying, was this cracking in each of the transverse walls?

A. The cracking appeared to be spreading, yeah, it had moved to the point that it was starting to show up at the north end as well.

Q. Right but you were particularly concerned at the south end?

10 A. It was worse there yes. There was more concern there.

Q. Were you concerned still about the north end?

A. No I wasn't alarmed about the north end. It was happening and if it got any worse than that I think we would have been more concerned.

15 Q. Well I'm just trying to gauge or understand your level of concern. Let's start with the south end, the Noodle House tenancy. What was your level of concern with that?

A. Um, I don't really know how I can quantify that, I mean, my level of concern.

20 Q. You didn't think there should be occupation of that portion of the building, correct?

A. Well by the 17<sup>th</sup> that part of the building had been red stickered. The tenants had moved out. We were basically just making a decision to demolish the building. There didn't seem to be any point in inviting them back in and certainly if 603 was to collapse it would affect 605 so there was that level of concern I guess.

25 Q. What was it about the cracking then in that area that concerned you? What did you think could happen if it got worse?

A. Eventually then it was possible that the front wall would collapse into the street.

30 Q. So was the connection of the front wall to the transverse walls that you were concerned about?

- A. Yeah well the front wall is held in place by the transverse walls, the roof and the first floor and there was damage to the transverse walls but I never saw any separation of the floor or the roof.
- Q. And presumably you looked for that?
- 5 A. I did.
- Q. But that was your concern, this connection between the front façade and the walls?
- A. Yes.
- Q. And as a result of seeing that did you form any view as to whether or not there should be any kind of cordoning or barricading in front of the building and I appreciate that wasn't necessarily your responsibility but did you think about that?
- 10 A. No. When I left the building on the 17<sup>th</sup> I wasn't concerned that the front wall was in immediate danger of collapsing.
- 15 Q. Despite these cracks having increased as you've said in your email?
- A. Yes, well I suppose with every crack there comes a point I suppose where you have to become very concerned and I don't know we were quite at that point but we were perhaps approaching it.
- Q. Well why did you say in your email that it was now becoming urgent that a decision be made what to do?
- 20 A. Because no decision had been made. I felt I had made some recommendations. I had designed and sketched up some tie backs. They had been measured up, they had been priced or at least budget estimated and sort of the weeks rolling by and nothing was happening.
- 25 Q. But the urgency presumably came from your observation of the state of the cracking?
- A. That was part of it, yes – partly from that, partly from the fact that we were just, as I say, nothing, no decision was being made to tie the building back and you couldn't go on indefinitely.
- 30 Q. Presumably you were saying it was urgent because you wanted the work?
- A. I wanted som..., yes I wanted a decision to be made and some action to be taken.



Q. Because of the potential danger?

A. Well because of potential danger yes obviously.

Q. And the potential danger that you were concerned about was that façade falling off in a significant aftershock?

5 A. That would be, yeah –

Q. – Is that fair?

A. major concern or the main concern, yes.

10 Q. That was your main concern right. If you had that concern and you were expressing it, did you not think that if that did happen there might be a danger to pedestrians and the public in Colombo Street?

A. I didn't think at that stage that the wall was in imminent danger of coming off the building. That's my assessment that there had been a number of, a lot of earthquakes, it had got slightly worse but the pattern of aftershocks is normally to diminish.

15 Q. Right, do you recall any of the emails from Mr McLeod?

A. Ah, yes.

Q. He was obviously getting more and more concerned, wasn't he? Would you accept that?

20 A. Ah, yes, well I think he was quite concerned from the very first time I met him.

Q. Right and his concern grew when you look at some of his correspondence. Would you accept that?

A. Yes.

25 Q. Were you saying to him, "Well no it's not that bad. You don't have to worry" or anything like that?

30 A. Um, well I don't recall specific conversations but I mean at the end of the day we have to make, engineers have to make a judgement on what they see and obviously listen to what your client has to say and the occupants of the building and the builders and other people you come into contact but in the end I guess the decision is ours, well not the decision, the advice is ours.

Q. And that's because as well an engineer has an ethical obligation in relation to safety doesn't he?

A. Yes.

Q. So I mean obviously you're aware of that but you didn't consider the danger was such that you needed to take steps and, what, something like contact the Council or anything like that?

5 A. No I didn't.

Q. Right, did you give that any thought?

A. Um, I can't, I didn't recollect whether I did or not but I don't recall thinking about it.

10 Q. And in that email you said it was currently okay for the Kiwi Disposals tenancy to be occupied?

A. Yes.

15 Q. I understand what you're saying about the cracks being less severe as you went north and therefore you were more worried about the south end but there were still cracks going right along, including above the Kiwi Disposals, correct?

A. Yes, although we had the tie back in place where Kiwi Disposals met 615.

Q. Is that one you'd put in?

20 A. Yes it was one because at 615 there was strengthening work before the securing work went ahead.

Q. So that's at the very north end of this building that we're talking about or this portion?

A. Yes.

25 Q. But if you were concerned about the façade above the Noodle House coming off, coming away in an aftershock, a significant aftershock, couldn't that potentially pull the whole of the façade off that portion of the building up to 615 or further?

1436

A. Well it obviously it could and it did –

30 Q. I'm just trying to make this –

A. – but I don't think I was worried, I don't, did I say that I was worried about the façade collapsing at the Noodle House?

Q. I thought you said that was a possibility?

A. It was a possibility yeah.

Q. Well –

A. But a possibility for the possibility to be, to come to pass there has to be an earthquake big enough to do that damage.

5 Q. Right well let's talk about that then, what, when you were assessing the building?

A. Mhm.

Q. And looking at the cracks and they'd increased in your view, you knew that we were in an aftershock zone so to speak?

10 A. Yes.

Q. And you knew that we'd had a significant aftershock albeit low magnitude on Boxing Day?

A. Yep.

15 Q. So you knew there was a possibility of another significant aftershock or not?

A. Um, I guess if we thought about it we would've imagined that the aftershock sequence was still, was going to diminish but that may be that one on Boxing Day was the big one although there was another, there was a five I think on 20<sup>th</sup> of January. But the destruct- the accelerations that are associated with the earthquake of the 22<sup>nd</sup> of February were, were far bigger than the original earthquake and far bigger than anything that we designed for.

20

Q. I accept that and you weren't expecting that?

A. No. No.

25 Q. No as most people weren't?

A. If we were expecting that we would've evacuated the building and shut it down.

Q. Okay but I'm just trying to understand what it was that you thought, like what did you base your information on that, what was likely?

30 A. Um –

Q. Did you have any GNS information or anything like that?

A. No well G- well GNS only tell you about the magnitude of the earthquake they don't tell you about horizontal accelerations and

horizontal acceleration is what we design for so that our building codes standards mandate horizontal accelerations to design for and that's, that's what we work with and yeah although we didn't, and with an existing building with cracks in it it's very, very difficult to, well you can't really calculate what sort of earthquake load it's going to take to pull the façade off the building.

5

Q. All right but you knew that the Boxing Day was on a different fault line than the September?

A. Yeah.

10

Q. And obviously under the city?

A. Yes.

Q. When you said that it was okay for Kiwi Disposals to occupy but it should be monitored daily?

A. Yeah.

15

Q. Who was going to do that daily monitoring?

A. Um, well there was a tenant who was a, seemed like a fairly switched on sort of man. He knew about all of the cracks in all of his walls. We talked to him at, on the 17<sup>th</sup> of January and discussed that with him.

Q. So you made it clear to him to keep an eye on them?

20

A. Yes.

Q. And contact, what contact you if they increased?

A. Contact our office yeah.

Q. And so if the cracks above his tenancy what had increased to similar to the south end what would you have done?

25

A. Um, I think at that point well we're speculating now but I think yeah I think that would have been enough to, to red sticker that, the building.

Q. That portion?

A. Yep.

Q. Because it hadn't been red stickered for some, for whatever reason?

30

A. No.

Q. When the Noodle House had?

A. No that's right it hadn't.

Q. Right. I just wanted to show you a photo that Mr Raper took who's an engineer who went on the 26<sup>th</sup> of December?

A. Right.

Q. It's WIT.RAP.0001.7, sorry, .8, .9.

5 **WITNESS REFERRED TO PHOTOGRAPH .9**

Q. All right now that's a photo of the same wall as the one that you took the photos of?

A. Agreed yep.

10 Q. In his evidence in his brief he, in reference to that photo, says that it appeared to be about 20 millimetres at its widest?

A. Right.

Q. Firstly have you got any comment about that compared to what you saw in January?

15 A. Um, no I would estimate the width of that crack as being more than 20 millimetres like if you look at the brick, the mortar courses between the bricks they're probably 10 to 12 millimetres and at its widest point the crack is probably maybe two or three mortar courses wide but –

Q. Okay.

20 A. – which would put it in the slightly more than, I'd maybe put it in the nearer to, up towards 30 millimetres perhaps maybe, yeah.

Q. And how do you think that compares with what you saw in January from looking at the photo. Where's your photo? I've forgotten the number.

A. Well I think it would probably very, be very similar to what I saw in January.

25 Q. Have you got the number, it's page 6, 0005.41?

**WITNESS REFERRED TO PHOTOGRAPH 0005.41**

Q. Can we put them both up, thanks. So your one's on the left?

30 A. Yes. Well I, it looks to me as though the gap's bigger in my photo but I don't know whether it really is or whether it's just the angles that have been turned and the sort of slightly different quality of the photos.

Q. All right and can you just been shown please WIT.RAP.0001.8

**WITNESS REFERRED TO PHOTOGRAPH WIT.RAP.0001.8/6**

- Q. This is a photo that's coming up of the separation between the parapet and the top of the transverse wall. Oh, sorry .6. Taken by Mr Raper.
- A. Oh yes.
- Q. Now in relation to what you saw back in October?
- 5 A. Ah, yes I, yeah, there is a slight degradation there or a degradation, in my October photograph.
- Q. It's a wider separation in –
- A. This is a bit –
- Q. – the December photograph correct? Is that what you're saying?
- 10 A. This is the December photo yes.
- Q. Yes.
- A. I, um, because I have also having heard some evidence last night I did have a look at these photos, well my photo back in the office and my photo just joint, across the top of the wall that's coming in from the right
- 15 that seemed to be a sort of tapering whereas this is more parallel and there's a bit of damage you can see to the side –
- Q. Right.
- A. – of the short parapet.
- Q. So there's a wider separation?
- 20 A. And some material lying in the gutter there. Yeah.
- Q. Yes. All right thank you, so just finally Mr Fletcher, 17 January was your last inspection?
- A. Yes.
- Q. And you said that it's, the cracking had definitely worsened on the south
- 25 end?
- A. Yes.
- Q. That it was now becoming urgent but you were still comfortable to leave this issue of restraining the, the wall to the, the owner or insurers to come back to you albeit you're saying it was urgent?
- 30 A. Ah, yes.

**CROSS-EXAMINATION: MR ELLIOTT**

Q. Thank you Your Honour just one short point really. Could that photograph be put back up please.

**WITNESS REFERRED TO PHOTOGRAPH**

5 Q. Just to clarify Mr Fletcher, that photograph there would have been taken directly above the other photograph where you showed, where there was cracking up in the top the interior?

A. Ah, yeah so this is the same location where 603 joins 605 at Colombo Street, this is above yeah.

Q. Have you read the report Mr Peter Smith has prepared?

10 A. I have.

Q. And in that report he says that in relation to 605 to 613 "The first floor façade of the buildings failed by an outward rotation of the façade about the first floor supporting beams in severe shaking during the 22 February earthquake". Do you agree with...?

15 A. Yes I agree.

Q. That. And that means that the connections between the façade and the floor and roof weren't sufficient to withstand the forces exerted that day?

A. Yes I agree with that.

1446

20 Q. Did the cracking which you've told us about today lead you to consider further enquiries about the state of the connections?

A. Sorry the, you mean the roof, you're talking –

Q. The connections, the cracking that we've talked about so far.

A. Yeah.

25 Q. Did you consider looking at the state of the connections between the façade and floor and roof?

A. Well we could see the floor was just bare floor boards running in, well I think the wall might have been match lined but there didn't appear to have been any, the floor had not separated from the wall linings at any place that I could see and the roof, the roof frame is completely exposed up in that roof space. It wasn't lined.

30

Q. Were you able to see all of the connections or only some of them along that –

A. I, yeah, I can't honestly, I don't think I would have inspected every connection. I would, would have had a look to see if there was any, especially at that south end but I haven't got any, I haven't taken any notes about that so I can't give you a, a definitive answer.

5 Q. And finally you've, you've said to Mr Zarifeh that as at the 17<sup>th</sup> of January you weren't concerned about the front wall being in immediate danger of collapse. Am I right in saying that in reaching that view you were using a damage based test?

10 A. Yes I guess, yes I was effectively because I mean the whole, the whole building was earthquake prone. So you had to assess, yeah, is the new damage making the building worse, significantly worse.

Q. And that is a test that many other engineers have come along and said that they used.

A. Yes.

15 Q. And you also mentioned what appears to be an underlying assumption that there had been lots of earthquakes before and this building had made it through.

A. Yeah.

Q. And that was in your mind as well.

20 A. It would have been, yes.

Q. Do you not consider though that if you were giving consideration to danger of collapse it would have been better to consider the strength of the connections and compare them to the possible forces they might experience in future aftershocks?

25 A. Yes but then the difficulty is to quantify that force. Should we be designing for the design earthquake or a third of the design earthquake which is the test for earthquake proneness or double the design earthquake which is what came along, yeah, it would have been, I don't know what, what criterion you'd use. As you say we were looking at  
30 damage base and there was no evidence of damage to the, there was, obviously there was damage at the wall to wall connections but there was not damage, or visible damage, at the wall to roof and wall to floor.

Q. Mr Smith has referred to horizontal ground accelerations of .9g –



A. Yeah.

Q. – at 12.51 on 22 February but you would agree that the façade was at risk of failure during ground accelerations much, much less than 0.9g?

A. Yes that would have been ...

5 Q. And so a better test to have used if safety was the focus would have been to look at existing strength against possible forces?

A. Well that is a, yeah I think that sounds like a good way for the future.

Q. Although as you say you would need to choose the forces that someone may face.

10 A. Yeah, that's right, we either have to choose it or it would have to be mandated for us.

**CROSS-EXAMINATION: MR LAING**

Q. Mr Fletcher could I ask you to look at paragraph 4.4 of your evidence please. You say there that Mr Bushnell's budget estimate was sent to  
15 Mainland Claims on 13 December. Did you see that estimate or was it something that didn't pass your desk?

A. No, no, Bushnells would have prepared, so if I, the process was that we, we had provided, we produced some sketches for tie-backs. We had a, a high level tie-back which would, which was connecting to the parapet  
20 and then some low level tie-backs that were just wall to wall and I walked around with Ms Keast, who's a quantity surveyor at Bushnells, and we established for each, looking at the cracking and where it was on the wall, for each wall how many tie-backs we'd need, where they would go, how far back they'd have to go, and in one or two cases there  
25 were some special requirements. So we, we reached an agreement on all of those. He went away and prepared the estimate and he forwarded it – it didn't come to us. It went straight to Mainland Claims.

Q. Mr Bushnell gave evidence yesterday that the estimate was \$200,000.

A. I understand it was.

30 Q. Does that surprise you?

A. Well there was quite a lot of work involved and, yeah, the cost of earthquake repair work has ceased to surprise me but it was quite high

and I should say that we designed those tie-backs to be part of a permanent solution initially. So we designed them for 67% of the earthquake load that was in force at the time, prior to February and, yes, it's possible that a lighter tie-back could have been used but we were never asked to look at that.

5

Q. So just to be sort of clearer on this.

A. Yep.

Q. Your solution was regarded as a permanent solution, in fact would involve upgrading the building to a greater earthquake strength.

10

A. Yeah it was, we regarded it as part of a possible, as part of a permanent solution otherwise all that money spent would have had, would have been lost and we would have had to start again. It wasn't the permanent solution. It was simply an element of a permanent solution.

Q. So if the building was going to be upgraded properly then other – you'd be looking at other work as well wouldn't you?

15

A. Definitely.

Q. Just going back to the fact that you said that this was more upgrading work, it simply wasn't immediate response to the earthquake, or just immediate repair work. If you had been asked to design work to simply, some sort of interim securing work, what would that have involved?

20

A. It might have involved similar ties perhaps with not so many bolts and maybe the, and the steel section would have been smaller but I doubt. I don't think the cost would have been dramatically reduced. I mean if we provided half, for half the force you wouldn't have halved the cost.

25

Q. No but it would have been, would have been cheaper than \$200,000.

A. Yes well when we designed the tie-back system we imagined the building would be saved and restored.

Q. Yes.

A. And that as the process rolled on, I mean we designed those, I think we issue those in November.

30

Q. Yes.

A. Late November 2010.

Q. Did you consider your own estimate of the works that Mr Bushnell estimated as well. Had you done any pre-estimate of the cost of those works?

A. No we hadn't.

5 Q. Can I ask you to look at your email of 17 January 2011 – 0004.37. That was an email addressed to Peter McLeod wasn't it?

A. Yes.

Q. And you refer there, confirming, "Hi Peter, confirming verbal advice given during our visit to site earlier this afternoon." Then you've set out various bullet points containing that advice.

10

A. Yes.

Q. From memory Mr Cheng was at that meeting?

A. Yes he was.

Q. Were those matters discussed in front of him?

15

A. Yes.

Q. So you'd be quite certain that he was aware of the various issues that you've raised there?

A. Yep, well he heard them all.

Q. Heard them all.

20

A. Whether he'd be, was totally aware of them I, I can't say but he, he was involved in all of the discussions, he was there at the time.

Q. So he would have heard the substance of what –

A. Yes.

Q. – you said there?

25

A. Yes.

**CROSS-EXAMINATION: MR McLELLAN**

Q. Mr Fletcher could I have Mr Raper's photograph which is WIT.RAP0001.6 please. I think, if we could zoom in on that feature we were looking at earlier on please. I think Mr Raper would agree with you that you can see some, some is it paint or masonry that's flaked off into the guttering there.

30

A. It's look like a piece of plaster and maybe some brick too above it there.

Q. Which wasn't apparent in the October photograph –

A. No.

Q. – I think. He, he'll say that he thought that crack was about, or that separation, was about 20 to 30 millimetres. Would you agree with that?

5 If you don't know or you didn't –

1456

A. Well I don't, I don't really know but I would suspect from having been there that it would be a little bit bigger than that, yeah, I haven't measured it and I ...

10 Q. And the, I don't need to take you back to the photographs because I think you say that you can't learn a great deal from those interior photographs there. Mr Raper's estimation was that that cracking when he looked on Boxing Day, this is on the interior brick wall on the south –

A. South side, yep.

15 Q. – and was about 20 millimetres. Are you –

A. Yeah, and I –

Q. – you didn't see it until the 17<sup>th</sup> of January –

A. I saw it the 17<sup>th</sup>, I thought it was, yeah, well my site notes certainly say more than that, yeah. I've said approximately 50 in the notes that I took  
20 on that day.

Q. Yes I think Mr Raper would disagree with you based on the –

A. Right.

Q. – the relative size of the brick and mortar to the crack that he observed. He would say it's closer to 20 millimetres and you're 50–60 is quite  
25 significantly larger than that estimation?

A. There's a difference, yeah.

Q. Do you think he might have been closer to the mark?

A. I can really only say that what I wrote down when I went to site was approximate 50.

30 Q. Now I think that when Mr Raper observed, he was up in a, he was in a snorkel but relatively close to the roofline, probably read his evidence?

A. Yes.

Q. And he recommended a yellow placard for the building, and he said that one of the factors that led him to that conclusion was that he couldn't observe any separation between the façade and parapet and the roof and I think your evidence is the same, is that right?

5 A. It is, and also which I haven't said but there was never any sign of the parapet itself cracking in relation to the wall below. It always seemed to be just while it was just sitting there, there was no cracking or damage visible from, in that photo or any other of our times we popped our head through and had a look at the roof.

10 Q. He also noted in his report that the possibility of a lean but he couldn't, but he will say that he couldn't see a lean and he didn't have a level with him. Was that your observation? Did you, could you perceive a lean in the parapet and façade?

A. I didn't perceive one but I certainly didn't check it with a level.

15 Q. And Mr Raper recommended a structural assessment of the building?

A. Yeah.

Q. Would you agree that given what was observed particularly the cracking and the separation from the transverse walls, that a structural assessment was an appropriate recommendation?

20 A. It was but then we'd already done a structural assessment of course on the 5<sup>th</sup> of November, well we've issued one on the 5<sup>th</sup> of November to the client, to my client who was the insurer.

Q. Which the council wouldn't have had?

A. It sounds like they didn't, no.

25 **RE-EXAMINATION: MR MCINTYRE – NIL**

**COMMISSIONER FENWICK:**

Q. In which direction were the floor beams running? Were they supported off the east and west walls or were they north and south walls?

A. Floor joists ran into the east wall.

30 Q. Into the east wall?

A. Yes.

Q. Yes, did you pull off the roof, the ceiling tiles, whatever was there so you could have a look and see how they were connected?

A. No, we didn't. Underneath? No.

Q. So you don't know what was holding them on to the wall?

5 A. No, we don't.

Q. But there was a movement of 20 odd, 20–30 millimetres which would have to be taken up between the movement of the transverse walls and the east wall?

A. Yes, presumably, it must have.

10 Q. Yes.

A. But there were certainly, you couldn't see the floor boards moving in relation to the walls.

Q. So where do you think that movement took place?

15 A. Um, yeah, possibly, no, I'm speculating, it's um, I'm thinking some of the cracking was wider at the top than the bottom so maybe it was taking place at roof level but we couldn't see any evidence that the roof was separating.

Q. There was no tie between the actual floor itself and the wall? You're relying purely on some form of tie between the wall and the supporting  
20 beams into the wall –

A. Yes, yes, we were, yes.

Q. – so –

A. By implication yes.

25 Q. Was the wall, do you think these were just buried into the wall or was there some physical connection there?

A. Well we certainly, we didn't see one but we didn't remove the ceiling tiles to look so at that age it probably, probably was that the joists ran into the bricks and the bricks would have been built round them.

Q. Yes. Bit of a puzzle, isn't it? Thank you.

30 **WITNESS EXCUSED**

**MR MCLELLAN CALLS****ANTONY FRANCIS RAPER (SWORN)**

Q. Is your full name Antony Francis Raper?

A. It is.

5 Q. You're a structural, civil and structural engineer of Christchurch?

A. Correct.

Q. You have your brief of evidence in front of you, Mr Raper?

A. I do.

10 Q. I'll ask you to read your brief and I'll interrupt you from time to time to ask you some additional questions arising out of matters that we've heard to date. Can you read from paragraph 1 please?

**WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 1**

A. "I hold a Bachelor of Engineering (Civil) Honours which I received in 1967, and a Master of Science Engineering which I received in 1973. I am a chartered professional civil engineer, a member of the Institution of Professional Engineers of New Zealand. I have been a member of the New Zealand National Society of Earthquake Engineering since 1974. I've been employed as a civil and structural engineer by Opus International Consultants Limited and its predecessor from 1967 to 1978 and since 2006 as a principal design engineer. Between 1967 and 1971 I practised as an assistance civil and structural engineer. From 1971 to the present day I have practised as a structural and civil engineer. I am based in Opus' Christchurch office. I had earlier career experience in earthquake engineering issues after the 1968 Inangahua earthquake when I was employed by the Ministry of Works Westport residency as assistant engineer Bridges. I was involved in the inspection of civil structures and until 1971 when I moved to the ministry's structural head office in Wellington. I worked on various remedial repairs to earthquake damaged structures on the West Coast.

25

30 From 6<sup>th</sup> of September 2010 I was involved in post-earthquake building inspections for Opus. On Boxing Day 26 December 2010 I was requested by Opus to assist the Christchurch City Council with level 1 rapid assessments of hazardous buildings in the central business

district. On the afternoon of the 26<sup>th</sup> December I was part of an inspection team consisting of a CPEng, myself, a city council representative Mr Mike Nilsson, and a search and rescue representative. On 26 December I carried out an inspection of the building at 605 Colombo Street following a request from the manager of the Khmer Satay Noodle House which operated from that building. The manager wanted an inspection before re-opening the restaurant that evening. When we arrived at the building the manager, Mr How Tan, was not on site so the inspection consisted of an external visual inspection of the façade of 605 Colombo Street and the external damage to 603 Colombo Street. There was no obvious external façade damage to 605 Colombo Street. The canopy of 605 Colombo Street was already supported by the addition of steel acrow props assumed to be carried out post-September event approximately one metre inside the footpath kerb. Plastic tape was attached between the props. 603 Colombo Street already had a wire mesh temporary fence outside the façade and footpath of Colombo Street and blocking Mollett Street with a steel pedestrian barrier to separate the pedestrians from the traffic lane. This did not extend to 605 Colombo Street which was posted green”.

**EXAMINATION CONTINUES: MR MCLELLAN**

- Q. Can I just stop you there and ask you a couple of questions about how your inspection came about. You said in paragraph 4 of your brief that you have been doing Level 1 rapid assessments of buildings following the Boxing Day earthquakes. Was the inspection of 605 part of those, and I'll call them 'routine inspections'?
- A. Most of the afternoon on Boxing Day we were doing zone areas. It was up Armagh Street area between Manchester and Colombo Streets, the north part of the city. I think it was about 4.00, 4.30 when we returned to the City Council buildings when we had this request to go out to Colombo Street.



Q. So, what, one of the Council staff?

A. The same team, the same three people.

Q. That had been in the Building Recovery Office team?

A. I don't know who, it was somebody from Council received a call.

5 Q. And you said in paragraph 5 that there was no obvious external façade damage to 605 Colombo Street. By what means were you able to make that assessment?

10 A. Um, I had been carrying binoculars all day and I used those. I stood towards the other side of the street and looked across at 605 on the façade and also especially the façade and the upper parapet.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 6**

15 A. "Following damage observed that afternoon around the CBD I was concerned about the condition of the external parapet or the front façade of 605 Colombo Street. I discussed this with the inspection team and consequently the USAR representative proceeded to enquire about the availability of a New Zealand Fire Service snorkel appliance to get  
20 could access above and behind the parapet for inspection. The arrival of the NZFS snorkel appliance enabled me with the assistance of the USAR representative who operated the snorkel arm and platform viewed the external parapet from both the Colombo Street side and from above the roof line of 605 Colombo Street. No horizontal cracking was observed in the parapet itself above roof height and the parapet was not  
25 considered at risk of separating from the façade. Separation between the mutual transverse cross wall between 603 and 605 Colombo Street was observed".

**EXAMINATION CONTINUES: MR MCLELLAN**

30 Q. Can I just stop you there and we'll bring up that photograph which is RAP.0001.6. That's the photograph you're referring to. Now when you said, "No horizontal cracking was observed in the parapet itself (and we can see the parapet in that photograph), and the parapet was not

considered at risk of separating from the façade”, can you just comment or elaborate on that?

5 A. Well one of the dangers obviously we had witnessed on several occasions on a building of this type was the parapet falling off or being cracked. This parapet in fact when we got up and had a look from above was much deeper than others we'd seen and so it was reasonably robust. There's the gutter you can see running along there that goes underneath that cross wall or through the cross wall. I photographed that. I don't remember any other cross wall that I looked at.

10 Q. And I think Mr Fletcher said in one of his statements that when he inspected on the 17<sup>th</sup> of January he observed separation I think with all of the transverse walls in this building. What observations did you make of any of the other transverse walls?

15 A. I don't recollect separation of the other walls. My photographs would have been taken of the worst damage I'd seen. I only took about five from that snorkel so that would have been the worst one. I don't remember or have any recollection of the other one.

20 Q. I think Mr Nilsson, he's sent an email to the Commission just I think generally agreeing with the observations in your brief of evidence but wanting it pointed out that he didn't make the observations recorded in the report that we'll come to in a minute and indeed he didn't go up in the snorkel with you. Is that correct?

A. No, correct, he was on the ground at the time.

25 **WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 8**

30 A. “After I examined the external parapet Mr Tan arrived enabling an internal inspection of 605 Colombo Street. Little damage was visible on the ground floor but cracking of the brick masonry transverse walls from first floor to roof was visible.

**EXAMINATION CONTINUES: MR MCLELLAN**

Q. I'll just take you to that photograph which is .9 and that's the cracking that you observed is it?

5 A. That's the major cracking I observed. There was other cracking which I have seen in other photographs by others of the intermediate transverse wall but that was the one that concerned me because it was adjacent to the façade and that's between 605 and 603, the party wall.

Q. Directly beneath the separation at roof line?

A. It's directly beneath that photograph, my photograph 17.

**10 WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "Mr Tan advised that the cracking appeared to be no worse following the Boxing Day quake and was present after the 4<sup>th</sup> of September quake. The masonry cracks were visible in the middle of the centre transverse wall and at the Colombo Street end of the transverse wall between 603  
15 and 605 Colombo Street. My observation was the maximum crack width was about 20mm. A Level 1 rapid assessment ..."

**EXAMINATION CONTINUES: MR MCLELLAN**

Q. Can I just stop you there. You've heard the exchanges about the cracks that are visible in the various photographs. Have you been able to form  
20 any assessment about the change that may be apparent or not from the photographs taken between October and January?

A. I didn't physically measure those. It's taken from the photograph. My estimate is 20. It may be out towards 30 at the top later on but there doesn't seem to be a great change as shown on the photographs but of  
25 course I didn't see them. I think it's different if you've seen them physically before and after. I only had the one opportunity.

Q. And what about the separation that you saw from the snorkel. What was the distance of separation?

A. Again I would agree it's probably about 30mm which is consistent with  
30 the photograph you see there where the crack decreases as it comes down towards the first floor so it is wider at the top of the building.

**WITNESS REFERRED TO DOCUMENT 603-613.0001.17****WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 9.**

- 5 A. “A Level 1 rapid assessment form was completed by Mr Nilsson and  
me. I included this observation in the form. My notes on the form are in  
capitals – “A front façade leaning out?” Mr Nilsson noted that the  
“parapets above roof line appear to have separated. (viewed from the  
10 “from cross walls”. There’s also an arrow I’ve put on the form there  
which says, “from cross wall” should come after “separated”. I also  
added that the building –“

**EXAMINATION CONTINUES: MR MCLELLAN**

- 15 Q. I’ll just stop you there while we scan down that page to the next  
comment.

1516

- Q. Carry on.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

- 20 A. “I also added that the building needs check from upper floor interior of  
transverse/outer façade. My professional recommendation is recorded  
on the rapid assessment form. In the section for further action  
recommended was that a detailed, structural engineering evaluation  
was required. This was necessary to check the upper floor transverse  
25 wall and façade connections, as the masonry cracking indicated that the  
front façade could have been leaning outwards as indicated by the  
cracking in the mutual transverse cross wall and although this was not  
obvious – although this was not obvious from an external view. I  
recorded that there was only a moderate risk of an overhead falling  
30 hazard. This was based on: (a) The fact that the transverse masonry  
damage, masonry wall damage that I was advised had occurred on  
4<sup>th</sup> of September 2010 had not significantly changed following the  
Boxing Day, and (b) The observed non-separation of the overhead

parapet on the Colombo Street façade. For these reasons I considered there was no immediate safety concern requiring any temporary fencing. We advised Mr Tan that he could not open the restaurant for business that evening as it needed a full engineering inspection. The building was posted on 26 December at 17:56 as Restricted use – Yellow. On return to the Christchurch City Council offices that evening Mr Nilsson and I handed in the level 1 form with the recommended further action for a detailed structural engineering evaluation of the building. The rapid assessment form has been amended since Mr Nilsson and I filled it in by someone with the initials RG, to classify the building as Unsafe – Red. I had no further dealings with this building following the 26 December 2010 inspection”.

**CROSS-EXAMINATION: MR ZRIFEH**

- 15 Q. Mr Raper you said that in paragraph 6 that following damage observed that afternoon around the CBD you were concerned about the condition of the external parapet. What, what had you seen in other buildings?
- A. I'd seen parapets come out.
- Q. In unreinforced masonry buildings, similar?
- A. Correct.
- 20 Q. So I take from that that you were alert to that danger and wanted to examine this building reasonably closely?
- A. Well I'd seen nothing on the façade, from external view I'd seen nothing on the façade that would indicate any damage externally but it was still a check, and we were able to do it, of the parapet, the large parapet.
- 25 Q. I just want to understand your form. If we can get that brought up again, .17. You wrote you said, “Front façade leaning out?”
- A. Question mark.
- Q. Question mark, all right, and did you write that out, write that before or is this at the end of the inspection?
- 30 A. This was when I got back down to ground.
- Q. So the front façade leaning out with the question mark was you raising the possibility that it was leaning out but you weren't sure, correct?

A. Correct.

Q. And as I understand it that's, plus the cracking you'd seen, that was the, one of the main reasons you wanted a detailed engineering evaluation?

A. Correct.

5 Q. And that detailed structural engineering evaluation would have as you say checked the upper floor transverse wall and façade connections, right?

A. That's why I added that note in that section.

Q. To make sure that happened?

10 A. Correct.

Q. So I think you were here when Commissioner Fenwick questioned Mr Fletcher. Did you hear that?

A. Yes.

15 Q. And he was asking if he had lifted the ceiling tiles to check the wall, the beam, the wall, beam connections with the eastern façade.

A. Correct.

Q. Am I right that that's the same thing you were looking to be checked or not?

20 A. That would have been a full check. As I say my comments, I didn't have time. It was a very quick inspection outside.

Q. No, I understand that.

A. So that would be part of the, it would be part of the check but my immediate concern was the crack that I saw, that we see on that transverse wall, the façade.

25 Q. I'm just trying to understand, I'm not an engineer, I'm just trying to understand whether it was the same thing that was being referred to by Commissioner Fenwick. It's a different thing is it?

A. He was asking, if you come back to my photograph on –

Q. Point 6 I think it is.

30 A. No, .9.

Q. Point 9, sorry, you're right.

A. He was asking about the connection between the floor which is where I'm standing on to take the photograph and the roof and if you look at

the roof you'll see that the joists go, the joist is just to the left of the crack which is underneath the gutter at the edge of the roof, correct.

Q. Right.

5 A. So you wouldn't have seen any separation between the gutter part of the roof and the, and the front façade because that joist is embedded in the wall and the crack appears to be on the, on the west-ward side of that, in that photograph.

Q. So what is it that you're wanting checked, when you said Needs Check?

10 A. I didn't have a spirit level with me that day and I, I, that was my question at the top of my, my form. Is the façade leaning out?

Q. Right.

A. One, it's an easy, easy quick check to see if the façade is on the lean. It is not fully restrained when you see a cracking pattern like that.

Q. And the danger is that, if the façade's not fully restrained it can fall out?

15 A. It could fall out.

Q. So when you said, "Needs check from upper floor interior of transverse outer façade."

A. Yes.

Q. What were you wanting checked then?

20 A. Exactly that photograph I'm looking at now.

Q. And that would have occurred via a detailed structural engineering evaluation amongst other things?

A. Correct.

Q. Which is why you wanted it to check?

25 A. Why is why I, I gave it a yellow because I wanted somebody else with more time to come in and have a proper look.

Q. And presumably that detailed evaluation would have, or might have included the other transverse walls in the building?

A. Correct, correct.

30 Q. So it was really the combination of, correct me if I'm wrong, the combination of that cracking you saw there plus the separation above the roofline?

A. Well that's the continuation of that line.

Q. Continuation of that crack.

A. Yes.

Q. Tell me in that photo is that cracking in the corner below where it's on the transverse wall. Do you see, if you follow the, the crack from the  
5 roofline down to the corner it appears to carry on down in the corner.

A. I would think looking at, at my photograph on my page 1 of the, of the roof above that that the gutter carries through. You can see the gutter carries through under that, that wall. So the crack would have followed the wall side of the, the wall, the crack would necessarily have followed  
10 down the façade when it got inside the, inside the room which is why if you look at the, my, the photograph that's displayed now the crack on the, away from the wall.

**COMMISSIONER FENWICK:**

15 Can I just add one quick comment? My question was in relation to the floor not the ceiling.

**MR ZARIFEH:**

Yes.

20 **COMMISSIONER FENWICK :**

Q. And as far as I could see that crack went on down. I've implied there was a movement at the floor or there was a break in the wall.

A. That crack decreased as it came down, down the wall and with the floorboards you couldn't see anything at the façade floor connection.

25 Q. If the wall had rotated –

A. Correct.

Q. – it would give (inaudible 15:25:47) a crack?

A. Correct.

Q. That's really one of the reasons I was questioning.

30 **CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

Q. And that would have been checked presumably with the detailed evaluation as well or may well have been?



A. Yes.

1526

Q. When you indicated that there was a moderate risk of an overhead falling hazard. What was the falling hazard that you thought was a risk?

5 A. That crack indicated the façade.

Q. Right so it was the façade falling out?

A. Correct.

Q. And you classified or categorised that as a moderate risk of that happening?

10 A. I did.

Q. Right.

A. At the time it had been through two 'quakes at that stage and the Boxing Day 'quake hadn't significantly changed, the crack patterns hadn't significantly changed, they had enlarged slightly but hadn't significantly changed was my understanding.

15

Q. Okay. So what, what were you putting in place if anything to mitigate that risk of the façade falling out?

A. I wanted a further inspection.

Q. Right so that was in your mind that's what would've gone towards mitigating that?

20

A. Yes.

Q. And you therefore ticked the appropriate box and even added your note at the bottom there?

A. Correct.

25 Q. To make sure that that was checked I presume?

A. Correct.

Q. Correct. And in your mind you finished your inspection and the form goes back to the Council office, correct?

A. Correct.

30 Q. You were relying on someone else to ensure that that happened?

A. When we got back I said to someone and I'm not sure who it was whoever received these, the form, there was still somebody in the office

then that I said, "This needs to", emphasised my note there that it needed a further check.

Q. Right and was that a male or female?

A. A male.

5 Q. You don't know who?

A. I don't know who.

Q. Right, you were with Mr Nilsson?

A. Correct.

Q. And he's a Council employee?

10 A. Correct.

Q. Right, was he with you?

A. Yes. Yes.

Q. Right was he the per- he's not, he wasn't the person that you said, emphasised that to?

15 A. No. No.

Q. It was someone else in the office. And Mr Nilsson presumably was aware of you emphasising that and wanting that to be followed up?

A. Mr Nilsson was taking my notes effectively for that, that day.

20 Q. Right. But he was present when you emphasised it to this other person?

A. I can't remember.

Q. Did you have any discussions with Mr Nilsson about this building and your concerns?

25 A. Um, only the mere fact that when I got down I actually wrote these notes. His, his written notes about the parapets above were, he wrote those while I was talking, shouting down from what we were witnessing at the time.

Q. Right.

30 A. So when we got, when I got down I looked at his notes and we added, I added those, my other comments.

Q. Right. I just, I was just asking because you said emphasised to someone in the office that it needed to be checked and you knowing that Mr Nilsson was a Council employee, did you take any time to

emphasise that to him knowing that he was, the form was going back to the Council?

A. He came inside, no, no I don't, um, I withdraw that, ah, he did not come inside the building, it was the SAR was with me. Um, I didn't emphasise apart from changing the, changing his notes.

5

Q. Okay. And given what you'd seen, given the fact that you were concerned about the façade and you wanted it checked, what was your expectation in terms of what kind of timeframe would you have expected it to have been checked in?

10

A. I would have expected it to be followed up very quickly.

Q. Right and why very quickly?

A. Um, because it was a concern but it was as I've noted it was, I've only checked that as moderate, but I did not tick it as red.

Q. Right.

15

A. So it needed to be chased up.

Q. So do you mean within a day or two when you say very quickly?

A. I can only say shortly.

Q. Okay and your expectation was that the Council would arrange that?

A. My expectation that something would have happened.

20

Q. Right. The form, the rapid assessment form requires you to turn your mind to the issue of cordons?

A. Correct.

Q. And as I understand your evidence you did that?

A. I considered it yes.

25

Q. Right. Did you consider that it, there might have been a more prudent course to tick cordons given that you weren't sure about the façade and you wanted it checked?

A. No because I, it had gone through the Boxing Day 'quake without, with little change. The parapet was secure. I ticked it yellow which it, which should then trigger an engineering, an eng- a further inspection by an engineer.

30

Q. Right and what, but you didn't know what the position was with the connection, the upper floor interior transverse outer façade as you've

called it you didn't know what that position was did you, that's why you wanted it checked?

A. I didn't know if it was leaning, I assumed it was leaning because of the crack patterns.

5 Q. Right. So if the detailed evaluation came back and said that it was leaning and it checked the floor and found that the connections were compromised what would you have thought should happen then?

A. If all that had happened?

Q. Mhm.

10 A. Then there would have been barricade put up.

Q. Right so you were envisaging what just a spirit level check or a bit more than that?

A. More than that.

15 Q. More than that right. What I'm asking is if you weren't sure and that's why you wanted it to be checked wouldn't it have been more prudent to call for cordons or barricades pending that being checked and confirmed?

A. I'd only, I, I only – my, my assessment was, it was only a moderate risk, it was not a severe risk at that stage.

20 Q. All right nevertheless you thought within a period of a day or so days it would be –

A. Within a short period of time somebody else would have got into that building and done a, the owners' representative or whoever would have then done a further assessment.

25 Q. And depending on what was found then it could've –

A. We acted accordingly.

Q. – could've been barricades then? Yes thank you.

**CROSS-EXAMINATION: MR ELLIOTT**

30 Q. Thank you Your Honour. Mr Raper did you hear my questioning of Mr Fletcher just before?

A. Yes I did.

Q. Well it seems evident from paragraph 10 (a) and (b) of your statement that in considering any immediate safety concerns you also were using a damaged based assessment?

A. Correct.

5 Q. Because that was the test that the Council asked you to use, or because you decided of your own volition?

A. That's what we'd been operating on since the September 'quake basically.

10 Q. And would you agree that a better assessment of safety would have been to assess the strength of the building, consider what ground accelerations it could face and if the latter exceeded the former take steps about the danger?

A. That's more than a level 1 or that's –

Q. I appreciate that.

15 A. Whether you put numbers to it or not it, my quick assessment of the crack pattern was that it needed further investigation whatever that may be.

**CROSS-EXAMINATION: MR LAING, MR MCINTYRE – NIL**

**RE-EXAMINATION: MR MCLELLAN – NIL**

20 **QUESTIONS FROM COMMISSIONER FENWICK:**

Q. Yes just one point, the crack coming down in the wall to what looked like the first floor?

A. Correct.

Q. Could you not see below the first floor whether the crack carried on?

25 A. No the first floor, the ground floor was, was fitted out as a restaurant, it had linings and ceiling panels.

Q. Right.

A. So you couldn't see anything in ground floor.

30 Q. So you would have had to have spent time and money removing ceiling tiles that would as you say required a much higher level investigation?

A. Yes, yes.

**QUESTIONS FROM JUSTICE COOPER:**

5 Q. Mr Raper you became involved in this inspection on the afternoon of Boxing Day, and you as a result of what you saw you recommended yellow placard?

A. Correct.

1536

10 Q. And I think you've said you wanted somebody else to look at it who had more time. Was there much instruction given to these inspection teams before they were deployed in the field on that day?

15 A. We were asked, we were assembled into teams and we were instructed to look for public safety aspects so it was falling hazards were primarily the risk for that afternoon. We were doing it on a zone basis so teams were sent out to do certain streets and certain areas. This was a wee bit different in the fact that it was a specific call to a specific site.

Q. And for some reason it was thought appropriate to respond?

A. Correct. Well we were asked, can we do it.

20 Q. And so I'm just wondering was anything said about the circumstances in which you were to call for further inspections or did you have an understanding I suppose is what I'm trying to get at when you recommended that a Level 2 or detailed evaluation is 'warranted' which I think is the word on the form. Did you have an understanding as to what would happen given such a recommendation?

25 A. I did not tick a Level 2 because effectively I'd almost done a Level 2 although it was a very quick one. Normally a Level 2 you then do a recommendation as to what repair restraints or what further you would do but I did get inside so although we were doing Level 1s, in this case I had been inside and was able to see the inside as well even though that was a fairly quick inspection.

30 Q. Do you see the tick there of "structural"?

A. Correct.

Q. Isn't that part of a Level 2?

- A. Well I ticked "structural" and I added within that same compartment about "needs check from upper floor interior of transverse/outer façade". So that was my emphasis.
- Q. I saw that as you requiring a Level 2 or a detailed engineering valuation because you've ticked –
- 5 A. I've ticked that –
- Q. – that part of the form. Do you think the form is ambiguous?
- A. No, well that's effectively what I tried to do with that note and I kept it as a yellow.
- 10 Q. Right well what I'm wanting to know is, did you have an assumption as to what would follow as a consequence of you filling in the form in this way?
- A. I'd been filling in these forms and doing inspections for many buildings, mostly City Council ones following September and most cases that triggered a follow-up by somebody, by somebody else.
- 15 Q. Was the somebody else going to be somebody arranged by the Council in your mind or by the owner?
- A. I didn't really, it didn't really matter who that person was. By doing it on the form then it should have been triggered by somebody in the Council.
- 20 Q. Whether that requires a inspection from the owner's engineering representative. It has been stated before that the City Council did not have many engineers seconded to them at that stage.
- Q. Well if the administrative response was not to require another engineering inspection but simply to require that action be taken under the Building Act to fix the problem would that have been a satisfactory response from your point of view?
- 25 A. Part of that instruction is an engineering report so that would be covered as well. The section 124 notice does ask for an engineering report.
- Q. Well that's your understanding is it, and was at the time?
- 30 A. At that time I didn't know it was going to be triggered by a section 124, no.

**WITNESS EXCUSED****COMMISSION ADJOURNS: 3.42 PM****COMMISSION RESUMES: 3.58 PM****5 JUSTICE COOPER TO MR LAING:**

Q. Now Mr Laing I'll just make the observation that we have been referred I think by now to most of the key documents that Mr McCarthy might otherwise have been wanting to tell us about so if you wanted to you wouldn't need to have him take us through all that but I'll leave it up to you as to how you go about it.

10

A. Well Your Honour I'm, I'm very happy that it's taken as read. I do want to ask him one or two supplementary questions. I'm very happy the whole, the briefs are simply taken as read. They are largely narrative.

Q. Well they're not entirely narrative are they?

15

A. They're not entirely narrative but they are to a large extent. They're not long but.

Q. Yes.

A. If I – there is only, for instance on 603 there's really, it is primarily narrative apart from perhaps one or two passages and the situation is fairly similar on 605 except that there is some commentary in there about Mr Bushnell but to a large extent that's been dealt with.

20

Q. Well I'll leave it up to you Mr Laing. If there's anything in here that can be omitted because it's already been covered then do that.

A. Thank you Your Honour. I think we'll just proceed on the basis that I ask Mr McCarthy a few questions about one or two paragraphs.

25



**MR LAING CALLS**

**STEPHEN JAMES MCCARTHY (SWORN)**

Q. Your full name is Stephen James McCarthy?

A. Yes it is.

5 Q. You have prepared two briefs of evidence.

A. Yes.

Q. One's for 603 Colombo Street.

A. Yes.

Q. And one for 605 to 613 Colombo Street.

10 A. Yes.

Q. I'd like just to take you firstly to your statement in respect of 603. Do you have that in front of you?

A. Yes I do.

**WITNESS REFERRED TO 603 COLOMBO STREET BRIEF**

15 Q. I'm not going to ask you to read it but I, I do want to (inaudible 16:01:44) rather. I just wanted to ask you to read a few passages. Could you please read, firstly, paragraph 8 of your brief on 603 Colombo Street.

**JUSTICE COOPER TO MR LAING:**

20 Q. Just before you do that perhaps just because these, we will be relying on these statements as a whole and he should just perhaps confirm the truth -

A. I'm sorry Sir, yes.

25 Q. - truth of the contents and they're published on our website too aren't they in their entirety so.

A. Thank you sir, yes.

**EXAMINATION CONTINUES: MR LAING**

Q. Mr McCarthy could you please confirm that in relation to your statement on 603 Colombo Street that that is a true and correct, true and correct?

30 A. Yes it is.

Q. Well can I now take you to paragraph 8 please and could you just read that paragraph?

**WITNESS READS BRIEF OF EVIDENCE**

A. "In addition to the Council letter dated 15 October 2010 the Council issued a section 124(1)(c) Building Act notice dated 20 October 2010. The Building Act notice includes a deadline of 31 January 2011 to carry out the work on the building to remove the danger. A CPEng report would be required to certify that the danger had been removed. The Council's files do not include any record of work being undertaken by the owners to provide temporary support to the south wall in response to the notice."

5

10 Q. Thank you. Then you go onto talk about subsequent events and I just want you to go to paragraph 15 please.

A. Yes.

Q. And I want you just to correct a reference there. The reference in the last line of paragraph 15, the words, sorry, the 24 should be struck out and 35 substituted. Is that correct?

15

A. Yes.

Q. Thank you.

**JUSTICE COOPER TO MR LAING:**

20 Q. That's just in the document reference?

A. That's in the document reference Your Honour. It was correct at the time it was put in but it was subsequently changed.

**EXAMINATION CONTINUES: MR LAING**

25

Q. So can I then ask you to go over to paragraph 23 please. This is to do with cordons.

A. Yes.

Q. And I want you to read paragraph 23.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

30

A. "Access to Mollett Street was cordoned off completely because the southern wall was seriously damaged and the building on the opposite side of Mollett Street had also detached from the end wall. As a result of this issue engineers contracted to the Council were regularly

monitoring the cordons in this area. However, not all inspections would have been documented. If any inspecting engineer had considered that the façade at 603 Colombo Street posed a significant risk to public safety the process would have been for the engineer to advise the traffic management team to move the cordon or barrier to deal with that risk.”

5

Q. Now I'd just like you to look at a document for me please. This is BUI.COL603.0038.24. Can you read that Mr McCarthy or would you like to have it enlarged?

A. No I can read it.

10

Q. Is that a letter that the Council sent to the Yee Brothers syndicate?

A. Yes.

Q. On 28 December 2010?

A. Yes.

Q. And that letter accompanied a section 124 notice?

15

A. Yes it did.

Q. That was the intention of it?

A. Yes.

Q. Can we go to the next page, 25 please – and could you enlarge the second to last sentence, the third sentence down in other words, paragraph down if you've not already done so.

20

A. Do you want me to read it?

Q. Just wait until it comes up.

A. Yes.

Q. And you see the words there, “You should also seek structural engineering advice from a qualified structural engineer on how to remove the danger.”

25

A. Yes.

Q. What were your expectations in terms of owners of buildings?

A. Our expectation is that owners would, would engage a structural engineer to advise them on how best to repair the buildings. This should be done certainly within the timeframes and the work should be completed before the, the notice runs out.

30

Q. Yes. So the expectation was that they would comply with the notice and obtain appropriate engineering advice?

A. That's their legal responsibility, yes.

Q. Did that always happen?

5 A. No.

Q. And what was the Council's response when that did not happen?

A. We were in the situation of having to check constantly as to whether the work had been completed. If it wasn't completed in the timeframes we were faced with a decision and the decision was to either re-issue the notice and agree a, an extended timeframe with the owner or alternatively to prosecute the owner. In extreme circumstances the Council might have had to have gone in and done the work themselves.

10

Q. And the situation after Boxing Day, there was a large number of notices issued, section 124 notices issued?

15 1608

A. Yes there were.

Q. And when did those, when were those notices expiring?

A. They were expiring on the 31<sup>st</sup> of January.

20

Q. Yes and then what happened in relation to notices that were not complied with as at the 31<sup>st</sup> of January?

A. We assigned engineers to go and check if the work had been done. Where the work hadn't been done we had to contact the owners and take one of those three actions that I, that I discussed.

25

Q. Yes thank you. Could I now ask you to turn to your brief for 605 to 613 Colombo Street?

A. Yes.

#### **WITNESS REFERRED TO BRIEF OF EVIDENCE**

Q. And are the contents of that brief true and correct?

A. Yes they are.

30

Q. Now I'm not going to ask you to read it in full but I just want to take you through a few passages. The first thing I'd like you to come to is the cordons or barricades around the building and I'll just ask you to read paragraphs 18 to 20 please?

**WITNESS READS BRIEF OF EVIDENCE PARAGRAPHS 18 TO 20**

5 A. "Council records indicate that no barricades or cordons were placed in front of the building after the inspection on 26 December 2010. As noted above the level 1 rapid assessment form did not state that barricades were required. Mr Barry's case manager notes of 20 January 2011 record that there was no barrier over the entrance to the building but it could be there as the building is in danger from adjacent building 603 Tea Net in brackets. Mr Barry was not an engineer and is merely recording an observation based on a walk round  
10 of the precinct that he was responsible for rather than making an engineering assessment. The owner advised Mr Barry the following day that he had engaged his own engineers around this time who were reviewing the state of the building. As noted above the engineering re-inspection form dated 2 February 2011 had a question mark beside the  
15 notations about whether protective fencing was required".

Q. If I can just go back to paragraph 19 and to the reference to Mr Barry's walk around. What was the purpose of those, of those type of walk around?

20 A. Well clearly we wanted to know if any work was underway. We wanted to record that and to ensure that it was being done in accordance with the building code and that, that in general terms that public safety wasn't compromised in any way.

Q. Yes. Can I now ask you to turn to paragraphs 21 to 24.

A. Yes.

25 Q. And would you please read those paragraphs.

**WITNESS READS BRIEF OF EVIDENCE PARAGRAPHS 21 TO 24**

30 A. "The statement made by Mr Bushnell in relation to 242 Tuam Street. Mr Matthew Bushnell states as part 2(e) of his evidence to the Royal Commission that, concerns raised in October with a CCC planner about possible danger to members of the public from the loose section of parapet at 242 Tuam Street were met with the response, "Why are you telling me about this? It is not my area of responsibility." When I pointed out that the Council's phone system was inoperative and I had

no other direct dial numbers I was again told that it was not this person's area of responsibility and they could do nothing about my concerns. A heated exchange followed but I am unaware of any actions initiated to protect public safety as a result of this conversation.

5 242 Tuam Street is not an address recorded in the Council's WebMap system however I believe Mr Bushnell is referring to the former McKenzie and Willis building site on the corner of Tuam Street and High Street. This is referred to in the Council records as 236 to 238 Tuam Street and the address on the other side of the intersection is 248 Tuam  
10 Street. I do not believe that I am the planner referred to in Mr Bushnell's evidence. However I had a number of conversations with Mr Bushnell in relation to this building and work he was carrying out on it. My recollection is that a cordon was established to deal with a loose parapet as a result of these discussions and Mr Bushnell was able to  
15 carry out repair work to the building. I understand that evidence is to be provided by another Council witness in relation to Mr Bushnell's comment that the Council's phone system was inoperative".

Q. And you're there referring to Mr Dally's evidence which has been taken as read?

20 A. Yes it has.

**JUSTICE COOPER:**

Q. Can I just ask you about paragraph 19 in this brief because I don't really follow, I can't make sense of Mr Barry's comments as you've recorded them. "Mr Barry's case manager notes of 20 January 2011  
25 record that there was no barrier over the entrance to the building", that's presumably 605 to 613?

A. Yes.

Q. "But that it could be there as the building is in danger from adjacent building 603 Tea Net", now when I read that I'm wondering whether  
30 Mr Barry is conjecturing or has a question in his mind as to whether this building should be behind the cordon or barrier. Is that the way you read it?

- A. Yes it's a little unclear isn't it? Certainly it's almost a suggestion that the cordon might have extended across a doorway of the adjacent building and that wouldn't be hard to affect but my belief is that that doorway was never physically blocked off.
- 5 Q. Which doorway?
- A. The, the doorway to the Noodle House.
- Q. To the?
- A. Noodle House.
- Q. Is that that 603?
- 10 A. Yes. Ah, 605 Sir.
- Q. 605. But that wouldn't be consistent with his observation that there was no barrier over the entrance to the building?
- A. Yeah it's –
- Q. Would it?
- 15 A. It's a very, it's a very confused note.

**CROSS-EXAMINATION: MR ZARIFEH**

- Q. Mr McCarthy just dealing with 603. You've heard I think you've been here and listened to the evidence and cross-examination so I can perhaps just go straight to some of these points?
- 20 A. Yes.
- Q. We had examples of level 2 assessments or what were, appeared to be level 2 assessments that were not interior or internal inspections?
- A. That's right.
- Q. Is that something that did happen quite often?
- 25 A. I think it occurred on occasions where it wasn't possible to access the building.
- Q. As Ms Billante said?
- A. Yes.
- Q. But might it still appear to have been a level 2 because of the form used?
- 30 A. Yes it could.

Q. And that could have been potentially confusing to someone coming along afterwards thinking that there had been a level 2, someone such as Mr Campbell say doing a re-inspection of, he presumed that there'd been an internal inspection?

5 A. Yes it could.

Q. So was there any training given to people that were doing these assessments to try and ensure that didn't happen?

A. I think we, we depended on the, on the fact that these were professional engineers, used to recording the salient facts on, on forms and I would  
10 have expected that if there was no internal inspection that there was some sort of notation made on the form to indicate that. So, so your question as to whether there was specific training, at the time and in the situation we were in I don't think we, we, we felt that we had either time to do that or really the need to do that. Subsequent review of that we  
15 might have reached a different conclusion.

1618

Q. You said in your brief for 603 that the barricades in place didn't change between soon after September earthquake when they were put up to February, correct?

20 A. Yes. That's correct.

Q. And that Mollett Street was essentially blocked off the whole time, wasn't it?

A. Yes it was.

Q. Blocked off at the Colombo Street end as we can see in that photo and  
25 blocked off at the other end. What was the other end? What street? Where was it blocked off in the other end of Mollett Street, the east end?

A. I'm not absolutely certain.

Q. But it was some way down past these buildings, wasn't it?

A. Yes it was.

30 Q. So there was no access to the fall zone so to speak of 603, on the east side?

A. That's right.



Q. And so we don't need to be concerned about that, it's really just looking at this side, this end, the Colombo Street end?

A. Yes.

5 Q. Just on that, that form that was completed on the 27<sup>th</sup> of December, the rapid assessment level 1, on 603, you agree that that would have been, if it had been followed up with a level 2 as requested, that would have been the first opportunity for, as it transpires, for someone to go, an engineer to go inside the building and determine the cracking on the inside from what we've heard?

10 A. Yes, it would. I think we heard the evidence of Mr Sinclair, the owner's engineer didn't gain access to the interior of the building either. I guess if he had he might have provided us with some information but he didn't.

Q. But –

15 **COMMISSIONER FENWICK:**

Q. Excuse me Mr McCarthy, could you speak up a bit? My ears just can't hear quite what you are saying.

A. I'm sorry Sir.

Q. Thank you.

20 A. I do speak very softly.

**CROSS-EXAMINATION CONTINUES: MR ZARIFEH**

Q. But from the council perspective that would have been the first opportunity for that, wouldn't it?

A. Yes.

25 Q. And you don't know, Ms Billante didn't know, but you don't know why that wasn't followed up?

A. No, I don't know.

Q. Because clearly there wasn't a level 2 following that request, was there?

A. There wasn't.

30 Q. No, and I don't understand you to suggest that the Building Act notice that was sent out following the Boxing Day earthquake was somehow to

deal with that request or deal with that issue from the council's point of view?

A. Well, not specifically, broadly it talked about structural damage, structural repairs being needed to the building and that the owner should initiate some actions.

5

Q. Right, but that had already been highlighted to the owner on the 15<sup>th</sup> of October, hadn't it?

A. Yes, it had.

Q. The Building Act with the letter? But it didn't and couldn't have required the owner to re-assess barricades, could it?

10

A. I think one of the difficulties I'm having in the direction we're going here is that the council obviously was putting barricades up to protect public safety. Owners and engineers have a responsibility to protect the public as well and clearly that's written into quite a bit of legislation.

15 Q. What for the owners or engineers?

A. Well both really, isn't it?

Q. I don't know, what –

A. Health, health and safety in the Employment Act, the Building Act. The owner has a primary responsibility, the engineer in advising the owner has a responsibility to protect the public if their building is going to in some way fracture or collapse then equally the council will try and anticipate that, the owner knows their building so much better than we do, and engineers know the building so much better than we do so we're trying to double guess what's going on. Surely the owner has quite a responsibility to protect the public as well.

20

25

Q. I don't doubt that and I'm not questioning that.

A. Yep, so I guess the point being that –

Q. I just asked –

A. – we wouldn't, if someone made a suggestion to us or a recommendation that the cordons be put further into the street or whatever, because they've got more knowledge than us, we would obviously take that on board.

30

Q. But my question was, the Building Act notice –

A. Yes.

Q. – was not a means of having the cordons re-assessed, was it, from the council point of view?

A. Well it could be. That's the point of what I've just said, is that if the –

5 Q. So is that –

A. – engineer who has done a detailed engineering evaluation knew more than us and they said to us, look this is a potential for failure here, you don't know about the council then you should do something, of course we would take that on board. So that's my point.

10 Q. Okay, but –

A. So Building Act notice covers that issue I think.

Q. Okay, but you're not suggesting that the council, in sending out the Building Act notice following the inspection on the 27<sup>th</sup> of December, was passing on the responsibility to assess whether the cordons were sufficient to the owner and the owner's engineer?

15

A. I think we share that responsibility, don't we?

Q. Well isn't the primary responsibility for the council if you're going to start blocking the roads?

20

A. Yes but we do it under advisement. We do that often and people come to us and say can you block the roads off, there's a hazard, we're going to create a hazard, and we block it off.

Q. So, well, just so we're clear, you're not saying though that the council's response in this case to that request for a level 2 and for a re-assessment of barricades was to send out the Building Act notice?

25

A. No, I'm not specifically.

Q. No, because that would be in effect saying well you've got to fix the defects and the damage and if they thought that cordons were required they put them up or they come back to you and tell you?

A. Well they could do that, couldn't they?

30

Q. Well they certainly could but what I'm asking is you weren't, that wasn't the way of dealing with it, you weren't passing that responsibility on to them?

A. No.

Q. No. The re-inspection forms were gone into and we heard from Messrs Campbell and Ryburn. Can you shed any light on instructions given to engineers in that position? Was that part of your role or not or is that more Ms Billante?

5 A. Well it was, yes it was her main responsibility but to me I think it was very clear that we were having to go back and check to see if the section 124 notices had been complied with and that was our responsibility. We'd sent out the notices, they'd come to the end date and we needed to check so whilst Mr Ryburn and Mr Campbell weren't  
10 clear on that issue, I think at the time it was pretty clear that our expectation was that that's what they were doing.

Q. So were you involved in making sure that it was clear to those people or not? Was that part of your role?

A. I was part of a management team that was directing some of those  
15 operations, yes.

Q. Well just turning to 605. First thing I wanted to ask you about was there's a level 2 assessment I think on 26 December that refers to 605, and then there's a level 1 soon after September on the 5<sup>th</sup> of September that refers to 605–613?

20 A. Yes.

Q. Now you recall the evidence of Mr Fletcher that the Kiwi Disposal's section of that 605–613 was occupied throughout?

A. Yes.

Q. 605 or the Noodle House was not after Boxing Day?

25 A. That's right.

1628

Q. I think you might have read Mr Smith's report. He raises this issue of whether there is confusion or potential for confusion where you get separate or what appears to be separate placarding of essentially the  
30 same building?

A. I think each of those tenancies was considered to be simply that, a separate tenancy, so I think we were pretty clear what we were doing. The building after September was green. 605–613 both of those

tenancies were green and then after Boxing Day the Noodle House was changed to red – yellow and then red I think. And the Kiwi Disposals stayed green.

Q. So you don't see it as any room for confusion there?

5 A. We're not confused by it.

Q. The rapid assessment for 605 on Boxing Day that we've heard recently from Mr Raper, that's a bit like the one we've just covered at 603. You can't shed any light on why that request wasn't followed up. So in other words the detailed structural engineering evaluation?

10 A. I've read that and my initial reaction, and it was highlighted, was that in fact that had been addressed on the day so as well as going up in the fire service hoist and looking at the transverse walls in the façade he also went into the building and he took photos and he checked and he did in effect a Level 2 assessment and I guess my immediate thought was that –

15 Q. Is this your thought sitting in Court or was this your thought at the time?

A. Sitting here today, sitting in the Commission yes. So I guess that's an interpretation. I do wonder if that interpretation hasn't been taken on board by Mr Gant. The other issue is because it was placarded red in effect was given a 124 notice it was going to need certification to re-occupy so I think the expectation is that this might have been addressed in that, um, review needed for that certification.

20 Q. The expectation of who?

A. The owner, the owner to appoint his engineer, the engineer to review the structure of the building and to give us certification to say that it could be re-occupied and clearly there is a business driver because the owner, the tenant, had asked for this review to be done so that's how I would have expected it to unfold.

25 Q. Right so when it says, "needs check from upper floor" et cetera you say that might have been interpreted as it's been done?

30 A. I think it could be, yeah, possibly.

Q. And, what, the tick for under "Level 2 structural" might have just been there why – under "Further Action Recommended"?

A. I just wonder if people saw it as being wrapped up in the whole issue but the fact that it was red placarded meant that this was going to be done as well.

5 Q. Right and Mr Raper said that his expectation was that there would be a follow-up pretty shortly after, quickly or very quickly and he in fact emphasised that it needed checking when he took the form back to the office. Do you recall his evidence?

A. I do, I do and I understand that was his expectation having heard his evidence today.

10 Q. So again that's another one that clearly wasn't followed up other than the Building Act Notices as you've discussed?

A. That's right.

15 Q. And the same presumably with the owner's call to Laura Bronner. That doesn't appear to have been followed up with an inspection as requested on the 7<sup>th</sup> of January?

A. That appears to be the case.

Q. Even though the tenant's request on Boxing Day was clearly followed up with Mr Raper's inspection wasn't it?

A. Yes.

20 Q. But you can't explain why one would be followed up and one wouldn't?

A. No I can't, I can't. There's something of a distinction. The owner has control of the building and should engage his own engineer and that would be the normal course of events.

25 Q. I don't disagree with that but I'm just looking at the systems and why they might have broken down which is really what we're talking about with the follow-up of these forms isn't it?

A. That's right.

30 Q. And just finally on 605 the point His Honour raised with you about Mr Barry's file note it would seem that Mr Barry, the case manager, on the 20<sup>th</sup> of January is noting that there is no cordon over 605 and raising a question in his mind whether there perhaps should be, correct?

A. Yes.

Q. And then we've heard evidence that some 10 or so days later he's at a meeting in relation to that building, correct?

A. Yes.

5 Q. And I guess Mr Barry's overseas we've heard. You can't shed any light on what happened. You wouldn't have been involved in discussions over the state of the buildings or cordons if they were necessary or anything like that?

A. No, no I wasn't.

10 Q. Just finally do you agree with me that the section 129 issue that you would have heard being discussed this morning –

A. Yes.

Q. – Section 129 as Mr Higgins said was realistically wasn't going to be available for this building was it?

15 A. I think 129 was a possibility in respect of any building where there was an immediate danger identified that was supported by the right sort of evidence. The process, the system was –

Q. From what you know now about this building do you think realistically it would have been?

20 A. There was an evolving situation. Mr Fletcher said that he didn't consider it to be an immediate danger. If that was his engineering report, then you're right, a 129 probably wouldn't have been enacted. It was always an option and Mr Bushnell was aware of this because I have personally been involved with him on 129 issue. I made the recommendations to Council. If this had been an immediate danger and  
25 identified to us as such we would have considered a 129.

Q. And you agree with me I presume that whatever was going to happen to the building – whether it was going to be tied back or demolished – the important thing was that pending any of that action the issue of cordons had to be dealt with?

30 A. The issue of securing the building needed to be addressed. There was a number options, one of which was bracing, one of which was the owner or Council effecting the temporary repairs, the securing repairs, so there was a number of options for that building.

**CROSS-EXAMINATION: MR ELLIOTT**

Q. Mr McCarthy, you're the most senior person from the Council to give evidence in this hearing. Is that correct?

A. Yes.

5 Q. And in this and other hearings you speak on behalf of the Council?

A. I do.

Q. And you've indicated previously that you are authorised to admit improvements where they can be admitted and outline lessons that could be learned?

10 A. Yes.

1638

Q. Firstly, there has been reference by me at least to the fact that there were seismic risk surveys carried out in relation to these buildings in 1991 or so, and I think it's evident that there was no follow-up action from the council as a result of those?

15

A. Yes.

Q. Is that right?

A. That's correct.

Q. Now for those people who are keen to follow that issue, that has been an issue which I've raised with you a number of times?

20

A. Yes.

Q. And Your Honour the brief from Mr John Buchan addresses that issue in some detail. It's come in quite recently and I wasn't proposing to put any questions about that today.

25

**JUSTICE COOPER:**

So we will deal with that more fully at a later hearing?

**MR ELLIOTT:**

Yes Your Honour and just to note that for those who are interested in that particular issue.

30



**CROSS-EXAMINATION CONTINUES: MR ELLIOTT**

Q. Secondly Mr McCarthy, just in relation to the 2006 earthquake-prone policy?

A. Yes.

5 Q. Well again we've heard a lot of evidence on this but once again for those just watching today that was a policy which the council was required to produce under the 2004 Building Act?

A. Yes.

10 Q. And that was a policy, that was a requirement for the council to produce a policy addressing dangerous earthquake prone and insanitary buildings?

A. Yes.

15 Q. And the, under the 2006 Christchurch earthquake prone policy there would be no action on earthquake prone buildings unless an owner applied for a building consent for a change of use or significant alteration. Is that right?

A. That's correct.

20 Q. And in relation to these buildings we've talked about at this hearing, there was no action in relation to strengthening under the 2006 earthquake prone policy?

A. That's correct.

25 Q. The mayor of Christchurch gave some evidence about that policy and I'm just going to quote a short section, he described it, "The 2006 policy as a relatively passive approach," this is in the transcript 20111114.38 and he said, "That obviously with the benefit of hindsight it (the policy) seems to be entirely inadequate but that was based on the clarity of understanding which we had of both the legislation and of the seismic environment which we existed in at that time," but would you agree at least that the fate of these buildings illustrates the inadequacy of a  
30 relatively passive earthquake prone policy?

A. Yes.

Q. Dealing with the period post-September 4, you agree that the council, after the expiry of the emergency period, the council had the power to erect fences around dangerous buildings?

A. Yes.

5 Q. And only the council had that power?

A. We would allow other people to do it. Clearly we administer the roads and the footpaths but if a contractor was doing work they would obviously put cordons around hazards.

**JUSTICE COOPER:**

10 Q. With the council's permission?

A. With the council's permission, yes Sir.

**CROSS-EXAMINATION CONTINUES: MR ELLIOTT**

Q. No one could do it without the council's permission?

A. No.

15 Q. And the council plainly considered itself obliged to consider whether fences should be put up as evidenced by the fact that there was a cordon guideline in place –

A. Yes.

20 Q. – and obviously consideration given to the presence of fences as part of the inspection process?

A. Yes.

25 Q. So you point out that an owner or an engineer may have potential dangers in mind but ultimately it could only have been the council who could take the step of either placing or authorising a fence or cordon around a property?

A. Yes.

Q. And you will be aware that there would have been a range of owners the council was dealing with, some of whom would have done nothing to inspect or strengthen properties, some who may have done a lot?

30 A. Yes.

Q. We've heard evidence about section 129 or heard reference to section 129. That section applying if because the state of, sorry, if because of

- the state of a building immediate danger to the safety of people is likely in terms of sections 121, 122 or 123. Did the council take the position that given the presence of that power it should therefore give consideration to whether the state of buildings constituted immediate danger to the safety of people?
- 5
- A. We received legal advice that we needed to be able to demonstrate that a build, before we could enact section 129, that an immediate danger to people was able to be demonstrated and that counts that there weren't alternative means of addressing that immediate danger.
- 10
- Q. You've given answers previously that the council had a philosophy of safety and it would be consistent with a philosophy of safety that the council would consider at all times post-4 September whether the state of buildings it was administering posed immediate danger to the safety of people?
- 15
- A. Yes we would address that.
- Q. And in order to give consideration to that question the council would no doubt need to consider information that it had, gather any further information, consider all of that information, and make a decision?
- A. Yes.
- 20
- Q. That's important, isn't it, because if there was a well considered cordon in place that would mean that issues about heritage could be debated for as long as they took because in the meantime people were safe?
- A. Yes. Cordons being one of the options.
- Q. Indeed.
- 25
- A. Yes.
- Q. So in terms of considering how the council addressed that question, I'll take you briefly through some points about those two properties, but just as an example, in relation to 605 we have an owner who said he was relying upon his advisers. We have advisers who said they spoke to the council and we have you saying this afternoon well it's an owner's
- 30
- responsibility to consider these things as well, and I can imagine how frustrating some people may find that and my questions are really directed to that. So I am asking you to consider, not the position of the

owner, or the engineer, but the position of the council. So in relation to 603 the council knew that this was an earthquake prone property?

A. Yes we did.

5 Q. And the council had access to the history as evidenced by the seismic survey and hazardous appendage survey?

A. Yes, that was an external review of the building, yes.

Q. And the council was aware that there had been no strengthening work in relation to that property?

A. We were aware of that, yes.

10 Q. And as Mr Zarifeh and others have highlighted there was an inspection on the 27<sup>th</sup> of December 2010 which referenced the need for a level 2 or detailed structural evaluation. That's right, isn't it?

A. Yes.

15 Q. So in terms of what the Christchurch City Council did, it sent out it appears both Mr Ryburn and Mr Campbell as part of its standard BRO follow-up process, didn't it?

A. Yes.

Q. But Mr Ryburn told us yesterday that he did not receive a copy of the cordon guidance document, agreed?

20 A. Yes that's correct.

Q. And the council did not give either of these gentlemen any of the information about the previous inspections in 1991 or 1992, did it?

A. That's correct.

25 Q. And the Christchurch City Council did not instruct or inspect those men to do anything other than an external inspection?

A. Yes.

Q. So that the Christchurch Council did not carry out its own internal thorough structural assessment in relation to that building?

A. No, we didn't. This is 603 we're talking about?

30 Q. Yes.

A. That's correct.

Q. And in passing I've said let's not refer to the owner but you referred to the owner's responsibility, the fact that an owner had been asked to

provide a report but had not would still mean that the council did not have a full report, wouldn't it?

A. That's right.

Q. In relation to 605 the council knew it was earthquake prone?

5 A. Yes.

Q. The council knew about the history as evidenced by the seismic survey and hazardous appendage surveys in the 90s?

A. Yes.

1648

10 Q. On the 26<sup>th</sup> of December 2010 there was an inspection which indicated the possibility the front façade was leaning out. The Council was aware of that?

A. Yes we were.

15 Q. And the Council was aware that a detailed level 2 structural assessment was recommended, agreed?

A. Say that, a detailed engineering evaluation was required?

Q. A level 2 or detailed structural is ticked in the box, that was the further action recommended? Do you agree?

20 A. The tick doesn't say, look I'm not trying to evade the question, but the tick doesn't say it needs a level 2 it just ticks structural doesn't it? So Mr Raper had done an internal and external assessment of that, of certainly part of that building at 605 so the effect of that was a level 2 assessment.

**JUSTICE COOPER:**

25 Q. The way I'm reading that form Mr McCarthy is that there's a requirement for a level 2 or detailed engineering evaluation rec- , well it's recommended and the level 2 or the detailed engineering evaluation recommended may be three kinds structural, geotechnical or other?

A. Mhm.

30 Q. Is there some other way, I mean it wouldn't be sensible to say that the word structural was just ticked as if it's there without a context would it? Otherwise it would be a meaningless part of the form?

A. Clearly Sir a detailed engineering evaluation of that building would be, is, is desirable and would be needed given the fact that it was a red –

Q. Yes.

A. – placarded building. So I don't, I have no dispute with that I'm just...

5 Q. I mean well it's the Council's form so if there's some other way that we should regard it you should, you should tell us?

A. The, I think we can go straight to a Building Act notice without a level 2 assessment in this case which is what we did and that – then a detailed engineering evaluation is required to reoccupy the building and change  
10 it from its unsafe red status.

**COMMISSIONER FENWICK:**

Q. If a detailed engineering evaluation is required why does it say a level 2 or detailed engineering evaluation?

A. The certification, the certificate, you're actually correct Sir, the, my  
15 apologies for that, a level 2 would be sufficient to satisfy the requirements of the certificate that would be provided. One would expect that it would be quite an in-depth level 2 assessment before it would come away from being a red status building. Yes you are correct.

**CROSS-EXAMINATION CONTINUES: MR ELLIOTT**

20 Q. All right Mr McCarthy well I think you could not deny that the upper right-hand corner of this document refers to exterior only and that the lower right-hand says, "needs check from upper floor interior of transverse outer façade". That suggests this person thought there should be further check from the upper floor interior of transverse outer façade would you  
25 agree with that?

A. It's likely yes.

Q. And once again in terms of the Council's action?

A. Yes.

Q. What it did was to send out Mr Campbell who went as part of the  
30 standard BRO follow-up process?

A. Yes.

Q. And the Council did not give him any information about the historical surveys of 1991 that it had on its file?

A. No it didn't.

5 Q. And it did not tell him about the custom – the owner who called saying that there was a 40 millimetre gap in the wall on the 7<sup>th</sup> of January 2011?

A. No it didn't.

Q. And it did not instruct him to undertake an internal thorough assessment?

10 A. No it didn't.

Q. So once again in relation to this building irrespective of the position of the owner the Council did not have its own thorough assessment of the interior of that building?

A. That's correct.

15 Q. So in terms of considering the question of whether the state of this building was such that there was immediate danger to the safety of people the Council did not have enough information to make an informed decision about that?

20 A. No it didn't. There was obviously an exchange of information between parties that evolved, the, the owner, the owner's engineer, Mr Bushnell, so that was all sort of happening through this January period wasn't it?

Q. But the Council never gathered and considered the information it surely required to make a responsible decision about whether this building's state presented an immediate danger to the safety of people did it?

25 A. Do you consider that the Council should act on its own or do you consider this is a partnership between the owner and the engineers of the owner and the builder and the Council or do you think the Council should take that responsibility on just by itself?

**JUSTICE COOPER:**

30 Q. Well Mr –

A. I suppose he's, he's asking the questions Sir but –

Q. Yes.

A. – I think that's a reasonable, I think the Council is one of the parties and we don't –

Q. Mr –

A. – we don't act in isolation Sir.

5 Q. Mr McCarthy we're aware of that.

A. Mhm.

Q. One of the things that the Commission will be considering when it comes to writing its report is what obligations everybody should have.

A. Thank you.

10 Q. Including the way in which those obligations might be expressed in law, but Mr Elliott's really asked you a question about the Council because that's the question that he is pursuing at the moment and if in any case there were a perception that the Council had not done what it should have, it would not be an answer to point to somebody else not doing  
15 what they should have done.

A. Well that's, that's –

Q. So –

A. – fair comment Sir.

20 Q. – Mr Elliott's questions are quite appropriate and they need to be answered in the terms that they are put, at least at the moment.

A. Okay, perhaps I can have another go at answering your question which was quite clear. The Council did not have all of the information it required, it had not gathered all of the information it required to make, to fully consider some of the issues that you've talked about, so yes you  
25 are correct.

**CROSS-EXAMINATION CONTINUES: MR ELLIOTT**

Q. Well it brings me to my final point really which is that every one of these cases that we've seen have their own tragedy and sadness?

A. Yes they do.

30 Q. But it seems almost too horrible to contemplate that eight people could die in a bus and four people on a footpath?

A. Yes.



Q. When an earthquake prone building collapses during an earthquake sequence that's been going on for over five months, and people watching this, families of those who died in particular may feel that by not taking any action from 2006, by not carrying out its own thorough assessment of the risk that these buildings posed to people, the Council has failed the people who used those streets and footpaths. So what does the Council say to that?

5

1658

A. The Council did as much as it could at the time to seek to protect public safety. We were in a situation in circumstances which are somewhat unprecedented and we all had a will and a care and everything we did in our primary response was about trying to protect public safety.

10

Q. Well just considering these buildings are there any lessons the Council draws from what's happened?

15

A. Clearly unreinforced masonry buildings are a hazard. We would hope that in the future we are able to address those hazards – certainly in Christchurch and nationally – so that these sort of tragedies don't occur again. The work of the Royal Commission I think will be a great help in giving us some direction in that regard but, yes, it's a tragedy and these buildings contributed.

20

**CROSS-EXAMINATION: MR MCLELLAN**

Q. Mr McCarthy, just a couple of questions along similar lines to those which I asked Ms Billante earlier on. We know that in relation to 603 Colombo Street the yellow placard was changed to red, apparently by Mr Gant?

25

A. Yes that's correct.

Q. But we also know that there was a physical inspection of the building the following day, and we've seen the comments on that so I don't need to take you to it. In relation to 605 it seems that Mr Gant changed the yellow placard that Mr Raper had recommended to a red?

30

A. Yes.

Q. Have you been able to identify what process was followed to decide upon that change to a red placard?

5 A. Well I believe that because there wasn't a Civil Defence emergency we were looking at issuing notices under the Building Act under section 124 and where a building was either in a yellow restrictive entry status or red status which would be restrict entry and also require extensive repairs there was little difference in sending out the section 124 notices. Clearly this building had some structural issues – repairs that needed to be made – so the decision was made I think to change the yellow restricted entry to a red which was going to be restricted entry plus some repairs required.

10

Q. So in the absence of any evidence of a physical inspection because there's no report of a physical inspection after Mr Raper's, would that have been essentially a desk top decision to make the placard red rather than yellow?

15

A. That's correct.

Q. And is Mr Gant an engineer?

A. No he's not. He's a building consent officer with I think he has a certificate in engineering but he's been in the business quite a while, very experienced.

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#### **RE-EXAMINATION: MR LAING – NIL**

#### **QUESTIONS FROM COMMISSIONER FENWICK**

Q. Just two quick points. I apologise they have come up and I have missed your reply, but first of all the Level 2 inspections on 603, the person couldn't get access. Was it beyond the abilities of the Council to provide a step ladder or some access they could have climbed over the barricade?

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A. No it wasn't and clearly we could have got through that barrier. We would have had to have co-ordinated a key to get into the building as well, but no that could have been done.

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Q. It's a great pity because it could have provided very valuable information and a warning that possibly further work in this case was required.

5 The second point is we questioned the engineers yesterday, several of them, about how you could check whether the façade was liable to collapse or not. I think all of them highlighted the need to get inside to see whether the façade was separating from the wall or from the transverse beams. So I get a bit alarmed when I find I agree it's essential to have that Level 1 rapid outside assessment after the earthquake but I would have thought there should have been some emphasis particularly on these old GRMs known to be susceptible to have a Level 2 following up to see whether the façades were in fact intact and joined to the walls. Do you agree that that really would be a wise steps because that's where one could spot the critical damage. You can't always see it from the outside can you?

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15 A. You're absolutely correct Sir.

#### **QUESTIONS FROM JUSTICE COOPER – NIL**

#### **WITNESS EXCUSED**

**MR ZARIFEH CALLS****PETER SMITH (SWORN)**

Q. Mr Smith you have prepared two reports – one for 603 Colombo Street and one for 605–613?

5 A. That's correct.

Q. Outlining your assessment of the failure of those buildings in the February earthquake. I want to deal if I can with the issues that arise in relation to both of them together, separately under each head if you like. I just wonder firstly if you can just tell us, we've heard reference to these buildings being unreinforced masonry and row building, 603 being on the end. Can you just tell us in very brief terms about the buildings and the construction and the significance, if any, of where they were?

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A. Yes these buildings were built as a single development. We're not quite sure whether it was done at one time or it progressed. The significant features were that they had internal party walls which were perpendicular to Colombo Street and those went from the ground level up to the roof line and actually projected to above the roof line in each case.

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Q. That's the parapet that we can see in the –

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A. – No that's the one that goes back across the roof. The façade at the front was very open at ground floor level.

Q. What does that mean? What do you mean by that?

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A. Basically the masonry above ground floor level was supported on two very substantial beams which span across between the columns you can see which are line with the party walls. Those steel beams were encased in concrete as the original drawings or at least the drawings for the alteration to the building showed and then the masonry was constructed above that. The buildings had a timber framed roof. Part of it was a tile and part of it was just an iron roof. They also had timber floors and the timber floors rather than spanning between the party walls spanned between the front wall and a series of steel beams which in turn spanned between the party walls. The buildings had very low

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strength along their street frontage. There was considerable alteration of the building over the years. The tenancy which was there in the 1950s

1708

obviously wished to expand into adjoining buildings and there were large openings formed in those ground floor walls as a result and quite substantial concrete frames built in order to form those openings.

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Q. Is that in particular in relation to 605 to 613?

A. Yes.

Q. The Kiwi Disposals tenancy?

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A. Yes.

Q. Now being unreinforced masonry what were they essentially constructed of, was it bricks?

A. Yes with bricks.

Q. And no reinforcing obviously between the bricks or in the walls?

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A. Certainly not, most unlikely.

Q. And the mortar between the bricks. What was that?

A. We don't know a lot about the quality of the mortar.

Q. Would it be of good quality or not given the age?

A. I don't really have the information to judge on.

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Q. The end, 603 being on the end of that block is there any significance in that in terms of structure?

A. Yes there is. The end building in a row, such as this, has two problems. One is that it tends to have openings on the two street frontages and therefore it has probably a greater weakness but it also ends up being, getting an energy effect from any earthquake shaking of the entire row of buildings so that it's the ball on the string philosophy. If you put energy into the row of buildings then it's the last one that ends up having to resist a lot of that energy.

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Q. Now I just want you to tell us, describe to us the structural failure in the February earthquake of these buildings.

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A. The, from the photos we've seen almost the entire Colombo Street façade of those buildings fell out. The building at 615 which had some securing was reasonably successful in preventing a total failure but the

other facades all rotated about the, what we take to be where the steel beams supported the façade at about first floor level.

Q. Okay and just to explain to people that might not understand that. When you say rotated, which way?

5 A. They fell out onto Colombo Street with disastrous effect.

Q. Now had there been any structural strengthening, you mentioned 615 but there hadn't been any for 603 and 605 to 613?

A. An understanding there had been no strengthening from 603 to 613.

10 Q. I just want to get you to comment on issues that have arisen in, in your view that arise from the failure of these buildings. Firstly we've heard reference to these rapid assessments, right, after the September earthquake.

A. Yes.

Q. And to level 1 and level 2 assessments.

15 A. Yes.

Q. In particular in relation to 603. Have you got any comment to make about that issue and that concept?

20 A. Yes certainly. There certainly is a need in terms of public safety for a rapid assessment to be not only undertaken on the outside which is fairly obvious to identify any fall hazard that – and damage to the exterior of the building, but there is also a significant need for rapid assessment level 2 on the interior of the building because these buildings have been shown to separate in the way we saw the cracking in the previous photos where the façade separates from the return walls.  
25 That leaves the façades effectively unrestrained. These buildings were not constructed with good connectivity to a roof or roof diaphragm and similarly at floor level they have a reasonable lack of connectivity to the floor although in most cases it was the upper level façade that failed not the ground floor.

30 Q. So in this case we heard that with 603 there doesn't appear to have been any level 2 internal inspection –

A. That's correct and it's unfortunate.

Q. – either on behalf of the council or as it transpires by the owner's engineer?

A. That's my understanding.

5 Q. I'll come back to that in a moment. I want to talk about barricades. In terms of the occupancy of buildings like this in general, have you got any comment?

10 A. I think probably one of the lessons from the February event is that the assessment of buildings on damage alone is probably insufficient to protect against public safety. I think in the future we're much more likely to have the larger event as the first earthquake not as the aftershock. I think Christchurch will be seen to be unique in that manner. As a result strengthening of the buildings and securing of façades of buildings now rather than worrying about it after the earthquake should clearly be a priority. I think again the, the level of earthquake shaking that took  
15 place in February, we will not protect totally against failure of façades. I think it's unlikely in these masonry buildings that that severity of shaking that we could reliably predict, that the façades will remain in place and that's an issue that needs thinking through.

20 Q. What about an issue that has been mentioned and that's upgrading of masonry buildings, strengthening of them. You just said a moment ago that the façades have to, work has to be done to tie back the façades and they clearly are a problem with such buildings.

25 A. Yes I think the priority really is the façades. If, if it had of been possible to restrain the façades of the buildings in Christchurch I believe the loss of life would have been significantly less. The buildings themselves, even though you can't calculate a predictable strength, survived remarkably well under the shaking that occurred. I think there's a danger in using that to assess the performance of these buildings in other earthquakes. There is, each earthquake is unique. It has a  
30 directionality and a shaking which is unique. If we can't assess these buildings as having, you know, a strength more than one-third at a minimum, hopefully two-thirds of code, I think the expectations that

they'll survive any reasonable earthquake shaking is, is anything but reliable.

Q. So following an earthquake such as in September, have you got any comment about the kind of test that should be applied to inspection of unreinforced masonry buildings like these?

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A. I think the industry needs better guidance as to the likely level of aftershock. I really believe that the historical approach of using damage to assess whether the building is capable of withstanding an aftershock is not rigorous. It doesn't account for the shaking being in different directions or being of a different type which could cause collapse. So I think we need to be reviewing the safety of buildings in that after the main event earthquake with some degree of strength requirement and before we allow occupancy of the building or of the area surrounding the building.

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Q. Turning to the issue of barricades or cordons. In relation to 603 we know that there was a cordon up, certainly blocking off the southern façade of the building in the western but – and extending out to Colombo Street on the footpath and in front of the building itself, the Colombo Street façade.

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A. Yes.

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Q. You've already commented on the need to get an internal inspection to properly determine the façade connection -

A. Yes.

Q. – to the walls. Any further comment in relation to the barricades at 603?

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A. The February earthquake has demonstrated beyond question the danger of these façades and the need to cordon off in front of buildings where the building does not have integrity to restrain that façade to a reasonable strength level.

Q. And given what you say about the danger to, from façades falling and collapsing out, what can you say about the extent of a cordon?

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A. As shown in that photograph?

Q. Yes.



A. I, I believe the extent of that cordon is envisaging a parapet failure and not a façade failure and I think that was probably the expectation of the 1718

5 engineers in large. I think they had seen the September earthquake as the significant earthquake in the series, they'd monitored buildings under the 26<sup>th</sup> of December earthquake and again there had not been widespread collapse of parapets or façades but the parapets were the area of primary focus.

10 Q. Right and if it had taken into account the potential for façade failure they would have been further out?

A. It would have almost meant closure of Colombo Street I believe.

Q. Just because of this building or –

A. I think –

Q. – are you talking about other buildings?

15 A. – the common feature of Colombo Street in this area was very similar buildings on each side of the street. To maintain the street open would have been virtually impractical.

Q. All right and just still on this same issue with 605 to 613, presumably you'd apply the same reasoning, it being the same construction?

20 A. I believe we should in the future yes.

Q. Right. Any comment on the issue, this issue of cordons in front of 605 to 613 or the need for them given the type of damage that was seen?

25 A. I think we've heard today that a number of engineers inspected the building, inspected the damage, I think and the basis on which the engineers were assessing the potential for a collapse of any portion of the façade was very much on the basis of assessing the building performance from the previous earthquakes. I think that we – unfortunately the February event has demonstrated that that is not a robust approach, that some of these buildings obviously once they've  
30 separated, the façade has separated from the return walls had very little strength, they rely on a certain amount of gravity providing some resistance and that really is not I think a robust method of protecting the public.

Q. Thank you. Just finally have you got any comment, you've heard the evidence about the fact that 605, sorry that the, these buildings were classified as a heritage building and you've heard the discussion about the resource consent application that would have been necessary for demolition, any comment from your experience about that issue?

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A. (inaudible 17:20:54) engineer should be careful in getting into planning type issues and heritage issues but clearly the need, the way in which the legislation was working for a resource consent for demolition it did mean that there was a greater risk of injury to the public while that building was left in position without securing or without cordons. I, I agree that had the building been cordoned off then the risk could largely be removed or had temporary securing been put in place so there are other options and I can understand the need for society to retain heritage buildings where they feel that's appropriate and possible.

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Q. There was one witness I think it might have been Mr Bushnell agreed with the proposition put to him that there should be some rationalisation of the legislation and we heard that from Mr Higgins from the Council this morning. Do you agree with those comments?

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A. I would certainly support some rationalisation of that in the interests of public safety and really progressing from the situation that develops after a significant earthquake.

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**CROSS-EXAMINATION: MR ELLIOTT – NIL**

**CROSS-EXAMINATION: MR LAING**

Q. Mr Smith I've asked you some questions about this previously but I'd just like to return to the topic as to the response following an earthquake in terms of URM buildings. The way that I read your reports today and also other reports is effectively you are saying that the risk from URM buildings is such that there should be cordons in place blocking off any street where there is a URM building. Now firstly do you think that is a realistic proposition and if it is, what is the test in terms of an earthquake, given these buildings have already been here for some

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time. There is a initial earthquake, what is the test that should be adopted? Should the Council have closed off the whole of central Christchurch after September the 4<sup>th</sup>. Is that the response?

5 A. I think if you're to place public safety as paramount that probably is the option, I would hope that by the time New Zealand experiences another very damaging earthquake many things would have been done to secure buildings to a much higher standard and there won't be the extent of unreinforced masonry buildings which have been left in an unsecured position. So at the end of the day one has to look at the, the  
10 extent of the buildings and the implications to the city. I would hope that there is some wise counsel in terms of the likelihood of an aftershock and the significance of that aftershock, and I would believe, I believe that the engineering community should be assessing the buildings under those, some strength requirement before people are allowed back in the vicinity of unreinforced masonry buildings. I've experienced both in  
15 Gisborne and in Christchurch this phenomenon of the façade separating and until we can be confident that the façades are secure and won't fail in an aftershock we are placing life at risk.

20 Q. Do you think it was, it would have been a reasonable response for the Council to effectively cordon off the whole of central Christchurch after 4 September?

A. It sounds very severe but, and it's easy after the event of February to make that suggestion but I think February has demonstrated and probably more for the initial earthquake I think that the probability is we  
25 will get a more severe shaking with the first event not the aftershocks but we need very wise counsel as to how much we accept a damage assessment as being appropriate for re-entry and access around buildings.

30 Q. Yes. I'm just looking for this for the future as well but, and this is not simply an issue for Christchurch, it's an issue for any, any city where there are unreinforced masonry buildings?

A. Indeed.

Q. What I'm perhaps trying to seek from you is some help in understanding what is the level of the response if there is any earthquake at all, should you close off all streets? I mean if there's a relatively mod- very small earthquake in Wellington next week, should all the streets be closed off?

5 What is the standard that should be adopted?

A. I think that's a decision that has to be made given the actual size of the earthquake that's been experienced its proximity to a major centre, the seismology advice in respect of the likely aftershock sequences and some engineering input in terms of what would be a reasonable strength requirement for buildings to meet after such an event. I think if we don't go through such a process it is Russian roulette against an aftershock having unfavourable direction and unfavourable shaking which could cause loss of life.

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Q. So do you have anything to share with us in terms of the size of an event that would justify cordoning off central Christchurch or central Wellington to the extent that's relevant?

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A. I don't think I'm the best to advise in that respect. I think clearly if you get a, you can have a magnitude 8 event down in Fiordland which doesn't cause a risk to anyone. It is a matter of the proximity of the event and to a major area of population and the likelihood of an aftershock following that event and really I think it's each case on its own. I don't think there's a simple solution that meets all situations.

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Q. No. Do you think it's a matter for some sort of regulation, some sort of more enhanced powers or what do you think the solution is?

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A. I'd be cautious about legislation because I think it does need to be totally flexible. I think it, it needs some wise counsel from the people who are best able to advise under the circumstances of the event that's occurred.

**CROSS-EXAMINATION: MR MCLELLAN – NIL**

30 **RE-EXAMINATION: MR ZARIFEH - NIL**

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**QUESTIONS FROM COMMISSIONER FENWICK: NIL**

**JUSTICE COOPER:**

- 5 This now concludes our hearing into this particular tragedy. Our reflections on what we have heard will be contained in our final report which will be issued later in the year. We are going to adjourn now briefly because we have to go onto a case that we started last week and we now need to finish.

**COMMISSION ADJOURNS: 5.29 PM**

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