

**COMMISSION RESUMES ON THURSDAY 16 FEBRUARY 2012 AT
9.30 AM**

382 COLOMBO STREET

5

JUSTICE COOPER:

Today's hearing will involve consideration of the collapse of the building at 382 Colombo Street in Sydenham. Adjacent and to the south was the building that housed the Tasty Tucker Bakery at 380 Colombo Street. In the
10 earthquake on the 22nd of February the south wall of number 382 collapsed onto the roof of number 380. Maureen Fletcher was having lunch in the Tasty Tucker and lost her life as a result. We express our deepest sympathy to her family and acknowledge the presence here today of her son, Rodney Fletcher, and cousin, Noeline Hawkey. I'd also like to acknowledge Beverley Edwards,
15 another customer in the bakery who was very seriously injured and is a paraplegic as a result of the events that occurred on that day.

MR ZARIFEH AND MR ELLIOTT AS COUNSEL ASSISTING

MR LAING AND MS DAINES FOR CHRISTCHURCH CITY COUNCIL

20 **MR MCLELLAN FOR OPUS INTERNATIONAL CONSULTANTS**

MR ZARIFEH:

If the Commission pleases, the building that was situated at 382 Colombo Street was a two storey unreinforced masonry building that was at the end of
25 a row on the east side of Colombo Street in Sydenham. Immediately next to and south of that building was 380A and 380 Colombo Street which was a more modern single storey building constructed around 1972 and which housed the Tasty Tucker Bakery which was at 380A and which was the building immediately next door to 382 and 380 was a branch of the ANZ bank.

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JUSTICE COOPER TO MR ZARIFEH:

Q. Mr Zarifeh, what's the best photo we've got showing those two relevant buildings prior to the earthquake.

- A. I'll get one brought up now, 0009.3.
- Q. For some reason in this case the file copies that I've got anyway are, no that's after the earthquake though isn't it?
- A. Well it is but it still shows the buildings as they were in the frontages.
- 5 Q. Yes I see, well except that the wall that collapsed is presumably had fallen off the building at 382.
- A. Yes sir, well the one on the screen now –
- Q. Yes well I've seen that too but it's not a very good photo, is it? Is this the best we can do?
- 10 A. Well if we go back to the other one please.
- Q. What's the, I mean is that a wall behind number 380?
- A. Yes it is and I'll take you through a series of photos then explain it to you. So if we go back to the 0009.3. So 382 is as marked on the photo is the end of that block of two storey unreinforced masonry buildings and 384 is next to 382 and 380A and 380 were part of one building, see
- 15 the more modern building. That white part is a, if you like, a false façade or parapet. It's a single storey building and the gable wall that collapsed on the building is the wall to the south of 382 and if we look at photo 0009.4 this is a back view, or should be a back view. So 382 can
- 20 be seen on the right and that's the gable wall, the south wall that has collapsed. That wall was above the roof level and the white piece that you could see, the false façade of 380 and 380A can be seen there and there's some kind of piece of wood or concrete leaning against it and the higher building in the background is on the other side of Colombo
- 25 Street.
- Q. So Colombo Street is behind this white –
- A. Colombo Street is behind the front of the buildings and we're looking from the back of the buildings in that photo.
- Q. And the building above that area, you say, is on the other side of –
- 30 A. That's on the other side of Colombo.
- Q. And where's the ANZ bank you referred to?
- A. The ANZ bank would be, looking at this photo, to the left. So it's a part of this building that we can see and the Tasty Tucker Bakery premises

were directly underneath and you can see where the rubble from the south wall has fallen through and if we go to .7, 0009.7, you'll see from the street the result of that rubble coming through. There's the Tasty Tucker and the rubble has gone, as can be seen, inside from that wall
5 and the ANZ you can just see a tiny bit of it just to the right.

MR ZARIFEH:

Following the September earthquake the building at 382 was yellow placarded on the 7th of September. The rapid assessment form noted minor damage to
10 brick façade which could be damaged further in future aftershocks and the collapse of a building to the north of 382 and it appears that there was a building to the north of 382 that was of particular concern adjoining the block that 382 was part of. It appears too that around that time attempts to contact the owner were either unsuccessful or certainly difficult. Then on 29th of
15 October a Building Act Notice was served on the owner. That Notice referred to "significant damage to structural walls, party walls, fire walls and/or structural frame (cracking, bowing, failed connections and spalling)" and I should say that's a phrase taken from one of the Council forms so it's a phrase that an inspector would have ticked presumably. The source for those
20 details is not clear from the Christchurch City Council records. The notice required make-safe work be carried out by 15 October, 15 November I should say. No work was done on the building by the owner and you can see now, well it's there on the screen, an aerial view of that area of Colombo Street, it's from a Council record that related to cordons and you can see 382 Colombo
25 Street down at the bottom of the photo and the roof of 380 and we just go back and so it's Colombo Street and Wordsworth Street's there, the intersection to the north.

0940

And my understanding and we can have it confirmed from Mr McCarthy but
30 there were problems with the buildings on the corner of Colombo and Wordsworth on the east side and I think in fact down probably to where that line is that indicates a cordon and there's a reasonably extensive cordon I think on Colombo/Wordsworth corner. The front verandah of 382 was

propped up by the Council as part of a cordon review of that area of Colombo Street and that was to take the weight off the verandah and as I understand it in an effort to try and limit or reduce the cordons that were impeding traffic in that area. In the February earthquake the south gable wall on the building as we've seen, collapsed onto the roof of 380A Colombo Street and through the roof of the Tasty Tucker Bakery. That building, the Tasty Tucker Bakery was in, had been green placarded throughout. Maureen Fletcher was having her lunch in the bakery with a Mr and Mrs Moon. Mr and Mrs Moon were able to exit the bakery despite being injured, however Mrs Fletcher was not and her body was found under collapsed building rubble later that day by USAR. As Your Honour has mentioned Beverley Edwards was also a customer at the bakery at the time and as a result of the injuries she received she has been rendered a paraplegic.

15 **JUSTICE COOPER:**

I think Mrs Edwards is now here, yes, good morning to you.

MR ZARIFEH:

Sir, the likely issues in this hearing are the application of the Council's earthquake prone policy to the building. Secondly the assessment of the building in particular the damage to the south gabled wall. Thirdly inaction by the owner in relation to make-safe work. And fourthly whether there should have been communication of any potential danger to the neighbouring properties by the Council or owner.

25

JUSTICE COOPER:

Was there no response by the owner to the notice that was served by the Council?

30 **MR ZARIFEH:**

No Sir –

JUSTICE COOPER:

On the 29th of October.

MR ZARIFEH:

Mr Yan, David Yan is going to be giving evidence that the property was owned
5 as I understand it, from (inaudible 09:43:20) mother and he has explained that
the Council letter was mislaid but I think that, perhaps it didn't come from him,
but I think that there were insurance issues involved and the issue of
demolition is a possibility and whether there was any point in doing work on
the building. But he and Mr Ling his engineer will hopefully explain that to the
10 Commission. As to witnesses, there are seven witnesses to be called and
there are two witnesses whose evidence is going to be dealt with by written
statement only. Neville Higgs who the Commission has heard reference to
and seen give evidence before, he has provided an email and going to rely on
that rather than call him. He had an inspection in October/November of 2010,
15 and Mr Jarm, the owner of 380 Colombo Street, his is a written statement
only. The first witness is Cheryl Armour who was working in the Tasty Tucker
Bakery, and then the intended order is Mr Yan the owner of 382, or the
owner's representative I should say, Mr Ling his engineer, Peter Avnell was a
loss adjustor who visited the property, he is Australian and was here helping
20 out. He's back in Australia, we're going to video link with him at 11.45 our
time so fit round that, and obviously deal with however many witnesses we
can before then. Mr Ryburn would be next, or maybe before that and
Mr McCarthy then from the Council, and Mr Peter Smith the structural
engineer who has prepared a report for the Commission.

25

30

MR ZARIFEH CALLS**CHERYL ARMOUR (SWORN)**

Q. Mrs Armour, is your full name Cheryl Armour?

A. That's correct, yes.

5 Q. And you live here in Christchurch?

A. I do.

Q. And you're employed as a shop assistant?

A. I was, at Tasty Tucker Bakery, yes.

Q. I think you've signed a statement dated 10th of December?

10 A. That's right.

Q. Have you got a copy?

A. No.

Q. I'll get you a copy. Is that the statement you signed and it continues on the back?

15 A. Yep.

Q. What I'm going to get you to do is to read that out loud as your evidence and when we come to a point where I want to show you a photo, we'll get the photo up on the screen in front of you and you can refer to it, okay.

20 A. Sure.

Q. So just take your time and start at the first paragraph.

WITNESS READS STATEMENT

A. I am employed by Spotlight as a shop assistant. Prior to that I worked for nearly seven years as a shop assistant at the Tasty Tucker Bakery, 25 380A Colombo Street, Sydenham. In late August 2010 I went to the UK for a holiday and returned in early October 2010, therefore I was not present in Christchurch when the 4th of September 2010 earthquake occurred. When I returned in October I noticed a lot of cracks in the building next door to the north of Tasty Tucker, 382 Colombo Street. 30 These cracks had not been there prior to my trip to the UK. There were cracks in the façade facing Colombo Street and there were also cracks at the back of the building. We used to park our motor vehicles at the back of the ANZ building which was at 380A Colombo Street next to and

5 within the same building as Tasty Tucker. Coming from the carpark one could see the back of 382 and as well as the wall on the south of 382 Colombo Street, the wall directly next to and above the Tasty Tucker Baker roof. In October 2010 I noticed there was a slight lean in the wall toward the south. I noticed at least three or four, probably more cracks in that wall. They were zig zagging cracks following the mortar lines and were up to one to five metres in length and were wide enough to see that there was no mortar there. I knew that 382 had been damaged by the earthquake because there was a barricade in front of the building. I am pretty sure it had a yellow sticker, however I did not know the extent of the damage. There was often discussion in the Tasty Tucker Bakery between ourselves or within customers over the state of 382 Colombo Street and the fact we thought it should be demolished.

15 **EXAMINATION CONTINUES: MR ZARIFEH**

Q. Can I just get you to pause there and before you deal with the rest of your statement I'll just show you some photos. Firstly I'll get a photo of the street frontage of 382 brought up, 0009.3. Now this is after the February earthquake?

20 **WITNESS REFERRED TO PHOTOGRAPH**

A. Mhm.

Q. But you mentioned some cracks in the front of 382?

A. Yeah.

Q. So I don't know if you can help us with that photo. We can get it enlarged if you like, which section should we look at?

A. On this side.

Q. Do you see that mouse in front of you, computer mouse?

A. Oh yeah.

Q. You should be able to use that to point.

30 A. On that sort of area there down, you know sort of in there, it was actually between those, where that was there and where the wall was you could often see the little lines like that going down.

0950

Q. Okay, so you're indicating –

A. That's from the front of Colombo Street.

Q. Okay –

5 A. Yep.

Q. – so you're in, just so we've got a record of it, you're indicating the southern end of the façade –

A. Yeah.

Q. – Colombo Street façade?

10 A. Yeah.

Q. 382?

A. If I crossed the road sometimes if I went over to Kiwibank over there and come back and you looked up you could just see little lines you know where there's obviously wasn't anything in there.

15 Q. Okay, now and is that all you noticed about the façade before we move on to another photo?

A. At the, at the front yes, yes you could actually see more from the back when you walked through.

Q. Okay.

20 **JUSTICE COOPER:**

Mr Zarifeh, Commissioner Carter would like that photograph enlarged if possible, or is this as far as it can get?

MR ZARIFEH:

25 Well I think we can enlarge that section, I was just going to ask that.

EXAMINATION CONTINUES: MR ZARIFEH

Q. Leave the mouse while we enlarge it.

A. Yeah, sure. Even if you look up close now you can still see little lines up the top there.

30 Q. Right. So they were quite small cracks, is that fair?

A. They were small cracks at the front yes. Definitely.

Q. Okay, now we're a bit limited with the photos we've got but there's a closer view?

WITNESS REFERRED TO PHOTOGRAPH

A. Yeah.

5 Q. Okay well I'll get you to look at an older photo of the building and this is from the back and it's 0006.3.

WITNESS REFERRED TO PHOTOGRAPH

A. Mhm.

Q. Okay if we can that enlarged. This is taken around 1993.

10 A. Yep.

Q. Okay, so do you recognise that view?

A. Yes I do.

Q. Right and would you have ever had that kind view of the building?

A. Easily, yes.

15 Q. When would you, when would that be, what would you have been, where would you have been standing?

A. Um, at the back as coming down here, I mean that's your roof going down from the back of the shop and coming –

Q. Just use your mouse.

20 A. Oh sorry.

Q. And, that's all right.

A. Yeah sort of from back, that is our alleyway sort of just down that's how can I put it? Um, that's the lean-to, our alleyway's sort of at the back here and then we sort of walk down the alley into the shop, you know what I mean?

25

Q. Into your shop?

A. Into our shop because it was where the back door was, yeah.

Q. All right so the back door to 380A?

A. Yes.

30 Q. To the Tasty Tucker?

A. Yeah.

Q. Was there, and was there a carpark area at the back?

- A. There was a carpark area here at the back which we shared with the ANZ bank.
- Q. Right.
- A. Yes.
- 5 Q. Okay so that, that's the kind of view you would have had when you were parking your car?
- A. Yes.
- Q. Or approaching the building?
- A. Yeah, yeah every morning it's the same, you know it would be the same
- 10 from where we parked the car yes.
- Q. All right so you talked about the part you've just read that coming from the carpark you can see the wall on the south of 382 Colombo Street?
- A. Yep.
- Q. So which, just indicate where that is?
- 15 A. Down here.
- Q. All right and firstly you talked about cracking in that wall?
- A. Yeah.
- Q. Now I'm not saying that you can necessarily see the cracks there.
- A. Yeah.
- 20 Q. And this is an old photo.
- A. Yeah, yeah.
- Q. But just tell us where you saw those cracks.
- A. It was a significant bigger gap down there plus there was a lot of gaps down there.
- 25 Q. So when you say gaps do you mean what gaps in the mortar or...?
- A. Gaps, gaps sort of where the bricks had maybe just even drifted away you know what I mean come away where the mortar had come away from the bricks from there or the same there, I mean ends of bricks had fallen off and there was ones that were there were sort of zigzagged like
- 30 that you know what I mean?
- Q. Zigzagged through the mortar –
- A. – as you came down.
- Q. – line?

A. Yes, yes where it looked like something had gone sort of down like that yeah.

Q. All right.

JUSTICE COOPER:

5 Q. It's a series of steps perhaps.

A. Like a step, like a step yeah.

Q. Right.

A. Yeah, yeah.

EXAMINATION CONTINUES: MR ZARIFEH

10 Q. Now you also spoke of that wall appearing to have a slight lean?

A. Yes it seemed to lean toward that way.

Q. Right.

JUSTICE COOPER:

Q. To the south?

15 A. To the south toward our shop yes.

EXAMINATION CONTINUES: MR ZARIFEH

Q. Right, can you see that in that photo or not?

A. No you can't.

Q. Okay. All right so does that describe what you saw, I know you can't
20 point them out on this but –

A. No.

Q. – does that describe the location and what you saw?

A. Yes. Yes.

Q. All right. And what about the rest of the building did you notice any
25 other cracks or damage?

A. Ah, there's a wee out room, you can't probably see if from there but it was sort of stuck out, I'm just trying to work out how you could see it because it's possibly from sort of going down that way it was where there was, a building was sort of there and there was the wee out room

there, where we sort of, you could see into what used to be a toilet or washhouse I think.

Q. Right well I'll just get another photo brought up?

A. Yeah.

5 Q. 0014.14. This is another photo from the back and see if that's any help.

WITNESS REFERRED TO PHOTOGRAPH

Q. Just while that's coming was there any cracking at the back the part that we can see that you noticed or not?

A. I couldn't see anything there it was more there, see that's better yeah.

10 Q. Okay.

A. Yeah see this wee room here –

Q. So you're indicating –

A. You could –

Q. – the –

15 A. This one here.

Q. Looking at the photo?

A. Yep. That's -

Q. The room on the south side?

A. Yeah that's sort it backs out on to there and there was a doorway just about there that you could actually see into that wee area from our back door you know from our back door which was about there.

20

Q. Right.

A. You could see into this wee room here.

JUSTICE COOPER:

25 Q. That might be described as a lean-to I think?

A. Yes I think it was a wee lean-to here.

Q. Yes.

A. I think at one stage there when the Salvation Army used to have it they used it as a storage room.

30 Q. Right.

A. And that and so as I say we could see it because that was our back door directly there and you could see into there and that one, that wall

sort of there was fine but as I say you could certainly see when you looked out you could, coming up this is where you could actually see, oops, sort of little, you know down that area there.

Q. Okay and I'll get you –

5 A. You see it up that's where you could actually notice more easier to see.

Q. Okay this is a photo obviously after February and that's why the gable wall's not there.

A. Yeah, yeah. Exactly.

Q. You realise that yeah.

10 A. Yeah, yeah but just sort of when you got that down there that's where the gable wall was and as I say it was a distinct gap.

Q. And if you look at another photo 0009.6.

WITNESS REFERRED TO PHOTOGRAPH

Q. This is another photo of the back.

15 A. Yeah that's what I meant by zigzags.

Q. That's the kind of cracking?

A. Yes.

Q. But you saw that what in the other wall?

A. In the other wall yes, that wall that was attached to that up there.

20 Q. Okay well I'll just get you to look at another couple of photos, firstly 0009.4.

WITNESS REFERRED TO PHOTOGRAPH

Q. Now the photo that's going to come up is looking from the back of the roof of the Tasty Tucker?

25 A. Yes.

Q. And you can see that wall?

A. Yeah.

Q. And you can, the top part of it is gone?

A. Yep.

30 Q. Obviously, but what I was going to point out to you was that it appears to be, have a concrete skin over it?

A. Yes.

Q. Over the bricks?

A. Yes.

Q. Now did that go all the way up from the top of the –

A. I'm pretty sure it did.

Q. Okay.

5 A. I'm pretty sure it went right up to where the – because your bricks went right up to there and I'm pretty sure you wouldn't see any concrete wall.

Q. So were the cracks in the concrete or the bricks?

A. The cracks were in the bricks.

Q. So where were the bricks that you could see cracks in then?

10 A. Well –

Q. Assuming that the wall was still up there?

A. When we sort of came down here and if you went in the thing, our sort of back this way.

Q. Yeah.

15 A. You could see here down this wall here there were cracks zigzagging down there where the, where the bricks were down that side.

JUSTICE COOPER:

Q. So that's the eastern end south wall?

A. Yes. Because of the water, we had a water tank up this end and you
20 could just see up round that area there but from the, when you came from Colombo Street on the other side you could also see a little bit because of the façade.

EXAMINATION CONTINUES: MR ZARIFEH

Q. Okay I'll show you another photo 0009.5.

25

COMMISSIONER CARTER:

Q. Just before you leave that photograph I'm just intrigued to know where you were standing to be able to see this wall which is –

A. Okay.

30 Q. – up above the roof of the Tasty Tucker?

A. This is above the roof of Tasty Tucker, this is the wee lean-to here, that's the back of the lean-to which is just there.

1000

Q. Yes.

5 A. Yeah and because if this area here, you can act-, if you come back you can actually see up that far from the carpark.

Q. Is there an alleyway down the side?

A. There's an alleyway down the side yes. There is an alleyway that comes down this way here to the back, where the drainpipe goes and then we park our cars here and there's a carpark area right round here.

10

Q. So you would be in the alleyway when you're looking at that south wall were you?

A. I could be in the alleyway, just coming down the alleyway past the drainpipe yes.

15 **EXAMINATION CONTINUES: MR ZARIFEH**

WITNESS REFERRED TO 0009.5

Q. So that's a close-up view of that wall that collapsed.

A. Yep, yep.

Q. So the cracks that you're talking about –

20 A. Yes.

Q. – can we see any of those or were they higher up.

A. The cracks would be gone because the bricks have gone.

Q. So they must have been higher up.

A. Yeah, yeah, they were, as I say, they were up, if you stood back here you wouldn't have seen them if you were down that low but you could see them up to that height there.

25

Q. There might be a photo that shows the alleyway, a photo the owner supplied, and I'll get it brought up. I'm not sure what the quality will be like.

30 **WITNESS REFERRED TO BUI.COL382.003.30**

A. You can't really see it there 'cos the alleyway's over there.

Q. Okay so there's obviously another access-way too?

- A. Yeah, no this is actually the back of the next building. This fence went all the way down here. We couldn't actually get into any of this area because the area was all fenced off.
- Q. Okay so the alleyway you're talking about would be to the, where you've got cursor to the left of the photo.
- 5 A. To the left where the black tank is, yes, just there. As I say you can see from where my arrow is you can actually see up there.
- Q. So you'd be looking across the top part of that wall?
- A. That's correct yeah.
- 10 Q. Now you said that you knew or you were pretty sure that it had a yellow sticker, 382.
- A. Yes, yes.
- Q. Had you seen that?
- A. Yes it was in the window behind the, they had the wire mesh barrier around the building.
- 15 Q. What did you understand by a yellow sticker?
- A. Well I actually thought a yellow sticker was just, you know what I mean, was okay and a green sticker was go, yellow sticker was maybe not sure and red was completely to be demolished so I figured it must be okay if it was yellow stickered.
- 20 Q. And you also said there was often discussion in the bakery between yourselves or with customers over the state of 382.
- A. Yes.
- Q. Why, what were the concerns that either you expressed or anyone else?
- 25 A. Well basically because the people sort of would come into the shop and they actually would say to me, you know, there's cracks in the building and we'd say yes but it's yellow stickered so it must be fine and we just used to think well gosh if we got a big one then that would be, would it hold up under those sort of terms, do you know what I mean.
- 30 Q. Were you aware of barricading or cordons in front of 382?
- A. There were, yes they did actually extend further in front of our shop but I believe there was some discussion with the Council because they

wanted them moved back slightly so that people could access our shop because they did actually come right round by the door.

Q. And the Tasty Tucker building was green placarded throughout?

A. It was yes.

5 Q. Can I ask you to go back to your statement and you're onto the second page.

A. In the February earthquake I was working at the Tasty Tucker Bakery. I had just served Mrs Fletcher, the woman who was, sorry, who was killed in the earthquake and was walking back behind the counter when the earthquake struck. Mrs Fletcher was struck by a beam that came down from the roof. I think she would have been killed instantly. There were bricks everywhere falling in from the ceiling. Another customer, Bev Edwards, was pinned by a beam. I stayed with her but also tried to ascertain how the others were in the shop. She was rendered a paraplegic as a result of the injuries she received that day. There was a couple who were sitting in the café with Mrs Fletcher. They also received some injuries but survived.

10

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CROSS-EXAMINATION: MR LAING AND MR ELLIOTT - NIL

CROSS-EXAMINATION: MR MCLELLAN

20 Q. I just want to understand did you drive to work yourself?

A. Yes I did.

Q. So you parked your car to the –

A. The back of the building.

Q. – the rear of the Tasty Tucker building.

25 A. Yes, we have, we had two car parks there that were ascertained to our shop.

Q. I'm just going to show you a photograph of the rear of the building you've already seen.

WITNESS REFERRED TO PHOTOGRAPH 382.0009.6

30 Q. Is that the old outhouse that you talked about?

A. That's the old outhouse that they used for storage, yes.

Q. So that would have been the old privy in the earlier times?

A. That's correct.

Q. And to the left of that we can see a more modern concrete block wall.

5 A. That's correct, yeah, that's the top of you know where the roof goes of our shop.

Q. So did that wall continue on down?

A. That wall there yes.

Q. So would you park your car to the left of that wall?

10 A. At the back of that wall, you know what I mean, that wall extends right to the back and our cars are parked across the back fence.

Q. But were your cars parked in line with that wall or more to the right of it?

15 A. No pretty much in line with that wall. That wall goes straight down and our cars would be parked slightly to the south of that because that's just the shop there and the carpark and the alleyway, of course, was in between.

Q. And you accessed that from which road?

A. From, I can't think what the wee road is now.

Q. Is it Words-

20 A. You can go down Wordsworth Street then you go down, I think it might be the wee street at the back. There's a no exit street that goes into the back of the ANZ building.

Q. Harold Street is it?

A. Harold Street that's correct yes.

WITNESS REFERRED TO MAP – .0014.10

25 Q. Could we enlarge the centre of that photograph please. So you would drive off Buchan Street I take it down that –

A. That's correct, down Harold Street and we parked our car in here in this carpark area here.

30 Q. Right so where your cursor is which is in the property of, within the boundary of 380.

A. Within the boundary yes, as I say we had two carparks there that were allotted to the shop.

Q. And where your cursor is at the moment, which is just to the left of the, on the left-hand boundary of 380 towards the rear, there was a wall there was there between 380 and 382?

5 A. There was a fence, yes a wooden fence that goes right down to where you get to the shop there, yeah.

Q. But you could see that old outhouse could you from –

A. Oh you could easy see the old outhouse yes definitely, right down to there.

WITNESS REFERRED TO PHOTOGRAPH OF OUTHOUSE – 0009.6

10 Q. So you would have been to the side of that but you could see that wall clearly?

A. You could see that wall, yes.

Q. And the cracking that you've described in the wall above the Tasty Tucker Bakery that we can't see in this shot, the cracking was similar to
15 the cracking that you see there?

A. Extremely similar to there yes.

Q. So the zig zag lines.

A. Yes.

Q. Such that you've said in your witness statement you couldn't see the,
20 there was no mortar.

A. No, no just as there is there.

Q. And exposed brick.

A. Exposed brick that's correct.

Q. So you could see an entire face of brick wall.

25 A. Yes.

WITNESS REFERRED TO WIT.AVN.0001.6

Q. Now that's a photograph that was taken by another witness who's going to be here today, a loss adjustor, and he took this after the Boxing Day earthquake.

30 A. Yep.

1010

Q. A loss adjustor and he took this after the Boxing Day earthquake, so this is on the north side of that wall that is above the Tasty Tucker Bakery?

A. Yes.

Q. Can you remember seeing that wall?

A. Yes I can.

Q. And you'll see that that's covered with a concrete –

5 A. It is, like a façade, yeah.

Q. That's right. So you can't see the brickwork there can you?

A. No.

Q. So it can't have been brick wall like that that you were describing had cracking in it?

10

JUSTICE COOPER ADDRESSES MR MCLELLAN

That's quite a difficult question to understand –

CROSS-EXAMINATION CONTINUES: MR MCLELLAN

15 Q. Let me simplify that question, you're quite right Your Honour thank you, when you described cracking in brickwork of about one and a half metres in length in exposed brickwork.

A. Yeah.

Q. Like you saw in the old out house, it didn't look like this did it?

20 A. No it didn't. It was just like that, you know what I mean, just like in zig zags, it's not straight across, it's not even lines or anything like that is, you know it seems to be going in on direction.

Q. Yes, but my point is that in this wall it's coloured with concrete?

A. Yes.

25 Q. The cracking in the brick wall that you were talking about didn't have concrete on it, is that what you say?

A. Yes.

Q. So if –

A. You couldn't see concrete, no.

Q. No. So if we now have a look at 382.0006.3.

30 **WITNESS REFERRED TO PHOTOGRAPH**

Q. And could we have the photograph enlarged please. Could we focus in on that wall to the left of the brick building please? So that's the

opposite side of the wall that we've just been looking at in that previous photograph?

A. That's correct.

Q. And it seems to be covered with that concrete substance as well?

5 A. Yeah.

Q. So is that how it looked when you saw it after the September earthquakes?

A. Doesn't seem right. This is Tasty Tucker here, right?

Q. That's right.

10 A. So that's where the other one came from, yeah. So correct me if I'm wrong, but where is the other wall, the wall that came in on us?

Q. You mean the wall with exposed brick?

A. Yes.

Q. Well that's lower down.

15 A. Yes, exactly.

Q. So you think probably you weren't – you didn't see exposed brickwork in the area where you're moving the mouse?

A. There had to be brickwork because it came down on our roof which is there, the brickwork.

20 Q. Well I suppose what I'm suggesting to you is at the time you saw it, it actually had this concrete material plastered on it so you couldn't actually see brickwork, so perhaps you're thinking about cracks in another area?

25 A. I know I saw bricks, but I'm just trying to work out where on earth – can we see the other one please, where the bricks are coming from the back?

Q. Do you mean the photograph of the –

A. Of the lean-to, that's the lean-to there isn't it at the back of that?

Q. Let's just bring it – 0009.6 I think is the photograph you're talking about.

30 **WITNESS REFERRED TO PHOTOGRAPH**

A. Yes, up here.

Q. Right, so that's in the west wall?

A. Yes.

Q. Right.

A. Yes, that's what came, yeah. Yeah, you can see bricks and you could see gaps up there.

Q. Could I have another photograph please, which is WIT.AVN.0001.6, no
5 I'm sorry, .8.

WITNESS REFERRED TO PHOTOGRAPH

Q. So this is a photograph taken again by the Australian loss adjustor after Boxing Day.

A. Yeah.

10 Q. When do you think that you – you came back from England in October.

A. October's correct, yes.

Q. And you were working there throughout October -

A. I was working through Christmas, October, yes.

Q. – to February?

15 A. Yes.

Q. Now I can't see any cracks in that area running down the –

A. See here where the mouse is here.

Q. Oh, I see what you're talking about. Yes, so the cracks were not actually in the wall.

20 A. Yeah.

Q. Right over Tasty Tucker.

A. Where I've got my mouse, yes.

Q. Just where you're talking about there?

A. Yes.

25 Q. Which is in the –

JUSTICE COOPER ADDRESSES COUNSEL:

Bottom right-hand side.

CROSS-EXAMINATION CONTINUES: MR MCLELLAN

30 Q. In the east wall facing the area that you could see from where you parked your car?

A. That's correct, yes.

COMMISSIONER CARTER:

- 5 Q. Well I interpret that to mean it was on the return wall to the side of 384, so the wall was returning around the back of the building and you are looking at the cracks in the building?
- A. Yes, you could look at the back.
- Q. Adjacent to –
- A. Adjacent to your door, yes.
- Q. Yes, 382.
- 10 A. Yes. That's correct, yes.
- Q. So just to repeat that what you observed were cracks in the rear wall but close to the wall between 380 and 384?
- A. That's correct, yes.

15 **COMMISSIONER ADVISED NUMBER 382**

- Q. 382, and that was a brick wall.
- A. That's correct, a brick wall, yes, definitely.

CROSS-EXAMINATION CONTINUES: MR MCLELLAN

- 20 Q. So we can see the guttering, I'm just going to show you one more photograph just to carry on this orientation. You see the guttering that runs just above that crack you're talking about?
- A. Yes.
- Q. Can we now have a look at 382.0009.5 please?

25 **WITNESS REFERRED TO PHOTOGRAPH**

- Q. Sorry to have to go into it in so much detail –
- A. No, no that's fine.
- Q. – but it's very helpful, your evidence is very helpful.
- A. As you can see from there, yes.
- 30 Q. So we saw the guttering so the crack that you were just talking about was where you have the cursor, so –
- A. That's correct.

Q. So in the area, and then one more photograph.

JUSTICE COOPER:

Q. That's to the right of the pipe?

5 A. Yes.

CROSS-EXAMINATION CONTINUES: MR MCLELLAN

Q. Of the downpipe.

A. Yes.

10 Q. Now .4 in the same series. So that crack's still there post February earthquake?

A. That's correct, yes.

Q. Did you see after the – about the 4th of February a red placard put on the brick building, 382?

A. No I did not. I was not aware of a red one.

15 1020

RE-EXAMINATION: MR ZARIFEH

Q. (inaudible 10.20.16) refers to cracks on the front of the building at the end where that wall is.

A. Yes.

20 Q. So they were on the Colombo Street façade though.

A. Colombo Street yes.

Q. But near the edge of the wall.

A. Near the edge of the wall, that's correct. You could see them, if you were crossing over from Colombo Street.

25 Q. I understand. So from what you've just said is that you saw cracks on the other side, if you like, at the back.

A. At the back.

Q. At the edge of the back near the wall.

A. At the edge of the back near the wall, that's correct.

30 Q. And just so we're clear the face of the wall, so the south side of the wall which had that –

A. Concrete.

Q. Concrete.

A. Yes.

Q. You didn't see cracks in that?

5 A. No, no.

QUESTIONS FROM COMMISSIONER CARTER - NIL

WITNESS EXCUSED

MR ZARIFEH CALLS**DAVID KIN MIN YAN (AFFIRMS)**

Q. Mr Yan can you give the Commission your full name please.

A. Yan Kin Min, also known as David Yan.

5 JUSTICE COOPER DIRECTS WITNESS TO SPEAK UP

A. Yan Kin Min, I've been known as David since I was about five years old.

Q. Yan King –

A. Kin Min.

Q. Yan Kin Min, known as David Yan.

10 A. Yes.

Q. And you reside here in Christchurch.

A. Yes.

Q. We're concerned in this hearing, as you know, with the building that was situated at 382 Colombo Street. Who owned that building?

15 A. My mother.

Q. What was her name.

A. Boi Fong Yan.

Q. Boi Fong Yan. How old is your mother, is she elderly?

A. She's 83 now.

20 Q. And did she own any other buildings in that block?

A. Yes the 384 building as well adjacent to 382.

Q. So the one to the north of 382.

A. Yes.

Q. And how long had she owned those buildings?

25 A. Probably about 40 years.

Q. What was your role in relation to the buildings?

A. Well after the earthquake I was basically looking after my mother's affairs.

Q. You'll have to keep your voice up.

30 A. After the earthquake I was basically helping out with you know doing the insurance claims and you know looking after whatever was needed.

Q. Right on behalf of –

**JUSTICE COOPER ADDRESSES WITNESS RE STILL HAVING
DIFFICULTY HEARING HIM
CHANGE OF MICROPHONE**

EXAMINATION CONTINUES: MR ZARIFEH

- 5 Q. So Mr Yan you were saying that you looked after insurance matters following the September earthquake for your mother.
- A. Yes.
- Q. Had you been, had you looked after the property before the September earthquake?
- 10 A. No.
- Q. And who had done that?
- A. My sister, Eileen.
- Q. Do you know if any work had been done on the building in the 40 years that your mother had had it? Any strengthening work?
- 15 A. No.
- Q. It hadn't.
- A. Hadn't had any.
- Q. So it was, is it fair to say it was in pretty much it's original condition apart from, obviously, refurbishment inside?
- 20 A. Yes.
- Q. Do you know if your mother gave any thought to strengthening the building in any way or had any advice on that?
- A. Well around about 2007 my mother was considering to refurbish the upstairs and make it a separate flat.
- 25 Q. And what happened in relation to that?
- A. Um, during the course of getting consent it was observed that the 382 and 382A building didn't have access to the street for the proposed plans that we wanted. We wanted to make the flat access from the rear and it was basically landlocked.
- 30 **WITNESS REFERRED TO PHOTOGRAPH 0009.3**
- Q. So that shows 382, the first two two storey blocks if you like, and then 384's the next one.

A. Yes.

Q. And 382 immediately adjacent to the Tasty Tucker Bakery.

A. Yes.

Q. So, sorry you said that 382 –

5 A. Was landlocked.

Q. Because you couldn't get access to the back flat from the front.

A. No well basically the intention was to provide, renovate the shops and to you know create flats on the upstairs floor and access and some parking space at the back and basically the access would have come through from Wordsworth Street across the shops on the north, back of the shops on the north. Basically 384 had access right but the access rights were never extended to 382.

10

Q. Right so you didn't go ahead with that?

A. Um, I think my brother was trying to negotiate with the owners of the shops in the north to try and get access rights.

15

Q. And did that occur or not?

A. We got a, I think there's one or two that had agreed but basically the others were...

Q. All right so the plan didn't pan out.

20

A. No.

Q. Was there also a requirement for strengthening?

A. Yes.

Q. And was that one of the reasons, the cost of that?

A. Well based on the cost of that and there was consideration to remove the building and redevelop.

25

Q. Because of the cost of the strengthening?

A. That plus being landlocked. If we redeveloped we may have been able to get some access from the Colombo Street side into the back.

Q. But none of that happened?

30

A. No.

Q. I just want to ask you about the events after the 4th of September then, 2010. You said you were looking after the building for your mother then. Did you go and inspect the building after the September earthquake?

A. Um, probably a few days after the earthquake we went to the building.

Q. And who's 'we'?

A. Um, my mother and myself, and I think I had my wife and child with me.

Q. And what was your general observation as to damage?

5 A. Well basically I didn't notice any real damage on the outside. The main, most of the damage was on the plaster work on the inside.

Q. And was that extensive?

A. Um, there was a fair bit of cracking in the plaster yes.

Q. And what about the exterior, the brickwork?

10 A. Um, basically I didn't see any, no any major damage. There was no fallen bricks there, you know.

1030

Q. Did you inspect the building on other occasions before the 22nd February earthquake?

15 A. Um, probably went you know as a casual walk by and things like that but not, not really going into detail to looking at it.

Q. Okay so a few days after September you went and looking at it in detail?

A. Um, well basically just to see that you know the building was standing and...

20 Q. Right, right, and did you not inspect it after that other than walking by on Colombo Street?

A. How do you mean?

Q. Did you not inspect it after September in any detail?

A. Well, um, following that I think Robert and I went in, Robert Ling and I
25 had a look, ah, just so that we can see exactly what damage was.

Q. Okay Robert Ling is an engineer?

A. Yes.

Q. And someone I think a friend of yours?

A. Yes.

30 Q. All right when was that inspection?

A. Probably about a week or 10 days following the September earthquake.

- Q. Right and what was on that inspection, tell us you know what was the, what type of inspection was it? Did you look on the outside and inside or...?
- A. It was both outside and inside.
- 5 Q. Right and what was your observations on that occasion?
- A. Well it looked pretty much the same you know, I – didn't look any different to the way we remembered it.
- Q. Okay so when you say pretty much the same the kind of damage you've just spoken of?
- 10 A. Yes.
- Q. You said in a written reply to the Commission that Mr Ling's assessment was that the damage to the building was superficial and repairable?
- A. Yes.
- Q. "He did not see any damage on the exterior of the building".
- 15 A. Ah –
- Q. "Damage was inside the" – this is what you've said?
- A. Yeah.
- Q. "Damage was inside the building. Cracking and broken plaster in the walls and ceilings throughout the building. A zigzag diagonal crack in the party wall between 382 and 382A."
- 20 A. Yes.
- Q. So that's internal?
- A. Mhm.
- Q. Right you said, "The damage was consistent with what you would get from an earthquake?"
- 25 A. Mhm.
- Q. So there was reasonable damage in the inside in the plaster?
- A. Yes.
- Q. Not superficial inside?
- 30 A. Well basically around the ceiling, just below the ceilings there was you know sort of looked like movement in the plaster.
- Q. Okay and the exterior was, he thought superficial and repairable?
- A. Mhm.

Q. What was the exterior damage? What kind of damage?

A. Um, I really can't remember.

Q. Okay well what, was there cracking?

5 A. Um, there may have been some cracking but a lot of it was over sort of old, um, joints so I'm not you know basically we, there was cracking but you know, ah, it may have been, it looked like there may have been weathering or something but you know I couldn't –

Q. May have been what sorry?

A. A weathering.

10 Q. Right. I'll just get you to have a look at some photographs then WIT.AVN0001.10.

WITNESS REFERRED TO PHOTOGRAPHS

Q. It will come up on the screen in front of you in a moment. This is interior, these are from Mr Avnell, so you see cracking in the plaster?

15 A. Yes.

Q. Okay and I'll get you to look at the next page .11? See the damage there?

A. Yes.

Q. You recall that?

20 A. Ah, yes.

Q. Or damage like that?

A. Similar to that yes.

Q. .12. Recall that?

A. Ah, yes.

25 Q. .13 please, recall that?

A. Ah, yes, similar to that.

Q. Recall that kind of damage?

A. Yes.

Q. .14, not sure what we can see there? .15, recall that?

30 A. Ah, yes but that, yes, that would have been in the dairy yes.

Q. Right. Next page please. So was there a dairy down in...?

A. Um, there was, that's the 382A building was the dairy.

Q. Right did that carry on after September?

- A. Ah, the, they, when my mother was thinking of doing renovation in 2007 she had all the buildings cleared out so the building, the dairy had moved on after around about 2007.
- Q. Okay, and the next page, do you recall that damage?
- 5 A. Ah yes.
- Q. And that, was that from the earthquake that damage?
- A. Ah, yes.
- Q. Okay, so does that show some of the damage from the inside that you're talking about?
- 10 A. The type of damage yes.
- Q. All right and just have a look please at 0009.6. This is a photo of the back of the building at 382. Do you recognise that?
- A. Yes.
- Q. Now this is taken after the February earthquake, I believe, so the cracking that we can see in that brick work, do you recall that?
- 15 A. Ah, yes.
- Q. When do you first recall seeing that?
- A. That may have happened around the, round the Boxing Day 'quake.
- Q. All right. And if you look at that photo you'll see where the 382 building meets the concrete block wall of the Tasty Tucker building?
- 20 A. Yes.
- Q. Where you're indicating now?
- A. Mhm.
- Q. Did you see, do you recall any cracking in the brick work of 382 in that area or up near that drainpipe?
- 25 A. Ah, no.
- Q. No okay. Was there any other cracking in the building in the exterior of the building similar to the cracking we can see at the back?
- A. Um, I think there may have been some around that area up there?
- 30 Q. Where are you indicating?
- A. Yeah, I think it was around a window frame, there may have been some but I'm –
- Q. In the, in where the upstairs or the ground floor?

- A. Ah, would have been yeah round the upstairs.
- Q. Okay so similar cracking?
- A. Mhm.
- Q. All right now did you say that in 2007 when your mother was thinking
5 about redeveloping or, redeveloping the property that there were,
tenants were moved out then?
- A. Yes.
- Q. And did it remain vacant from then on?
- A. The shops remained vacant yeah.
- 10 Q. What about upstairs?
- A. Um, they were, well basically there was no access so when the, ah,
from outside. They were attached as part of the shop and when the
tenants moved out the upstairs was vacated yes.
- Q. All right.
- 15 A. Because the tenants actually, um, rented the ground floor and the
upstairs.
- Q. Okay was any of the building occupied after September?
- A. Um, yes, um, when, after September?
- Q. Yes.
- 20 A. Ah, yes there was somebody living in the 382 building.
- Q. So that's the building immediate adjacent to the Tasty Tucker?
- A. Mhm.
- Q. Right. And that was upstairs?
- A. Um, yes.
- 25 Q. Right.
- A. They accessed the building from the back.
- Q. Right and who was that?
- A. Ah, some guy named John.
- Q. Right do you know his surname?
- 30 A. No.
- Q. Right.

JUSTICE COOPER:

Q. Was he paying rent?

A. I think he was paying a small amount of rent to my mother.

EXAMINATION CONTINUES: MR ZARIFEH

5 Q. Okay. And did you collect that rent?

A. Um, occasionally.

JUSTICE COOPER:

Q. How did he pay?

A. Ah, in cash.

10 **EXAMINATION CONTINUES: MR ZARIFEH**

Q. And did he have a tenancy agreement or not?

A. No.

Q. All right. And did he remain there 'til February?

A. Ah, yes.

15 Q. So was he in the building in the February earthquake?

1040

A. I'm not sure. He may have been around the back there?

Q. Now the building was yellow placarded soon after the September earthquake, correct?

20 A. Yes.

Q. And I think it was red placarded at a point after the Boxing Day?

A. I didn't know about that.

Q. But you thought that it was yellow placarded throughout?

A. Yes.

25 Q. Why did you let someone remain living in the building when it was yellow placarded?

A. Well basically I thought if he wasn't supposed to have been there the – somebody would have told him to leave, or –

Q. Right.

30 A. But –

- Q. When you mean someone, who, someone like the Council?
- A. Someone like the Council or the emergency – when they were doing inspections or whatever.
- Q. How were the Council going to find out?
- 5 A. I thought that would have – done – when they did their inspection would have went around the whole building.
- Q. Right, but they might not have gone inside, mightn't they?
- A. Well it never occurred to me about that.
- Q. What about the safety aspect if the building had been yellow placarded and I appreciate you might not have known exactly why, but it was because of potential danger from damage wasn't it?
- 10 A. My understanding was that the building to the north had collapsed and I thought that you know the danger was in the front, that the façade may have collapsed.
- 15 Q. So there was a potential danger to your building on your understanding?
- A. Ah not at the time, now I do.
- Q. Well I thought you said that's what you thought the building had been placarded for?
- A. Well the danger was on the – my assumption was that danger was access from the front.
- 20 Q. Right, the façade might fall?
- A. Yeah.
- Q. And what, he was accessing it from the back?
- A. Mmm.
- 25 Q. So hence what you're saying, you weren't that worried about it because of that?
- A. Well it wasn't that I wasn't worried, I think I had mentioned to him on a couple of times that you know, I believe you should be moving on.
- Q. Why did you believe that?
- 30 A. Well basically as you said, it was yellow placarded and so basically I didn't think he was meant to be there.
- Q. But you didn't ensure that he did leave because he obviously didn't?

A. No, I just gave him some advice that I didn't think he was – it might be an idea for him to look for other places to live.

Q. And you didn't tell anyone like the Council?

A. No.

5 Q. So just going back then to your inspections, you say you went with Mr Ling a week or so after the September earthquake?

A. Yes.

Q. And he said the exterior was superficial he thought?

A. Yes.

10 Q. And the interior was repairable as well?

A. Yes.

Q. And did he seem very concerned about it?

A. He didn't express any need, you know, immediate danger to him if that's what you mean.

15 Q. And what's the next step then or the next inspection that you made following that visit with Mr Ling?

A. Well I did make several visits there, it wasn't you know, it was basically I was in the area and I popped in, but as for you know a thorough inspection or whatever it would have been when the insurance you know, when it came to insurance claim time.

20

Q. Okay, so you put a claim in?

A. Yes.

Q. And Mr Avnell was from Cunningham and Lindsey, the loss adjusters?

A. Yes.

25 Q. So prior to that though, had you had any contact from the Council as to any of their concerns?

A. Well I didn't personally receive any, no.

Q. Or your mother.

A. Um, well basically if you're talking about the Council letter –

30 Q. 29 October.

A. Yeah.

Q. Right, that was a letter requiring work to be done wasn't it?

A. Yes I know that now.

Q. And the work wasn't done?

A. Yes.

Q. Can you tell us why?

A. Well basically I never received the – got the letter.

5 Q. And why was that?

A. Well the letter was mailed to my sister's address but it goes basically you know, my mother's 80 something years old and so my sister took it upon to you know, have access to all her mails and things like that.

Q. What's that address?

10 A. 133 Memorial Ave.

Q. So that was your sister?

A. Yeah.

Q. So she got the letter?

A. Yeah.

15 Q. Right.

A. During the Boxing Day period my brother was down from Auckland and she passed the letters to him to pass onto me, but somehow just – my brother forgot about it and they ended up in Auckland.

Q. What, with your brother?

20 A. Yeah.

Q. So the letter would have been received presumably early November, it was posted – it was dated the 29th October.

A. Well my brother was in Christchurch for about two or three weeks after, you know, starting around about – what's the October – is it Labour day
25 around that date of time.

Q. Right, what I'm asking is why did it take presumably two months before you got the letter?

A. I never got the letter.

Q. So it was never passed onto you?

30 A. No.

Q. Right, and why didn't your sister or your brother do something about it? Have you asked them?

A. I asked and I think my brother said he had them in a pile of stuff that he took back and it was just sat in that pile and he had forgotten about it, and I'd – he didn't remember until I called him up on receiving your letter. It was August 30 or 1st of September.

5 Q. Of last year?

A. Yeah.

Q. Okay, so were you aware of some propping being carried out on the verandah?

A. Yes.

10 Q. And that wasn't something you did was it, that was the Council?

A. Yes.

Q. And you weren't aware that they did that because they were having trouble getting hold of you?

A. No.

15 Q. You weren't aware of that?

A. No.

Q. Did they have your contact details?

A. No.

Q. So they weren't aware that you were managing the building post
20 September for your mother?

A. No.

Q. You didn't think of contacting the Council and telling them that given that you were the agent for your mother?

A. No I didn't.

25 Q. So did your mother or you own any other properties in that area?

A. My mother had this, basically three properties in Colombo Street in the Sydenham area, there's 490 Colombo Street, 382 and 384.

Q. And did you have any contact with Council about the other one, 490?

A. Well the first contact I had with the Council would have been on
30 February 22. I was in a meeting with Katie Smith regarding the 490 building.

Q. Were there problems with that?

A. Yeah, the façade on that, they wanted to dismantle or ...

Q. And was there any discussion about 382?

A. At the time, well basically the meeting was between Katie Smith, there was an engineer there, there was the landlord for the adjacent property, Mike Jones, and the property adjacent to that which is Mike somebody else.

5

Q. And was that Council chasing up because nothing had happened on these properties?

A. Well basically it was to try and – it was a follow up, yes.

Q. But you say that's the first contact you had with the Council?

10

A. Yes.

Q. And that was the 22nd of February?

A. Yes.

Q. The day of the earthquake?

A. Well personally for myself, yes.

15

Q. Was Mr Ling your representative in terms of the property?

1050

A. Um, yes, unofficially yes.

Q. So was he in contact with the Council as far as you knew?

20

A. He did mention at one time, not exactly the date but it may have been around November or December, that the Council would like to prop up the verandahs on the property and strengthen it. I think it was apply plywood or something on top.

Q. And did you contact the Council after you heard that?

A. No.

25

Q. Why not?

A. Well basically when Robert spoke to me it was basic just the wording sounded like 'information only'.

Q. So you put in a major insurance claim, Mr Avnell was the loss adjustor.

A. Yes.

30

Q. Did you visit the property with him?

A. Yes.

Q. When was that?

A. It would have been early January, I think about the 6th or 7th of January.

Q. And who else was present?

A. Robert Ling.

Q. So the three of you?

A. Yes.

5 Q. And what kind of inspection was it? Internal and external.

A. Internal and external. I think we even went up onto the roof to have a look.

Q. So was that the first time that there'd been that kind of thorough inspection?

10 A. Um, yes.

Q. And what was your observation or what did you take from Mr Avnell's inspection? Did he make any comments to you about the property?

A. Um, basically at the time he said, well after the inspection he said he was gonna recommend a full pay out.

15 Q. Why was that?

A. Well basically what he said was that, you know, given that the amount of insurance that my mother had the insurance company wouldn't be able to find somebody to do the repairs within that cost he said you know, well basically the building was start, whole plaster, lathe and plaster yes.

20 Q. So the cost of repairs was going to exceed what it was insured for?

A. Yeah.

Q. And did he make any comment about the damage itself?

A. Um, no.

Q. What was Mr Ling's role that day?

25 A. Well basically I wanted someone with me when I was talking to the insurance and he would advise on, you know, whatever damage.

Q. And was Mr Ling going to prepare a report on the building?

A. I believe Peter had asked him for that he would get him to do a report.

Q. So an engineering report on the building?

30 A. I'm not sure what kind of report. I didn't hear it.

Q. Has Mr Ling ever given you a report?

A. No.

Q. So that's early January that meeting?

A. Yes.

Q. And Mr Ling was going to give a report to Mr Avnell and to yourself?

A. I never requested the report, no.

5 Q. You said in your written reply that in early February 2011 Robert Ling called me to arrange access to the building for the purpose of estimating the cost to restore the building to pre-earthquake condition for the insurance company. Robert Ling tells me that this report is still pending.

A. Yes.

Q. So was that a report he was doing for Mr Avnell?

10 A. Yes.

Q. So you never saw any report or heard that there'd been one done?

A. No.

15 Q. So Mr Avnell is going to give evidence and he says, referring to a written statement from him, that went onto the roof and conducted an inspection. He made a note of some cracking in a wing wall on the south side so that's the south of 382. "The cracking appeared to be old. I recall seeing some hairline cracks in the parapet which appeared to be old shrinkage relating to cracks. It was on a tilt by about three degrees lean but going backwards towards the roof not the neighbouring property. I recall making note of the chimney which was also cracked but it showed signs of movement caused by natural settlement and age as well". Then he says a bit lower down "At the time of my inspection I was concerned about the wing wall which was displaying signs of age cracking. I considered it potentially dangerous". Now do you recall that?

25 A. I don't recall him actually mentioning it to myself.

Q. What about observations, do you recall seeing those things? Were you up on the roof?

A. I was up on the roof. I remember the chimneys did show signs of age.

30 Q. And, as you said, his view was that the building wasn't worth repairing so what was going to happen to it, demolishing it?

A. Um, we had talked about that. In fact demolition was an option that my mother had been considering around the 2007/2008 period. Yes

actually demolition and redevelopment had of been one of the options that was being considered around about 2007.

Q. But I'm talking about after the September earthquake and Boxing Day.

A. Well no final decision had been made but it was under consideration.

5 Q. And at that point 7 or 8 January when you were doing that inspection the tenant that you talked about was still in there?

A. He, let's see, I think aroundabout, he may have been using the premises yes.

Q. And had you asked him to leave before then or suggested it?

10 A. Yes I'd suggested that he leave. I was with my mother some time at the premises. I think it would have been around early December/late November and my mother had made the suggestion and I conveyed it on to him.

Q. Mr Avnell says in his statement that on that inspection he noted that
15 tenants were still in occupancy. So you say there was just one or were there more?

A. In 382 there was one.

Q. What about 384?

A. 384 I think there was two.

20 Q. And what was the sticker on that, the placard?

A. I believe the sticker was for the whole block. It was yellow.

Q. So what were those tenants? Were they tenants that had been in there before September?

A. Yes.

25 Q. Okay well had you spoken to them about leaving?

A. I had mentioned it to them that they should leave.

Q. And they obviously didn't?

A. No.

Q. And, again, as with the other one you didn't tell anyone or the Council?

30 A. No.

Q. So, in fact, the whole upstairs of 382 and 384 was tenanted?

A. Um, it was basically, I think John was living on the downstairs floor of 382.

Q. And Mr Avnell says in his statement that he recalls suggesting to you that it might be an idea if the tenants were asked to vacate. Do you recall him saying that?

A. Yes.

5 Q. So that was another reminder from someone that you should get the tenants out. Did you get them out after that? You didn't?

A. I believe that they moved out to the section at the back. There was a caravan there and they told me they had moved out.

CROSS-EXAMINATION: MR ELLIOTT

10 Q. Mr Yan I think you said that your mother cannot read or write English, is that right?

A. Correct.

Q. I don't mean to embarrass you but you can read English?

A. Yes I was born in New Zealand.

15 **WITNESS REFERRED TO DOCUMENT WIT.MCC.0008.7**

Q. Just highlight the top three paragraphs please. So this is a statement of evidence from Mr McCarthy from the Council. Have you seen this before?

A. Um, I looked at it last night.

20 1100

Q. I'm just going to ask you to tell the Commission whether or not what Mr McCarthy says here is accurate from the owners' point of view?

A. Let's see.

25 Q. So it says that the owner applied for a project information memorandum in February 2007 for a project to carry out internal alterations to create living quarters upstairs. Is that right?

A. Um, I believe that would have been Robert. Robert Ling would have done it I don't think we did it ourselves. I wasn't in New Zealand in 2007 because I was in Hong Kong.

30 Q. Do you know whether your mother initiated or authorised a project to carry out alterations to create living quarters upstairs –

A. Yes.

Q. – in 2007?

A. I knew about that.

Q. And Mr McCarthy says that the PIM advised that the building was a potentially earthquake prone building. Do you agree that the PIM was provided which advised that in 2007?

A. Um, I think you'd need to ask Robert on this because actually I wasn't here.

Q. Paragraph 31, "the owner applied for a building consent for the work in March 2007 but did not provide all the information required and the consent application was subsequently cancelled". Can you confirm that?

A. Um, again you'll have to ask Robert.

JUSTICE COOPER:

Q. Who would have been instructing Robert to do these things if it were not you?

A. Um, I think my brother Michael and my mother and Robert were the three parties.

Q. Michael's the one that lives in Auckland is he?

A. Yes, yes.

Q. Is he the one that's really responsible for your mother's affairs?

A. Well it's basically spread for day-to-day running. I think my, ah, my sister Eileen would have been you know the first point of contact.

CROSS-EXAMINATION CONTINUES: MR ELLIOTT

Q. And in paragraph 32 Mr McCarthy just refers to the report from Spencer Holmes which he says, states that the Council records provide no basis for assessing what appears to be a change of use of the upstairs tenancy at that time and he says in response to an application for the owner the Council issued the PIM to identify the building as potentially earthquake prone. The owner then applied for a building consent. The application was later cancelled at the request of the owner after the council asked for more information. Again are you able to confirm whether that's accurate?

A. Um, I think you need to ask Robert on that.

Q. Well if we turn to BUI.COL382.0018.1.

WITNESS REFERRED TO DOCUMENT

5 Q. If we just enlarge the paragraph beginning, "During the consent approval process". So this is an email from Mr Ling to the Royal Commission dated 18 October 2011 and he says "during the consent approval process the plan with strong request for details of strengthening so much was the requirement that the refurbishing idea was abandoned in favour of designing and building a new complex to
10 which multiple sketches were done and not proceeded because of problems with access right 382 Colombo Street to the right of way running at the back of the properties from 384 through to Wordsworth Street". Again do you agree with that or would we need to ask him?

A. Yes basically that's what I said before.

15 Q. And then document BUI.COL382.0002.1.

WITNESS REFERRED TO DOCUMENT

Q. Just highlight section B. Is that a letter from you to the Royal Commission?

A. Yes.

20 Q. And its contents are all true and correct, are they?

A. Yes.

Q. So in paragraph B you say that "the building had not been leased for business activity since the end of 2007 because at the time my mother wanted to make improvements to the building", and I take it they are the
25 improvements which Mr Ling –

A. Yes.

Q. – had referred to. And you say "after the building became vacant the building was vandalised and some – I think you mean squatter – used the building, some damaged caused. My mother allowed an
30 acquaintance John to use the flat at the back of the shop to provide some activity around the back of the building to deter the squatters and vandals from attacking and using the building. This arrangement was

casual and informal". And that's the person you've referred to today as John?

A. Yes.

Q. He was a residential tenant?

5 A. Yes.

Q. He was paying rent?

A. Yes.

Q. In cash to your mother?

A. Mhm.

10 Q. It just appears from that that your mother has allowed the property to be occupied by a residential tenant after 2007 when an application to allow residential use had been withdrawn. Could you comment on that?

A. I didn't know about anything, anything of that.

Q. Could Mr Ling assist with that do you think?

15 A. Um, I don't know if he ever conveyed that, um, basically my understanding was that, ah, you know, the building had previously been occupied as a residential thing. I didn't know it was withdrawn.

Q. So do you know anything about the business tenants who were occupying the front section?

20 A. Um, basically I think it was the Salvation Army they had occupied it up to 2007 that's for 382. 382A was as I said it was a dairy.

Q. Do you know whether the people who was using the ground floor as business were also living upstairs before 2007?

25 A. Ah, no, because Salvation Army I think they used the upstairs for storage, but, um, actually I'd grown up in the Sydenham area and I know, I can't remember who the tenants were originally, the dairy, 382A used to live upstairs so basically it was existing use. I didn't know it had been withdrawn.

MR ELLIOTT AND MR ZARIFEH CONFER

30 Q. Thank you Mr Yan. Secondly I just wanted to ask you a few more questions about the Building Act notice. This is the document which you didn't see?

A. Got lost.

Q. That's document BUI.COL382.0008.3.

WITNESS REFERRED TO DOCUMENT

Q. Firstly Mr McCarthy from the Council says that a copy of this document was placed on the front of the building?

5 A. Okay.

Q. Did you see the document on the front of the building?

A. I never noticed it.

Q. If we just highlight the section 2 at the top left-hand corner. So that's addressed to your mother?

10 A. Yes.

Q. And the address is 133 Memorial Avenue, Burnside?

A. Yes.

Q. Is it the case that your mother did not live at that address?

A. No she lives in Nelson Street.

15 Q. Yes. Mr McCarthy says that the letter was sent to that address because that was the address recorded by the Council for rating purposes.

A. That's correct.

Q. So was the person living at that address your sister dealing with matters such as the payment of rates?

20 A. Yes.

Q. So just so that we can understand the fate of this letter and Building Act notice, you say that the letter and notice was received at that address?

A. Yes.

Q. By your sister?

25 A. Yes.

Q. And did your sister open the letter?

A. I think she had opened it and noticed it was related to earthquake and then since my brother was there she pass it on to him because knowing that he would be popping over to see me.

30 Q. So she opened it. Did she do somewhat more than notice it was related to earthquake, for example see that it was a Dangerous Building Act notice with requirements upon the owner?

A. I don't think she would have known the difference.

1110

JUSTICE COOPER:

Q. The difference?

A. Well –

5 Q. The difference between what and what?

A. No, no, she would have noted the importance.

CROSS-EXAMINATION CONTINUES: MR ELLIOTT

Q. She would have noted the importance? She would not have noted the importance?

10

JUSTICE COOPER:

Q. Was she born in New Zealand too like you?

A. Yeah, she was born in New Zealand, yes.

Q. Speaks English?

15 A. Speaks English.

Q. Reads English?

A. Ah yes, but a lot of things she would convey back, confer with me so.

CROSS-EXAMINATION CONTINUES: MR ELLIOTT

Q. And so she gave that letter to your brother?

20 A. Mhm.

Q. Who then put it in a bag?

A. Well he said it was some other stuff, I presume it was in a bag.

Q. And the bag went to Auckland?

A. Yeah.

25 Q. And sat in a cupboard?

A. Yeah.

Q. Until after 22 February?

A. Yes.

30 Q. Were you dealing – you were dealing with Mr Ling in the period after 4 September?

A. Yes.

Q. Did you ever say to Mr Ling, "Please when you carry out your inspections would you ensure that this building presents no danger for those in and around it"?

A. I didn't use specific words, no.

5 CROSS-EXAMINATION: MR LAING

Q. Mr Yan, you say that the first time you had any contact with the Council was on 22 February 2011. Is that your evidence?

A. Yes.

Q. Can you have a look at BUI.COL382.0002.2 please?

10 WITNESS REFERRED TO DOCUMENT

Q. Could I have the last paragraph highlighted. I'll need to take you over the page too but we'll start with this one. Just while you look at the last sentence on that page, "We had about three or four discussions with Katie Smith at the Council, who was working with," and I'll bring the next page up please – "building owners in Sydenham to resume normal traffic operations through Sydenham along Colombo Street. We think that that these conversations were in November/December 2010 and January 2011." Well were they conversations that you had with Katie Smith personally?

20 A. No.

Q. Well who had those conversations?

A. They contacted my brother Michael.

Q. Michael.

A. Yes.

25 Q. And was he dealing with those matters at that time?

A. Well basically I didn't know what was actually discussed during those meetings but you know, he was the one that answered those – in those conversations and he said that, you know, that those, are conversations had occurred.

30 Q. So he told you that he'd had conversations with the Council?

A. Yes.

Q. And what were those conversations about precisely?

A. Basically was with trying to get traffic running down Colombo Street.

Q. And do I assume from that the Council wanted you to – or your mother to fix up her property so the cordon could be removed?

5 A. I don't know the exact details of what was said during those – that conversation, all those conversations.

Q. Could I ask you to look at BUI.COL382.0007.1.

WITNESS REFERRED TO DOCUMENT

10 Q. Could I have enlarged the bottom email please, and from about halfway down the page. This is an email from Esther Griffiths at the Council to – it's an internal Council email, "Good morning, we've attempted to no avail to contact the owner of the above properties. Katie Smith, S & P managed to make contact with the owner's representative Mr Ling this morning. Apparently nothing has been done about these properties and no indication of urgency was given by Mr Ling." Are you saying that you
15 knew nothing about attempts to contact your mother?

A. No. I don't – didn't know that the Council was trying to contact. No.

Q. So when you had your meeting on February 22, what was the nature of the conversation you had with Katie Smith on that day?

20 A. Basically the meeting was with the landlords of the 490 to 494 building, to fix the façade or make some, you know, get some agreement as how to approach the insurance companies and things like that to fix the façade, or to make safe the building so that they can open up Colombo Street for traffic.

25 Q. Can we come back to the propping of the building, you were aware the building had been propped?

A. I'd seen some metal poles propping up the front.

Q. Why do you think the building had been – the verandah had been propped?

30 A. I just assumed that there was a fear that the façade may fall down on the street.

Q. Didn't you think that you had some responsibility or your mother had some responsibility to take steps to secure your building rather than simply leave it with the Council?

- A. The thought never occurred to me at the time, but the work had of been done and so I presumed it was ...
- Q. You were quite happy simply to leave it to the Council to have the building propped, notwithstanding you knew that it was potentially an unsafe building?
- 5 A. Well I didn't know it know it was potentially unsafe building, only that the Council had thought it was necessary to prop it?
- Q. Well why do you think the Council would prop the verandah unless there was some issue about the safety of the building?
- 10 A. I really don't know.
- Q. You knew the building was yellow placarded at the time?
- A. Yes.
- Q. What do you think that meant?
- A. Well basically it was not okay for normal use. It was okay for limited access I think it was.
- 15 Q. Well if it's not okay for normal use, wouldn't that suggest to you that the building was potentially unsafe?
- A. I suppose you can draw that ...
- Q. Well would you draw that assumption please, answer the question?
- 20 A. Um, yes.
- Q. Thank you. Now I just want to ask you some questions around the two buildings. There was 382 which was formerly occupied by the Salvation Army, is that correct?
- A. Yes.
- 25 Q. And there was the area at 382A that was formerly occupied, formerly occupied the dairy?
- A. Yes.
- Q. With the dairy tenancy, was the upstairs fitted out with a kitchen and bathroom and things of that nature?
- 30 A. Well the – basically that lean-on that you saw in the photo, that's where the kitchen was. The bathroom was upstairs.
- Q. Yes, so it had a bathroom and a kitchen?
- A. Yes.

Q. And what about 382?

A. It was the same.

Q. So both properties had a bathroom and a kitchen?

A. Yes.

5 Q. Now just going back to September 2010, was your evidence that you asked Mr Ling to come and make an inspection of the property?

A. Yes.

Q. Did you ask him to provide a comprehensive report about the state of the property?

10 A. No.

1120

Q. You were however concerned enough to ask him to come and make an inspection weren't you?

15 A. Well basically I want an understanding of the damage, basically for insurance reporting and things like that.

Q. But you weren't concerned enough to ask him for a detailed engineering report. Is that your evidence?

A. I didn't, no.

20 Q. After the building had been propped, did you then consider asking Mr Ling for a comprehensive engineering report?

A. No.

Q. You had a meeting on site in December with the assessor with Mr Ling. Did you ask for an engineering report at that stage?

A. No.

25 Q. And I think it was your evidence that in January when you went back to the property your expectation then was that Mr Ling was to provide a report to the assessors. Is that your evidence?

A. Yeah, based on the assessor's request.

30 Q. So you were never personally concerned enough about the state of the property to ask Mr Ling to provide a report to you?

A. Well basically it was verbal – all the reports had been verbal, you know, giving his assurance that he felt the property looked okay.

Q. You didn't think that you or your mother, or your family had any personal responsibility to make sure the building was safe?

A. Well he'd – well basically he was there to – if he saw an issue I believe he would have given me recommendation that it was not safe.

5 Q. Yes. And what would you have done at that stage?

A. Well we'd need to do some work, work out what to do next.

CROSS-EXAMINATION: MR MCLELLAN – NIL

RE-EXAMINATION: MR ZARIFEH – NIL

10 **COMMISSIONER CARTER:**

Q. Yes I wonder if we could look at the exhibit BUI.COL382.0003.11, a copy of the title. I wonder if you could highlight the first of the descriptive work on the right-hand side of the page, in the centre. And the top of that description talks about the transfer of party wall rights over part of the – apportion a pertinent property. Do you know the existence of party wall rights on your property?

15

WITNESS REFERRED TO DOCUMENT

A. How is that again?

Q. Do you understand that your property at 382 had party wall rights associated with it?

20

A. I think my brother had mentioned something like that to me once. I don't understand what it means.

Q. Okay, so we had better ask another perhaps – but the party wall rights are associated with the adjoining owners as to what – whether you share the rights to a wall.

25

A. Okay.

Q. And because these properties were part of a long row of buildings I just want to understand to which walls the party rights applied and you can't help us with that?

30

A. No. I would – if that's the case I'd assume that – if you're saying it's a shared brick wall or something like that –

Q. Yes.

A. – 382 and 384 would have had a shared brick wall, so it's 382A and 384, and then 384A and 386 would have had a shared wall.

Q. So you think those rights applied to the buildings going further north?

5 A. Yes.

Q. But not to the 380 – 380 property?

A. That one I don't know.

JUSTICE COOPER:

10 Q. Mr Yan, what's your occupation?

A. I'm not working at the moment.

Q. When you were working what did you do?

A. I was a computer systems analyst.

Q. And do you own properties in Christchurch or elsewhere?

15 A. Myself and my brother and sister own jointly the Seven Riccarton Road property.

Q. And any other properties?

A. Seven and Nine, that's all.

Q. And how many properties did your mother, or does your mother own?

20 A. The three on Colombo Street.

Q. And what's your brother's occupation, your brother David who lives in Auckland?

A. Michael in Auckland he –

Q. It's Michael is it?

25 A. Yes, yeah, he was a barrister.

Q. And does he no longer work either?

A. At the moment no.

Q. And where do you live?

A. I live in Christchurch on Clyde Road.

30 Q. Where?

A. Clyde Road.

Q. And your mother needed help in managing her properties?

A. Yes.

Q. And were you the one that helped her in that respect?

A. In what respect?

Q. Well to look after her properties?

5 A. Basically since I was not in – I've been out of the country for about 20 years, my sister had taken over that role as primary contact.

Q. But it seems that when she received notices from the Council she handed them on, or she wanted to hand them on to you.

10 A. Well basically after the earthquake I was looking after the earthquake related stuff so since she would have seen that was earthquake related it would have been passed on.

Q. So was that – which earthquake are you talking about?

A. September.

15 Q. So with the September earthquake, there was an aspect of your mother's affairs which then effectively became your responsibility. Is that the way it was?

A. Correct.

Q. I see. Thank you. You are excused now but I don't want you to leave until after Mr Ling has given his evidence, all right.

A. Okay.

20 **WITNESS EXCUSED**

COMMISSION ADJOURNS: 11.29 AM

25

COMMISSION RESUMES: 11.44 AM

MR ZARIFEH CALLS:

PETER ADRIAN AVNELL (AFFRIMED) (VIA LINK AUSTRALIA)

- 5 Q. Mr Avnell, can you see and hear me?
- A. Yes I can.
- Q. Can you give us your full name please?
- A. Peter Adrian Avnell.
- 10 Q. Mr Avnell, have you got a statement in front of you that's dated 23
November 2011?
- A. I do.
- Q. And I think it's four pages and two lines into a fifth page, correct?
- A. Correct.
- 15 Q. Can I ask you to read that out. You can do it at reading speed, it's not
being recorded, and when I get to a part where you have got to refer to
a photo or something I'll stop you, okay?
- A. Okay. My name is Peter Avnell. I am 60 years old and a Chartered
Loss Adjuster. I have been working in the insurance industry for over 40
20 years. I set up my own Loss Adjusting Company about 30 years ago,
although it wound up and I became an employee of Cunningham
Lindsey in 2006. I am a senior adjuster with that company. In 1989 I
was actively involved with the assessment of earthquake related
25 damage to the city of Newcastle, just north of Sydney. It was hit with an
earthquake registering 5.8 on the Richter scale, from memory. There
were over 45,000 properties damaged. I was personally involved in the
management of about 1300 and it took over three years from beginning
to end to manage those claims. In 2010 I went to Kalgoorlie in Western
Australia, which was struck by an earthquake, which registered 4.2 on
30 the Richter scale. It damaged about 1000 properties. I assessed about
160 with 40 still current. I had visited Christchurch in November 2010 to
assist with earthquake related claims following the first tremor in
September. I spent about 14 days and inspected about 50 properties. I
returned to Christchurch in early January 2011 after the Boxing Day

earthquake and spent 10 days in the city and inspected another 40 or so. The claims I managed in Christchurch ranged from relatively minor stock loss matters, some rural claims but most of my time was spent in and around Christchurch. I believe that I am the only Australian adjuster that had two tours of duty in Christchurch. The largest claim that I inspected involved a five storey commercial property in the CBD, where I had placed an estimate to repair it at 4.2 million dollars. Of the claims I inspected I would have recommended to the insurers that about 40% of the properties be considered as technical total losses. On the domestic front this was mainly due to the influence of the liquefaction more than the extent of structural damage to the properties. Earthquake claims are not a common phenomenon in Australia, but with my experience dating back to 1989, I would be fairly confident in suggesting that I've handled more earthquake related claims than any other adjuster working in Australia today. My experience however, would pale in significant when compared to New Zealand based adjusters. As with most claims we were simply given a manila folder with a name and address on it and that is where we start. When I first went to Christchurch in November 2010, I picked up three files where Mr Yan was the property owner. His properties were situated at 490 Colombo Street, 384 Colombo Street and 382 Colombo Street. The only point of contact I had was the insured's son David and I had a little trouble getting a hold of him. I conducted a preliminary inspection of the properties in the absence of any other party and this was primarily to familiarise myself with the buildings involved. All three buildings had barricades across Colombo Street. It was apparent at the time that all three properties appeared to be vacant although this did not prove to be the case. At the time of my initial inspection I was concerned about all three properties. It was quite apparent that the awnings at the front of the buildings had bounced and were unstable. I could not detect any sign of significant cracking to the external façade of the buildings as they faced Colombo Street. The property adjoining 490 Colombo Street and being a neighbour of the insured, appeared to be badly damaged

and all indications were that it was to be demolished. This did prove to be the case. I was concerned about the influence this would have on 490 Colombo Street. At the time of my initial external inspection I could not examine the rear of the buildings nor gain access to the interior. I departed Christchurch but maintained contact with David Yan and informed him that I would be returning to Christchurch shortly after Christmas, indeed one of the reasons I went back was to have a look at all three properties owned by this client. Communication with David had established that he had engaged an engineer to inspect the properties and we organised a joint meeting to take place which included myself, David and the engineer. The first building we inspected was 490 Colombo Street. By January 2011 the adjoining property had been demolished. We were able to gain access to the interior of the building. The lower level shop had been vacant. There had been tenants in the upper level although they vacated after the September 2010 earthquake. This building appeared to be in relatively good condition and indeed the upper level quarters had been renovated prior to the 2010 earthquake. As a result of my inspection of this building, keeping in mind that it was not only affected by the September 2010 event but also the earthquake on 26 December 2010 and the demolition of the neighbouring building, I considered it to be a total loss, that being beyond economic repair when considering the sum insured. In the company of both David and the engineer, I then inspected the properties at 382 and 384 Colombo Street. As far as 382 Colombo Street is concerned, I noted the tenants were still in occupancy. This building was showing its age. There were indications of old settlement and movement in the brickwork at the rear of the building and this was reflected inside as well. It was also quite evident that the two earthquakes had caused cracks to the internal walls. This is shown in the photographs attached.

EXAMINATION CONTINUES: MR ZARIFEH

Q. And they are the ones that you forwarded to the Commission?

A. That's correct.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

5 A. Internally the condition of the both the residential quarters and the shop left a lot to be desired. It seemed to me that there had been little money spent on the building over a long period of time. In the company of the engineer and David Yan, we ventured onto the roof and conducted an inspection. I made note of some cracking in a wing wall at the southern side. Here I've got see photographs.

Q. Have you got that photograph in front of you or not?

10 A. I do.

1154

Q. And is it, just so that we're looking at the same photograph, has it got a reference on the top WIT.AVN0001.6? It may have not.

A. Sorry could you repeat that?

15 Q. WIT.AVN0001.6.

A. I don't have that reference on the copy I have, I can show you the photo.

JUSTICE COOPER:

Q. If you just hold it up then.

20 **EXAMINATION CONTINUES: MR ZARIFEH**

Q. Thank you.

A. Can you see that okay.

Q. Yes, and we got –

25 **JUSTICE COOPER:**

Q. Yes we can. Has that got another reference on it which might be 2010.0101-06.jpg?

A. That's correct.

Q. Okay, so he's got his numbers, but not our ones.

30 **EXAMINATION CONTINUES: MR ZAFIFEH**

Q. So that's the wall that you're referring to?

A. That's correct.

Q. And the crack in the wall, the cracking, can you just point that out to us, or describe it?

A. It's in the centre photograph.

5 Q. And is it a horizontal crack?

A. It's adjacent to – sorry.

Q. Is it a horizontal crack adjacent to where the downpipe is held into the brick?

A. That's correct.

10 Q. Thank you. So you're at the second paragraph on page 3, "this cracking."

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. This crack appeared to be old. I recall seeing some hairline cracks in the parapet, which appeared to be old shrinkage related cracks. It was
15 on a tilt by about three degrees lean but going back towards the roof, not the neighbouring property.

EXAMINATION CONTINUES: MR ZARIFEH

Q. And if we can just stop you there, when you talk about hairline cracks in the parapet, can you describe where they were?

20 A. Yes. They're mainly on the top of that wall, it was cement rendered.

Q. Right.

A. And they were generally just hairline cracks through the render.

Q. And were they new cracks or old?

A. Old.

25 Q. And if you look at photograph, your reference number, I'll give ours first, WIT.AVN0001.8, and your reference Mr Avnell is 2010010104.jpg.

A. Yes.

Q. Does that show the wall, southern wall at the end, wing wall at the end?

A. Yes it does.

30 Q. Can we see the tilt you mentioned or not in the photograph?

A. I think that the best point of reference for that tilt is with the downpipe.

Q. Right.

A. The photograph is a little bit misleading but you can see that the downpipe is on a two to three degree tilt and that's going back towards the insured's property.

Q. So following the wall itself, the downpipe?

5 A. Yeah, yeah.

Q. Thank you. Do you know when that tilt might have occurred, could you tell or not?

A. I couldn't really hazard a guess as to when it might have developed that degree of lean. My general impression now and then was that it was probably quite old. I could not detect any sign of fresh cracking around the base of that wall and indeed the old crack didn't appear to have been exacerbated by the recent earthquakes. I must admit however that I did not get up close and personal with the crack, that particular crack.

15 Q. Right.

A. I was looking at three buildings overall, being in company with two other persons and I was getting a good general overview of the extent of the influence that the earthquakes may have had on these buildings so I could report back to the insurer and give them an idea of what they were up against.

20

Q. Thank you, can I ask you to carry on reading from the third paragraph, "I recall."

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. I recall making note of the chimney, which was also cracked but it showed signs of movement caused by natural settlement and age as well. I then inspected the property at 384 Colombo Street and noted extensive cracking to the external masonry and internal linings. At the conclusion of my inspection I formed the opinion that both of these buildings were beyond economic repair when taking into account the sum insured. I asked the insured's engineer if he would be kind enough to prepare reports on the extent of damage to all three properties and provide them to me, so that I could pass them onto the Insurer for their consideration. At the time of my inspection I was concerned about the

25

30

wing wall, which was displaying signs of aged cracking. I considered it potentially dangerous. I was however keen to obtain reports from the engineer so that I could advise the insurers on quantum issues.

EXAMINATION CONTINUES: MR ZARIFEH

5 Q. Can I just ask you there, the wing wall is the wing wall that you've referred us to?

A. That's correct.

Q. And can you just tell us why did you consider it potentially dangerous?

A. It was already cracked, it was on a tilt and whilst it had already
10 weathered two fairly significant earthquakes I was concerned that there was a potential for further problems with it, and the same applied to the chimney.

Q. And the chimney is part of –

A. It's not a building which – sorry.

15 Q. I just said the chimney you're referring to, was that part of that wall that we can see in that photo?

A. No, you can see the chimney on one of the other photographs and a closer view on photo 05. That's more towards the middle of the building.

20 **JUSTICE COOPER:**

This is our suffix 1.7.

EXAMINATION CONTINUES: MR ZARIFEH

Q. All right, we're looking at that now. Thank you Mr Avnell, if you can carry on please. "I was however."

25

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. I was however keen to obtain reports from the engineer so that I could advise the insurers on quantum issues. During my meeting with David Yan I informed him that from my perspective all three buildings were a
30 total loss and I would be recommending that the claims be settled on a cash basis, as there was simply insufficient funds available under the

contract for the insurers to do anything else. There were no discussions that I can recall between myself, David Yan or the engineer about any emergency work that would be required or any fears of imminent danger, although I do recall suggesting that it might be an idea if the tenants were asked to vacate. With properties such as these, when they are considered as a technical total loss, we have some fairly standard procedures we must follow. Apart from reporting to the insurer on our findings and opinions, we then seek to support those thoughts with an opinion from a qualified expert, thus the need for an engineer's report. The insurer or the adjuster, will then arrange for a valuation to be obtained. This is not necessarily a quote to repair the building, but more a valuation on the current day replacement value, for we need to demonstrate that the sum insured is exhausted. Such a valuation was obtained. To my knowledge a report from the engineer was never forthcoming. Other procedures one would follow would be to obtain Title Deed documents and thereupon negotiate settlement on a cash basis. Once that is achieved the insured would need to make their own arrangements regarding demolition and clearing the site. Where a property is considered as a total loss, the insurer would not take this step on behalf of the insured without consent or agreement to do so from the property owner.

1204

I might also mention that I have grave concerns about three other properties in Christchurch following my tour in January. One was a two storey commercial building. The adjuster whom originally inspected it estimated repair costs at \$25,000. After the Boxing Day earthquake I recommended it to be written off at \$650,000. I also inspected a five storey commercial building in the heart of the CBD. The original adjuster recommended a reserve of \$75,000. My reserve, after re-inspection went up to 4.2 million dollars. I was also concerned about another property at Lyttelton. It was a two storey commercial building with a flat above. It had significant damage to a parapet wall. I am told by the owner that following the February earthquake that building is now

5 earmarked for demolition. I allude to these three matters for, in all honesty, they were the ones I was most concerned about for safety reasons. Apart from the property at Lyttelton I am not aware of the fate of the other two. At the time of my meeting with the insured's son and engineer I did advise that in my opinion, all three buildings were beyond economic repair and I would be reporting to the insurers to that effect. However, as there were components of the buildings used for domestic purposes, the EQC would have jurisdiction over all three buildings. Until such time as EQC had conducted their inspection and determined their liability and appropriate course of action, there was nothing more I could do other than to requisition a report from the engineer, obtain a valuation and do a title search. I was compelled to send the files back to New Zealand before any of that documentation was in place. That would have been in February, only a matter of weeks after my inspection. The buildings were knocked about by the September 2010 quake and the one on Boxing Day was almost as big but a lot closer and more shallow. If the wing wall was to collapse, I would have expected that from the Boxing Day event. Please keep in mind that my inspection took place after the second major event. I was concentrating on the damage to the buildings as a whole. I did not ask the engineer if he thought that any emergency make-safe was necessary, nor did he suggest this either. I do not recall making any specific reference to the integrity of the parapet or wing wall during my discussions with the engineer. Even if he had, I would have had to communicate this to EQC and the insurers before anything could be done.

EXAMINATION CONTINUES: MR ZARIFEH

- Q. Thank you. Can I just ask you, you told us about concerns for the potential danger posed by that wing wall and that you were keen to get a report from the engineer Mr Ling.
- 30 A. I was going to get a report from the –
- Q. I was just going to ask you Mr Avnell, is the report that you were expecting, was that a structural damage report?

A. Yes it would have been and it may have also included the scope of works.

Q. And you told us that you had suggested that it might be an idea if the tenants were asked to vacate. Why did you suggest that?

5 A. The buildings were in pretty poor shape. They were cordoned off at the front and I didn't think it was a safe place for people to be living.

Q. And who did you suggest that to?

A. I can vaguely recall mentioning it to David and even the tenants but it was only a passing comment.

10 Q. Do you recall David's reaction or response?

A. No I don't recall a response from either party.

CROSS-EXAMINATION: MR ELLIOTT

Q. Mr Avnell, can you hear me?

A. I can.

15 Q. I'm just going to ask you a question about the Newcastle earthquake. You said there were 45,000 properties damaged and in your case you were dealing with about 1300 and that took three years to deal with those.

A. That's correct.

20 Q. Was there an aftershock sequence following the Newcastle earthquake?

A. There were minor aftershocks for a matter of weeks but that was all. None of significance and none that would have caused significant additional damage other than the first earthquake.

25 Q. Do you know how you and engineers and/or local authorities were determining whether buildings were acceptable to occupy after that first earthquake?

30 A. Generally speaking the authorities made that call. By the time I got there which was in November, two months after the earthquake, a lot of properties were already cordoned off or being demolished. I personally don't have any jurisdiction over whether a person should be living in a property or not. I can make an observation and suggest for their own safety they might think about moving out. Of course finding alternate

accommodation in Christchurch at any stage after that first earthquake would have been very difficult for anybody.

Q. I'm just going to ask you to identify where one or two of these photographs were taken that you've referred to in your evidence?

5 A. Sure.

Q. I'll refer you firstly to, it's your number 20100101-09 and our number WIT.AVN.0001.9. So your number 20100101-09.

A. I believe I have two photos with that number on it. If I hold that up, is that the photo you refer to?

10 Q. Yes, that appears to be the one. Just wondering if you can tell us what part of the building that relates to?

A. That would be inside either 282 or 283, I can't recall exactly what part of the building that was but it would be. It looks to me as though like a ground floor brick work.

15 Q. You couldn't say whether it was the north or the south for example?

A. No, no, I can't recall exactly where that one fits in. That's not the property at 490. It's one of the other two and quite frankly these photos were a little mixed up at my end so I might have a little difficulty identifying exactly where each one of them fits in. Just as an example,
20 here's the other one with the 09 number on it and that's a that's a closer view of a problem with the rendered wall. I'm 99 percent sure that was in 382.

1214

Q. Would you hold that up please?

25 A. And that shows a closer view of the step cracking through the render and exposing the brickwork.

JUSTICE COOPER:

Q. Yes, that's our number –

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

A. When you have a closer look

Q. Just pause there please Mr Avnell for a moment, so that's our reference 0001.10 and can you just in your summary, can you tell us where in the building that was?

5 A. I'm sure this is in number 382. It is an internal photo and I believe it is in the brick wall dividing 382 from 384. That would be towards the middle of the building. The concern with this photo is that there's all this cracking in the render but it's what's underneath that concerned me because when you look at the brickwork you can see where – there's not – there's places where mortar is missing altogether and that was
10 lime mortar from memory which is – it gets very soft with the passing of time and it's very hard to repair or re-brick areas where you've got lime mortar because what you see in one location is going to be reflected pretty much across the whole span of that wall.

Q. Thank you. Are you able to tell us which of the other photographs that
15 you have there relate to 382 and if so what part of the building they portray?

A. I don't want to mislead anybody, and the photos that I have could have
20 been taken in either of those two buildings. In all honesty the ground level and the upper level, residential quarters were almost identical as far as the nature and extent of damage was concerned, so the cracks you see in these photos are typical of both. I can't say categorically whether one was in one particular side of the building or the other. The only way I could do that is to go back to my own computer records or have access to the file that I sent to the insurer which did have them
25 segregated.

Q. Can you recall any cracking on the internal south wall of 382?

A. Effectively every wall and every ceiling had cracking. I can't be much
30 more specific than that. In the lower level shop of 382 I seem to recall there was panelling around the wall. Now I might be confusing that with the property next door. Please keep in mind that as I'm walking through the two buildings with the engineer and David Yan, we were walking from room to room reasonably quickly. I'm taking some quick notes about general cracking in particular, both upstairs and downstairs and

we move from one to the other. We spent maybe half an hour inside each building and probably half an hour or so on the roof and that was enough from my perspective to be able to compile a report and raise concerns with the insurer about the extent of problems that we had with those two buildings.

5

Q. Would you mind sending those notes to us please.

A. Which notes are those?

Q. I thought you said you made some notes.

10

A. They would be on the file that I sent back to New Zealand. I don't have any file at all. I had to send the original file back and they were my scribble notes if you like. You'd find it very hard to read.

Q. You mentioned that a valuation was obtained. What was the valuation of 282, sorry 382?

15

A. I don't know. I understand that valuation was obtained. I think when I spoke to my colleague in New Zealand who had taken over the file that a valuation had arrived but I don't know what it was.

Q. Do you remember how much 382 was insured for?

20

A. I can only guess, I think it was around the 320 mark, something like that and that would be consistent for all three buildings, about the same amount.

CROSS-EXAMINATION: MR LAING AND MR MCLELLAN – NIL

RE-EXAMINATION: MR ZARIFEH – NIL

QUESTIONS FROM COMMISSIONER CARTER - NIL

25

WITNESS EXCUSED

MR ZARIFEH CALLS**ROBERT GOH HUNG LING (SWORN)**

Q. Mr Ling, can you give the Commission your full name please?

A. My full name is Robert Goh Hung Ling.

5 Q. You reside here in Christchurch?

A. Yes I do.

Q. And can you tell us your qualifications please?

A. Bachelor of Science in Physics Mathematics and Bachelor of Engineering and Chartered Professional Engineer.

10 Q. And am I right that your Bachelor of Engineering was from Canterbury?

A. Yes.

Q. How long have you been working as a structural engineer?

A. I qualified 1974 and I've been doing structural engineering predominantly since that time.

15 Q. I want to ask you as you know about the property at 382 Colombo Street.

A. Yes I do.

Q. I think you're a friend of Mr David Yan who has given evidence and whose mother owned the property?

20 A. Yes.

Q. How long have you known the Yan family roughly?

A. About 36, 37 years.

Q. And can you tell us when was your first involvement with that building, the 382 and 384 Colombo Street?

25 A. The first involvement was when they put in a concrete floor in one of the building. I think that was in the year 2000 I think. Then about 2006 or five, I got involved in economic study of the properties.

1224

30 Q. Just firstly, the concrete floor, where was that, which building, which premises?

A. I am not too sure, but in one of them the floor was rotten so put in a concrete floor at ground floor.

Q. The ground floor, okay. Then in 2006 did you say or 2007 you were involved. Was that looking at a redevelopment?

A. Correct.

Q. Did Mrs Yan who owned the property want to redevelop it?

5 A. Mrs Yan wanted to make use of the shop, upgrade the shop so that it looks a bit better and also use the upstairs as apartments because inner city living has become more and more popular.

Q. So were you involved in, what, drawing up plans for that?

A. Yes, we were involved in the total planning of the whole job, yes.

10 Q. Including applying to the Council?

A. Yes.

Q. Did that involve a change of use or not?

A. Yes.

Q. Why was that?

15 A. Well in actual fact I argued with the Council. The Council thinks a change of use but I argue that it has always been used as residential upstairs so the change of use, anything would be very minimal. The main reason with the potential use is in terms of car parkings and things like that and fire separation and things like that so they no issue
20 anyway.

Q. But in any event the Council requirement I think was for substantial earthquake strengthening?

A. We know that anyway. We have proposed substantial earthquake strengthening and the whole project was abandoned, not for a lack of
25 information supplied to the Council, because information was supplied to the Council on 2006, December 2006, on a plan but they asked for more details and it was then when we did a feasibility study and found that the cost of strengthening is very, very high and not economic and that's when I instructed or advised Mrs Yan that we pull the plug
30 because it taking too long and getting too expensive.

Q. So firstly, can you tell us roughly what was the cost of strengthening going to be?

A. Well, it come up to about 200 to \$300,000 just to strengthen the four shops.

Q. And your reference to it not being abandoned because you didn't provide information, is that a reference to Mr McCarthy's statement?

5 A. Well, Mr McCarthy with all due respect was not really involved in the project so he can only read the result at the end of it, so any time when there's information being asked then if it's not given then it's lack of information been given, so ...

10 Q. So you're saying that it was abandoned because of the cost of the strengthening was too much.

A. Yes, yes it is.

Q. Was there any other proposal then for the building?

15 A. I had drawn sketches to build a brand new building also, correction, also we abandoned because the Council actually insisted that we haven't got access to the right of way at the back of all the shops fronting onto Colombo Street between Wordsworth Street and the subject property and without that you cannot have access to the flats at all or the car parking area for the flats and even for commercial property downstairs. We argue on existing use rights but the Council planning department was quite determined that it is a subject that we had to resolve before we can proceed any further.

20 Q. Mr McCarthy's evidence, which I think you've read, his statement, says that the building owner applied for a project information memorandum, a PIM, you're aware of that?

25 A. Yes.

Q. And that the PIM advised that the building was potentially an earthquake prone building?

A. Yes.

Q. So you knew that?

30 A. Yes.

Q. And you would have known it from the state of the building?

A. That was a PIM and the building consent was applied at the same time normally and so that is the usual procedure for a PIM to come back and

advise what is the problem etc, etc. We definitely know it is earthquake prone otherwise I wouldn't have got all this statement on the plan in 2006 saying that we got to do all these works, proposed works, to strengthen the building.

5 Q. Did you give Mrs Yan or her sons any advice at that time about the state of the building and its earthquake prone status?

A. Yes, they do know that it is earthquake prone in the sense that, well, I ask this question many times now, might as well ask the same question again. What is earthquake prone, where is the –

10 **JUSTICE COOPER:**

Q. Just a minute, you were asked whether Yans knew that the building was earthquake prone. It's not an occasion for you to start answering some other question.

A. Yes, they do know it's earthquake prone but they don't understand the
15 implication.

Q. You didn't feel able to explain it to them?

A. It's very hard to explain that word "prone."

EXAMINATION CONTINUES: MR ZARIFEH

Q. Well did you yourself know what it meant as an engineer?

20 A. I have asked the question of IPENZ. They haven't come back to me yet. They refer to the Act because, if I may divert slightly, we have got a lot of earthquake prone building at the moment which I believe is structurally sound but because of the age it's built, therefore all the tenants are evicted because it's earthquake prone.

25 **JUSTICE COOPER:**

Q. Do you know the definition of earthquake prone in the Building Act 2004?

A. Well I understand the words "earthquake prone" but to what degree we don't know.

30 Q. Do you know how the Building Act approaches that issue?

A. Yes I do.

EXAMINATION CONTINUES: MR ZARIFEH

Q. But Mr Ling, you could have put it in lay terms to them in explaining it.

A. Oh yes I did.

Q. And you did that?

5 A. Yes I did. That's why they accept the plans to have strengthening.

Q. Was there any discussion about carrying out any kind of strengthening anyway because of the state of the building?

10 A. Okay, once we decide to pull the plug it is decided they will, they should build new buildings because of access problem, create access from Colombo Street.

Q. And what was done to effect that? Did you draw up plans for new buildings?

A. I drew a sketch, yes.

Q. Did it get any further?

15 A. No because Michael was trying to organise the access right. He still believed that he should get access from the back so he was trying to get access from the next door neighbours.

Q. So this is in 2007?

A. Or thereabouts, yes.

20 Q. And so between 2007 and September 2010 did anything progress or not?

A. Not – I didn't receive further instruction to go forward or backwards, I was waiting for their reply as to what to do next.

25 Q. So you were involved in dealing with the Council in relation to that, those matters?

A. Yes, for permit matters, yes, consent matters.

Q. After the September earthquake, September 2010, were you also involved in a representative capacity for Mrs Yan in relation to the building, 382?

30 A. It is a very hard question to answer because we are good friends and informally I help her all the time to look after the, shall we say, the investment potential as well.

Q. Did you have dealings with the Council on her behalf?

A. After the earthquake?

Q. Yes.

A. Very little until Kate Smith ring me up and I say, “Look Kate, I want to demolish this property because it is no good.” She say, Look, it is beautiful lady, we would like to preserve it if we can please, try our best to preserve it.” They were actually wanting to categorise or classify it because the next block is classified as of historic significance.

Q. So you’re saying she was saying that the Council wanted to classify this building as a heritage building?

10 A. Yes, that is the intention but then they cannot just do that.

Q. After September you were aware that the building was yellow placarded?

A. Yes.

15 Q. And were you aware that the Council were trying to get hold of the owner?

A. No.

Q. No, not at all?

A. No.

1234

20 Q. I’ll just get you to look at document that’s 0007.1. This is an internal email within the Council, right?

A. Mhm.

Q. And I’ll just get the bottom section after ‘good morning’ enlarged please.

WITNESS REFERRED TO DOCUMENT

25 A. I did say (inaudible 12:34:33) had this message, but –

JUSTICE COOPER:

Just wait for a question please.

EXAMINATION CONTINUES: MR ZARIFEH

30 Q. Yes. So if you look at the first line under good morning, at the top there, “We have attempted to no avail to contact the owner of the above properties. Katie Smith, S & P managed to make contact with the

owner's representative, Robert Ling this morning. You recall her contacting you, this is an email 29 October so it will be sometime on the 29th of October. Do you recall that?

5 A. Katie Smith contact me a few times, so I can't actually remember each and every one of them.

10 Q. And it goes on, "Apparently nothing has yet been done about these properties and no indication of urgency was given by Mr Ling." So what I want to ask you is, the clear impression that the Council has received from you is firstly that there's nothing been done about the properties, but that you didn't consider it was urgent?

A. Yes, because the shop was empty and there was nobody using the shop so upstairs as well. I wasn't aware that there were actually people living there.

15 Q. But in relation to the work, make-safe work in relation to the yellow placard, you were implying that you didn't consider there was any urgency you say because it was empty?

20 A. Yellow placard is interesting one, it access for inspections, limited access for that purpose and cannot be operate as a business or occupy otherwise. Since it is not being used as a business or occupy otherwise, and I have a quick look at it and there is no imminent danger of collapse for parapets in front which is the major concern was it on, or any wall and I did look at the south wall and that wall is in fact was the best wall in the whole complex. And so unfortunately that is what the conclusion was drawn on and there was no urgency in that matter.

25 Q. So the Council were obviously wanting work to be done on the building and they were talking to you as a representative of the owners and you were saying, well you didn't think there was any urgency because you'd had a look at the building. Is that what you're saying?

A. I can't remember what I told her.

30 Q. You can't remember what –

A. What I told her.

Q. But you don't dispute that, the tenor of that email?

A. I don't dispute the general tone of it, no.

- Q. Well just tell us then when did you inspect the property first after the September earthquake?
- A. In fact, like David say it was a few days after.
- Q. And was that with Mr Yan, David Yan.
- 5 A. No, the first time I was driving past I have a look at it back, and then the second time with David Yan.
- Q. And when you looked at it with Mr Yan, was that an internal and external inspection?
- A. Yes.
- 10 Q. How would you describe that inspection from an engineering point of view, the level?
- A. Well firstly there's a lot of cosmetic damages which mean there's a lot of plaster –
- Q. No what I meant was, are you familiar with these terms we've been
- 15 hearing, level 1 assessment, level 2?
- A. Aha.
- Q. Are you aware of those?
- A. Yes.
- Q. Can you describe the level that your inspection achieved in that – on
- 20 that day?
- A. Neither one of those because we only do a level 2 if you want to dispute the yellow placard and change it back to green. We didn't do level 2 inspection as such because there was no need to because they're not going to occupy the place at all.
- 25 Q. So you weren't asked to do any kind of detailed engineering inspection at any time?
- A. Basically we were just to assess just how much damage there is.
- Q. For insurance purposes?
- A. Mmm, yes.
- 30 Q. So there was never any request from Mr Yan to look at the building from a safety point of view?
- A. Maybe they assumed that I would do so but no.

Q. No, I'm not suggesting you did, I'm just wanting to confirm there was never a request for that?

A. No, not really, no.

5 Q. And there was never a request for anything other than a look at it for the purposes of insurance claims?

A. Yes, a scope of works wanted.

Q. And is that, you say because it had been yellow placarded and you didn't – what you were thinking it would be demolished in the end.

10 A. Yes, or substantially, if it decide go back it would be substantially strengthened.

Q. If it was retained?

A. Yes.

Q. And on that first inspection then, what conclusions did you come to as to the extent of damage?

15 A. There's a lot of damages in cosmetic nature of it in the first instant, not in the hundred but in the thousands already and there were a lot of damages in the internal partition of the brick wall, especially between the two units and somehow the northern wall suffer more damage than the south for reason unknown and the party walls got damaged quite badly too. The parapet walls in the north was actually substantial damage because they'd knocked against the building next door, but internal parapet walls and the far chimneys at the back of the building were badly damaged in the same state, there were a lot of cracks but for in a way, those are all cracks being worse at the back of the building, and there were a lot of windows too at the back of the building.

20 Q. And internally, did you inspect the south wall?

A. Yes, yes, yes I did.

Q. And tell us about that.

30 A. Well there were one or two original cracks, diagonal cracks which is actually a (inaudible 12:40:56) works in that sense and original cracks are for any cracks diagonally means that the force towards the east and west happen and there's a wee bit of a movement and the plaster board being rigid couldn't cope with it, and sometime if the bricks have install,

as the main in sand, it's lime and sand as we say in those days, they become powdery after a certain period of time. So there were some loose mortar joins along, not much that were still the base wall, I still maintained a that is still a base wall. There were actually very bad crack

5

Q. Just talking about the south wall still though.

A. Yes.

Q. So what you're saying is there were diagonal cracks in the plaster and that you could see some cracks or mortar loose in the bricks?

10 A. (inaudible 12:41:58) on that wall.

Q. Did you think about removing any of the plaster board linings to check the damage to the brick work behind on any of the surfaces?

A. Well that would have been necessary at end because Mr Avnell asked a scope of works so that he can justify the claim. The quantum he mentioned was the quantum of the amount of repair required for a job.

15

No I didn't, I only have a look at some but not all.

Q. Did you think about that from a safety point of view, the stability of the building?

A. Generally speaking because there were no actually outward sign I look at external wall as much as I can for both running back and look for telltale signs of failure like what we did in 490 Colombo Street. We couldn't find any external signs of the sign of distress on that wall.

20

Q. Right, what about the other walls, you said the north and the back were more damaged. Did you not think about it in relation to those?

A. Those walls are very skinny walls if I may say so. We called it long and slender columns in fact become like that, whereas the south wall is a huge mass of about 50 metres long and double, triple brick, I'm not too sure, but it's quite thick and generally speaking it is quite strong in the plane of the earthquake.

25

30 Q. My question though was leaving aside the south wall, you said there was more damage to the rear of the building than the north.

A. Yes.

Q. Did you not consider a – taking out linings on those areas and looking further for safety reasons?

A. Well I told them these walls are not safe and I said to prop the back door if they want to go in and out, yes I did that and (inaudible 12:43:54) the
5 upstair lintel was propped as well, so (inaudible 12:44:00).

1244

Q. Which wall did you say –

A. On the east wall, the back wall. It had a lot of doors and windows and...

Q. And what about the north?

10 A. The north we can't see, is all –

Q. Is the building next door right. But internally you were concerned about that?

A. Not that one but north wall of 382 was –

Q. Okay so just so we're clear, the back, the east wall, the back you told
15 Mr Yan that it was unsafe?

A. Well it's dangerous, part of it was dangerous so they propped that one.

Q. And when did you tell him that?

A. That was after December.

Q. After December or?

20 A. Yes.

Q. So it was worse after the Boxing Day aftershocks.

A. Slightly just at that area there. I told, the top, the upstairs one side of one I think after September I think it wasn't before that.

Q. And who propped that?

25 A. I think they got a friend who was there all the time called Joe and I think he may have propped that using a beam and some timber.

Q. Because the impression that I had from Mr Yan's evidence and I don't know if you were here listening to it was that he didn't get any work done on the building.

30 A. No just very simple process, just to the back door of going into 382, just that one at that time so it would not even be much effect at all maybe. If they don't use the shop at all it doesn't really matter but I told him just to do that.

Q. And you told him because it was dangerous?

A. Well if you want to go in and out. It's not dangerous that it might collapse just you may have a brick drop on the head, that's all, so just some loose brick be propped.

5 Q. I thought you just said the east wall the back of the building was dangerous?

A. Well dangerous if one brick fell down. One brick is another two it don't have to be the whole wall.

10 Q. So you were concerned though about the mortar and the cracks in the rear wall?

A. No, no, no just that one particular area but then there is issue at of the fireplace that was the information that one is got, is too (inaudible 12:46:11) over the years had actually become a bit of a, maybe dangerous, maybe not we don't know because it's been there for a long, long time but again as I say if the place isn't occupied it's not endanger anybody as such from my professional experience tell me.

15 Q. So I'm just trying to understand from a, as an engineer you come to a conclusion that something may be dangerous and may be not what do you then tell the client?

20 A. No, no if the shops are occupied then something to be done immediately. If the shop is not occupied then you don't occupy it then it would all right just to leave it as such.

Q. But Mr Ling, there were tenants in that building?

25 A. I was not aware of that until I went there, that is why say don't go into that shop at all.

Q. You were not aware of it until when?

A. Until I went in September and there were some people staying there.

Q. Right. So you were aware that there were people still in the building after September?

30 A. Yes but they had actually got a caravan. I asked them are you still inside, they said no in a caravan.

Q. And where was the caravan?

A. At the back of the property.

- Q. What in the alleyway?
- A. No, no they got a huge property there. The land is huge at the back away from the house.
- Q. Well Mr Yan's evidence was that there was someone called John who
5 was in the downstairs of 382.
- A. Yes he was there.
- Q. And isn't the area that you're talking about as being dangerous?
- A. No it's 382A is that one that says dangerous.
- Q. And there were tenants upstairs in that building?
- 10 A. No, not in that one it was 384.
- Q. Was 384 dangerous in your view?
- A. 384 I told him not to lease that building.
- Q. You told who?
- A. Yes and that's why they got a caravan. The 284 moved into a caravan.
- 15 Q. And when did they move into the caravan?
- A. After September.
- Q. So they weren't there between September –
- A. Yes they were they go in and out but they do not, domicile is -
- Q. So if you go in and out to use the bathroom and kitchen?
- 20 A. There is a toilet is really bad. I'm not too sure what they do.
- Q. Alright well so they could go in and out to use the kitchen, is that right?
- A. I'm not too sure they got, I think they got kitchen out there too but I think more likely it's the toilet I think. The toilet's out near the back anyway so as well.
- 25 Q. Mr Ling you said that the building was dangerous. It would only be dangerous if you were living in it, so you told these people, you correct me if I'm wrong, you told these people that they shouldn't be living permanently in it?
- A. That's right.
- 30 Q. And you say they got a caravan after that and were living out the back of the building?
- A. That's right.
- Q. But were coming and going –

- A. I think so.
- Q. – to use the kitchen and –
- A. Not the kitchen. I don't know about the kitchen and the toilet is outside but they do have some thing still inside the house. Their personal effects left inside it but they're not staying there.
- 5 Q. Right. So why were you concerned about the building then if you said it was dangerous?
- A. What do you mean?
- Q. Well you confirmed that it might collapse in an aftershock.
- 10 A. I was concerned that any loose bricks they can fall down not even only a total collapse would hurt them, that's all.
- Q. And that might happen as they were coming and going into the building?
- A. Yes but the chances are less.
- Q. And did you tell, well you knew that it was yellow stickered?
- 15 A. Yes.
- Q. You knew what that meant?
- A. Yes.
- Q. That meant restricted access for things like inspections by an engineer or repair.
- 20 A. Yes.
- Q. So you knew that was a breach of the effect of that yellow placard?
- A. Yes I have no authority over the tenancy of the thing. I can advise the safety aspect.
- Q. Do you not have as an engineer an obligation under the ethical rules to do something where you have a concern for a person's safety?
- 25 A. I did. I did it. I told them to not stay there.
- Q. But they could come and go?
- A. I didn't say that but they –
- Q. But you knew they were doing that?
- 30 A. Well only when I went there in, after December earthquake.
- Q. Why didn't you go to the Council or ring the Council and tell them that there's a building that's been yellow placarded and there's people living

in it? Why didn't you do that as an engineer if you were concerned about safety?

A. They were actually except for John who was in 382 they were not living in it. They told me they're not living in it.

5

JUSTICE COOPER:

Q. So that left John that was living in the building?

A. In 382.

EXAMINATION CONTINUES: MR ZARIFEH

10 Q. Why didn't you do something about John?

A. Well there's certain people, it's how you get hold of them sometimes so I, whenever I go there I only saw him once and that was in, after the September earthquake and it be after that I never saw him again so I didn't actually talk to him at all.

15 Q. When you went on the 7th of January I think it was with Mr Avnell and Mr Yan you probably heard Mr Avnell's evidence were you here?

A. Yes.

Q. Right. He spoke of the need or his advice to tell the tenants to leave. You heard that?

20 A. I'm not too sure. I can't remember.

Q. You can't remember him saying that?

A. Not too sure but I will say the same thing too anyway.

Q. Well what I was going to say to you is it's clear from his evidence that it was clear that the building was in occupation then. Do you recall that?

25 You recall it being occupied?

A. I think that was the first visit. The second visit we didn't see John there but then it looked like it still occupied and we did mention that there shouldn't be anyone staying here anyway but you know we can't control the movement. We are not there all the time 24/7.

30 Q. Well Mr Ling my point is as an engineer you've got obligations of safety where you're concerned about structure of the building. Shouldn't you

have rung the Council at least and told them and let them deal with it?
Did you not think of doing that?

A. No, because it is for family friend so I don't actually (inaudible 12:53:14)
on people. You just let them hopefully they would do what you tell them
5 to do but again as I say John is an unusual character, that he kind of
casual in things, so most times he's not there.

Q. But you could have rung the Council. You didn't want to?

A. No I didn't never think about because we thought that this is, we done
the job. We tell them not to do it and sometimes you know somehow it's
10 not important issue as such because you know that if anything is going
to collapse on them the sign is not that it would collapse so therefore
they stay in the downstairs floor, maybe that's why I thought that, you
know, I told him not to stay there because if you were to go to Councils
in, I don't know what happened after that because I never ventured into
15 that.

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Q. But you didn't even think of doing that?

A. No.

Q. So just so we're clear, you inspect it a week or so after September?

20 A. Mhm.

Q. With David Yan. Did you inspect again in 2010?

A. Yes.

Q. When was that?

A. I think when Mr Avnell came back from Australia we went through
25 together again and that was when he told me that I need a scope of
works so they can quantify the damage.

Q. That was early January he said?

A. Yes.

Q. So after the Boxing Day aftershock?

30 A. Mhm, yes.

Q. Had the damage that you'd seen in September, was that worse after the
Boxing Day?

- 5 A. Not where it's important. For me the most important part was the façade where people were moving past underneath all the time and also the south wall. The north, we're not worried because there's a building next to it, collapse into it and the central wall is not important because nobody suppose to be there at all.
- Q. But they were?
- A. Well, not upstairs, no, definitely no. As I said, they're not staying there.
- Q. So the façade had a cordon in front of it and had been propped?
- A. Yes.
- 10 Q. The verandah, correct.
- A. Yes.
- Q. So did you consider that, why that might have done?
- A. That is protection of just in case the parapet get loose and the brick fall down, then the weight of it would not collapse the verandah and the propping is actually an engineering issue so that it can actually support the verandah in case something drop down.
- 15 Q. So when you went with Mr Avnell on 7th January, you went up on the roof with him and looked at the exterior and the interior?
- A. Mhm.
- 20 Q. And you've heard his evidence a moment ago?
- A. Mhm.
- Q. Do you have any dispute with any of his evidence about the damage?
- A. No.
- Q. You said in an email, I'll get it brought up, 0018.1, an email to myself, that during the visit with Mr Avnell he expressed his view that he believed the buildings can be saved? Do you recall that?
- 25 A. Yes, and that is when he wanted quantified the damage and how much it cost to save it.
- Q. Mr Avnell's evidence was that the three buildings he looked at were basically write-offs because it wasn't worth repairing?
- 30 A. Exactly, it wasn't worth repairing. As an engineer they know building cannot be saved.

- Q. So you're talking about that they could but it wouldn't be worth it in this case?
- A. That's right, because of the insurance.
- Q. And you heard his evidence about the south wall, he called it the wing wall?
- 5 A. Yes.
- Q. You recall that, the older cracks and the tilt?
- A. Mhm.
- Q. You agree with that?
- 10 A. Yes, I agree and also I agree with him that the tilt was actually north, not to the south so by any educated deduction you would know that if you ever fall, you fall to the north, not towards the south.
- Q. Well doesn't the tilt indicate some kind of movement in the past and therefore potentially some kind of weakness?
- 15 A. No, three degree for a short distant is not a considerable amount of tilt as such is therefore three degree over 1.5 metres is only about, a little bit of tilt.
- Q. Does the tilt indicate a movement in the past?
- A. Yes.
- 20 Q. And does that movement indicate a potential weakness in the wall?
- A. Ah, yes.
- Q. So are you saying that you were confident that if it did fall –
- A. You would fall towards the north.
- Q. – it would fall inside, not out?
- 25 A. That's right.
- Q. What, and may be get John?
- A. No, no you wouldn't because John is on the ground floor and there's a floor in between.
- Q. Right. So Mr Avnell said that he considered that wall was potentially dangerous. You agree with that?
- 30 A. Dangerous is a ...
- Q. Sorry?

- A. Dangerous is a word that is hard to actually quantify. I wouldn't actually expressively say it is dangerous. Dangerous to who? Dangerous it might collapse may be, but ...
- Q. Well I think that's what's meant by it isn't it?
- 5 A. Well, you see again, with the benefit of hindsight things are different but after big aftershock in December we or engineer become a bit more, slightly more relieved in the sense that may be the pressure has been released now, there won't be anymore coming but that doesn't mean that we lower the guard but we saw thing, that things may not be as bad
- 10 as it is, but who is to know February earthquake, which is phenomenal, in vertical separation happen.
- Q. Do you agree with Mr Avnell's evidence that that wall was potentially dangerous?
- A. Potentially dangerous, yes. Anything is potentially dangerous.
- 15 Q. Well, I'm talking about that wall?
- A. Without going deeper into it, I can only summarise that as a covering note to say it is dangerous or that we can go and do some work and try to may be resolve the, the amount of danger it's going to cause and to what, but I actually don't actually hear him say that to me, that it is
- 20 potentially dangerous.
- Q. No, what I asked you was, you've –
- A. Or agree.
- Q. You've heard his evidence?
- A. Yes.
- 25 Q. And you said you didn't disagree with anything and I'm asking you about specific pieces of his evidence and one of those was that he thought, I'm not saying he said that to you, he thought that that wall was potentially dangerous. Now you're arguing about what "dangerous" means?
- 30 A. Yes.
- Q. But I took you to agreeing that it was potentially dangerous?
- A. Yes.

Q. Okay, and you said then that how dangerous it was would depend on further enquiry or inspection, correct?

A. And the cost, and the force that would be, is on it.

5 Q. Did you make any further inspection following that visit on 7 January to look at the structural stability of that building including that wall?

A. I didn't believe that that building is going to impose any danger on anybody at all as such at that time, so the next inspection was to quantify the amount of damage so I can actually give Mr Avnell that quantity of damage and the cost of repair.

10 Q. But if you did think it was potentially dangerous, wouldn't it follow that you should look into it further?

A. I was not aware that it is potentially dangerous at that time, as I say, because I didn't hear him saying that even.

Q. When did you think –

15 A. I didn't even know that it was potentially dangerous until he say so but having a look at the evidence and close up view of the photograph, well, there is an element of slight potential risk that it might collapse.

Q. Right, so are you saying that at the time when you're up on the roof, you're with him, you're looking at the west wing wall, the wing wall, from
20 the roof, from the inside, you're looking at it from the back where he took that photograph and you're there to see it and you've inspected it before then as well, you didn't think then –

A. None of this -

Q. - that it was potentially dangerous?

25 **JUSTICE COOPER ADDRESSES WITNESS – DO NOT INTERRUPT**

Q. You didn't think then that it was potentially dangerous?

A. Because none of us ventured that close to look from the outside. It was only because of the photograph they can see the crack in the wall. We would be stepping on thin air to look at that because that is at the edge
30 of the gutter and you don't go so close to the soffit without proper safety measure, scaffolding or otherwise.

Q. Well I thought he said that you were on the roof?

- A. Yes, we were on the roof but we were more, at least two metres away from the edge?
- Q. Well Mr Ling, you're the engineer, he's just a loss adjuster?
- A. Yes.
- 5 Q. Are you saying that he's carried out a more thorough inspection than you?
- A. No, no, no, no. He took a photograph, you can see from the photograph. He didn't share information with me so we actually went independently so to say that I didn't notice the cracks or otherwise is not
- 10 true but at that moment I categorised the cracks as being non-risk as such.
- Q. So you saw the cracks?
- A. Well, I can't remember now, it's such a long time ago.
- Q. I thought you just said that you did see them?
- 15 A. No, no, no, I – it is actually very hard to remember all these things. I was trying to refresh my memory by looking at a photograph I took. That's why I was using my cellphone just now to look at a photograph to blow it up to see.
- Q. So are they photographs you took?
- 20 A. Well, they are – I didn't have the one that Mr Avnell took.
- Q. What are the photographs that you're referring to?
- A. I only took the overall views and close up of the internal cracks and things like that.
- Q. Have you provided them to the Commission?
- 25 A. Well, they were not structural and there were no – no I didn't because when I wrote these reports to you I wasn't aware of the seriousness or the implications that you were coming to pass.
- Q. And when did you become aware of those?
- A. Well, after the first Royal Commission hearing last year.
- 30 Q. And so once becoming aware of that, have you provided them to the Commission?
- A. Well, there were a lot of photograph you got already, so ...

JUSTICE COOPER:

Q. So the answer is no?

A. No.

COMMISSION ADJOURNS: 1.06 PM

5

COMMISSION RESUMES: 1.46 PM

ROBERT LING (RE-SWORN)

EXAMINATION CONTINUES: MR ZARIFEH

10 Q. Mr Ling we were talking before the lunch break about photographs that
you've got. In the letter that was sent to you 30th of September from the
Commission one of the things that was requested of you was any
photographs that you had. Do you see that in the letter at paragraph
3(b) under 382 Colombo Street? Or do you want to take it from me that
15 it was there?

WITNESS REFERRED TO LETTER

A. Yes.

Q. Right, so what photographs have you got?

A. Well there were not any different from what you got already so there's
20 actually –

JUSTICE COOPER:

Q. No, no. The question was what photographs have you got?

A. A general elevations of the building and internal cracks.

EXAMINATION CONTINUES: MR ZARIFEH

25 Q. Any external photographs?

A. At the back of the building only.

Q. Right, can you forward those to the Commission?

A. Okay.

Q. Have you got them electronically have you?

A. I hope so.

Q. Right.

5 A. (inaudible 13:48:14).

Q. So you can undertake to email those to myself?

A. Mhm.

Q. Thank you.

JUSTICE COOPER:

10 Q. When will you do that?

A. I was download it in the next day or so.

Q. So by Wednesday the 22nd?

A. Mhm.

Q. Thank you.

15 **EXAMINATION CONTINUES: MR ZARIFEH**

Q. Now just want to, I haven't got much more to ask you but I just want to be clear about something you said before lunch. When you looked at the building after Boxing Day did you notice the slight tilt back to the north?

20 A. I didn't.

Q. You didn't.

A. Yeah.

Q. So you thought it was plumb?

A. I thought it was very good and after all the major events that wall has stood up very, very well.

25

Q. Right. So why did you say that you thought there was some danger in the wall?

A. Well in actual fact if I'd known that the earthquake is going to be so heavy so ferocious then of course there's danger but giving any other event I don't think that it would have come down at all.

30

- Q. Right. Well you said before that there might have been a danger but you'd have to do further inspections –
- A. Well –
- Q. – to determine that?
- 5 A. – as I say I get confused now because is a long time ago and I can only base on what I see on the photograph now and (inaudible 13:49:57) and –
- Q. So are you saying then it's only from hearing Mr Avnell's evidence and seeing his photographs that you now agree that it was potentially
- 10 dangerous?
- A. Well I still don't think it is under normal circumstances is not potentially dangerous but that event was just as I keep emphasising it is –
- Q. All right.
- A. No matter what I do to that wall I believe it will still get damage.
- 15 Q. Did you think from the outset when you first went to the building after September that it was likely it would be demolished?
- A. Um, we have always, that is always an option and it just bring it a bit closer maybe.
- Q. Well that's what you were going to do after the redevelopment plans –
- 20 A. Yes.
- Q. – came to an end?
- A. Yes.
- Q. So after September I suggest that that's what you were thinking all along?
- 25 A. Ah –
- Q. Given the damage and what had happened?
- A. Not necessarily because I did know the insurance implication only a letter with and they told me that they only insure for a certain amount of money and that means they cannot rebuild it. If the insure money has
- 30 been sufficient they can rebuild the whole thing properly maybe.
- Q. And –
- A. It is –
- Q. Your – sorry?

A. All right, it is actually entirely in the hands of Michael. I would prefer to see a new building there but he want to redevelop to make it (inaudible 13:51:35).

Q. After September?

5 A. Well –

Q. I thought it was David Yan that was dealing with...?

A. Michael has always wanted to maintain the old building and work it that way because he thinks that it is possible.

10 Q. All right and when you said in your letter to the Commission or your email of 18 October that looking at the middle paragraph on the second page, I'll just read it to you, or perhaps it can be brought up 0018.2.

WITNESS REFERRED TO LETTER

Q. See the middle paragraph “after September and Boxing Day”?

A. Yes.

15 Q. “Earthquakes, although the buildings were damaged since the shops were not occupied except for a free lodger”, is that your reference to John?

A. Yes.

Q. Right.

20 A. I didn't know he was paying rental even, I thought he is just somebody who just stay there.

Q. But you knew he was in occupation?

A. At that time yes.

25 Q. “I didn't consider the buildings dangerous and hence did not consider make safe as necessary”?

A. Yes.

Q. But you agree with me that not considering the buildings dangerous because they were unoccupied is inconsistent with knowing that there was someone there?

30 A. Oh, okay, um, what I mean to say is the free lodger can be kick out any time so is not a danger to anybody at all and don't get me wrong you know I'm always after new building so I like to see this place demolish if I could but it is not for me to say so and so is actually a very hard thing

to say for somebody on somebody else behalf for example where is the boundary of that decision and the decision is not for me to make. I can only recommend so –

Q. The decision what decision are you talking about?

5 A. Regarding demolishing or repair.

Q. Right.

JUSTICE COOPER:

Q. So well did you tell the owner that you thought the building should be demolished?

10 A. Ah, I say that in the first instant he should demolish the building to make way for development better development (inaudible 13:54:18).

Q. No, no after, after the September earthquake?

A. After September earthquake I will say I told him it will only bring it one step closer now because it was so much damage.

15 Q. I'm not following you? After the September earthquake you said?

A. I would like to see demolish but insurance assessor say it could be repaired. He said no, everything could be repaired but again he says he's qualified that since the insurance is indemnity only and the cost of it pays far above that insured value therefore they will hope for cash settlement and then after that the decision is totally up to their owners to
20 demolish or to strengthen and or otherwise.

EXAMINATION CONTINUES: MR ZARIFEH

Q. But Mr Ling you saying to, presumably you said to Mr Yan initially before
25 Mr Avnell came along that you thought the building should be demolished from what you've said? That's one step closer now and we can demolish it?

A. Potentially that's what we talk about.

Q. Well how does that fit with his evidence in his written statement where
30 he said that your assessment was the damage to the building was superficial and was repairable?

A. Because the, if you look at the history of the whole thing is cost a lot to strengthen the building that's why I offer demolition. It's not because it cannot be repair, if you repair to original condition before the earthquake that's what insurance would do but it still haven't looked at the fact that the building got to be strengthened.

5

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Q. Right so your thinking all along was that the building would be demolished one way or another?

A. Right. I wanted it to be demolished. Again as I say is better to have that new building, than to have that strengthened old building.

10

Q. Right and as you said in the letter, in the email I've referred you to because of that and because you thought there was no-one in apart from a free lodger there was no need for them to make safe work?

A. Because they say it would be just a waste of money because –

15

Q. That's right but you knew as you say in the next paragraph that the wall on the south as you described there as a 'heavy unsecured south wall', see that in the next paragraph?

A. Yes.

Q. You knew that that was a potential danger because it was a heavy and unsecured wall correct.

20

A. Yes.

Q. And would you have addressed that issue and other structural issues in the report that you did, that you would have done for Mr Avnell?

A. Mr Avnell asked for repair. Mr Avnell would not be interested in strengthening in any way whatsoever.

25

Q. Okay. And did you ever give Mr Avnell a report?

A. Not yet because I was in the process of getting quotations or otherwise just to get the costs involved, how much costs to fix those cracks in the brick wall and how much investigative you got to do. It is a mammoth job to do, to look up that whole shop and to be able to itemise everything for him.

30

Q. So what had you done?

- 5 A. I had got everything on record how much damage there is but I haven't actually summarised a report for Mr Avnell. Yes he gave me three reports to do. I finished one send it out to him, that was the one he mentioned about 25 to 650 grand and another one for 490 Colombo Street which I finished but I haven't printed the thing out then February came along and the next job was to finalise this one.
- Q. So what had you done in relation to this one?
- A. I just get the data only.
- Q. What data?
- 10 A. Like how much cracks and how much per room it would cost to fix.
- Q. Have you sent that to the Commission?
- A. No because –
- Q. But you can do that with the photographs?
- A. I didn't deem it necessary but I got a data collection of that and it's in
- 15 draft form so I can summarise it for you.
- Q. But you can send us the data?
- A. I can, I can even do better just to summarise everything, so can easily read.
- Q. I'm interested in the data that you've gathered did you send that with the
- 20 photographs?
- A. The data is in my brain.
- Q. Okay so you hadn't gathered anything?
- A. It is not true that I haven't got anything.
- Q. Well you hadn't gathered anything? You said you were gathering
- 25 quotations and things like that?
- A. Gathering quotations being verbal the gathering then and how much it cost to get this to get this thing done and how much it cost to do lath and plaster walls and how much it cost to replace those limes, that limes and mortar, it is –
- 30 Q. So had you arranged for any contractor to go there to give you a quotation?
- A. No because I base on my experience and phone calls.
- Q. Who had your phone?

A. My bricklayer. I just generally got a price off him.

Q. So how can he give you a price if he doesn't go and look at the job?

A. Because I, they have done a lot of this sort of work and they can give me a rough ballpark figure. Anybody give ballpark figure, nobody got

5 time to look at all this work at this time.

Q. No you've done nothing in relation to the report other than think about it?

A. That is a very strong allegation. I had done a lot of work but haven't written it down.

10 Q. All right and is it the same position as the report that you were doing for Mr Yan in relation to 7 Riccarton Road. That was never forthcoming was it?

A. It was coming.

Q. But it never came did it?

15 A. Never came because September, the earthquake came. We just finished cleaning up the place for that one.

CROSS-EXAMINATION: MR ELLIOTT

Q. Mr Ling, I'm just going to ask you some questions about the particular danger posed by parapets in unreinforced masonry buildings and just to orientate you I'll show you BUI.COL382.0009.4. So that is the south or

20 the remainder of the south wall of 382 which you can see has collapsed over into the adjoining premises and that's the section of the building I'm going to be asking you about. Do you understand that?

A. Yes.

25 Q. Now I'll show you a photograph of that same section before the February earthquake BUI.COL382.0006.3 and if the left-hand wall could be enlarged please. And you agree that's the same section?

A. Yes.

Q. And you agree do you that we're looking there at a parapet and wall?

30 A. Yes.

Q. And that was the state of the parapet at the time that you examined it?

A. Yes.

- 5 Q. You said to Mr Zarifeh and you've also answered in previous proceedings that you consider yourself bound by the Chartered Professional Engineers' rules which relate, which include an obligation to society. What is the particular ethical obligation that you're bound by in relation to the safety of people?
- A. To make sure the safety of the people is of paramount importance. It must be protected.
- 10 Q. A chartered professional engineer must in the course of his or her engineering activities take reasonable steps to safeguard the health and safety of people?
- A. Yes.
- Q. And even though you are doing this work for a friend you were carrying out engineering activities weren't you?
- A. Yes.
- 15 Q. The friendship would in no way comprise your ethical obligations in relation to safety?
- A. Very true.
- 20 Q. Professor Ingham has provided some evidence to the Royal Commission about parapets and I'm just going to ask if you are aware of particular things about parapets at the time that you examined the building. Professor Ingham said that parapets are parts of unreinforced masonry construction that project above the roof of the building. I take it you agree with that?
- A. Yes.
- 25 Q. He says when subjected to lateral loads if unrestrained the parapet acts as a vertical cantilever which potentially rocks on the base support of the roofline. Do you agree with that?
- A. Yes.
- Q. Were you aware of that when you carried out your inspections?
- 30 A. I actually specified that that may happen.
- Q. He says that recognising the obvious hazard that parapets pose for buildings occupants and passersby, it follows that the installation of parapet restraints is one of the earthquake strengthening techniques

that's most commonly encountered in unreinforced masonry buildings.

Do you agree?

A. Yes.

5 Q. When you carried out your inspections were you aware of the types of restraining techniques that might be applied to a parapet?

10 A. In a lot of cases, when you talk of parapets, they in danger of parapets they refer to the façade where there are people walking past continuously all the time. In this case there's a single storey building next to it. In most cases in the most usual state of lateral movement the whole parapet will come down in one piece. You know it will come down loosely or otherwise and it will not have such a big impact on the roof next door and the roof next door usually should be able to carry a certain amount of load without endangering the life below, so that is a lot of assumptions being made on that (inaudible 14:05:28) I appreciate
15 what is happening, regret that it happened but at that time we really never believed that a vertical and horizontal happened at the same time.

Q. Were you aware when inspecting the building that that parapet could have rocked either way when exposed to horizontal accelerations?

A. Yes.

20 Q. And you're aware that building was potentially earthquake prone?

A. Yes. If we had gone ahead with the renovations for example, that parapet will probably reduce down to 450 above roof level.

1406

25 Q. Did you give consideration when carrying out the inspections to recommending some sort of method to restrain the parapet or to reduce the danger that it posed?

30 A. No, at that moment I seriously believe we have been two 7 earthquake and a 6 point something, again and we are going to a lot, and I don't – I sincerely believe that the next earthquake will be on diminishing scale, rather than on increasing scale.

Q. The parapet could have been lowered to roof level, couldn't it?

A. That could be part of my recommendation.

Q. Or it could have been braced in some way?

- A. I don't think unless you have a very, very heavy bracing you would help in this case.
- Q. Or a concrete ring beam could have been added?
- A. Concrete beam.
- 5 Q. Do you know what a concrete ring beam is?
- A. Ring beam?
- Q. Mmm.
- A. You mean going round it.
- Q. Well I'm just using the words that Professor Ingham has used. Perhaps
- 10 you don't know what that means.
- A. I – you spell that please, ring beam?
- Q. Just a concrete ring beam.
- A. R-I-N-G.
- Q. R-I-N-G B-E-A-M.
- 15 A. Well it all depends on how you do it. If it can combine together and it has got somewhere to fit onto which you haven't got in this case, you will not improve it at all.
- Q. Well you're aware that it was a unreinforced masonry building that was potentially earthquake prone, you've already agreed to that. You're
- 20 aware of cracking in various parts of the building weren't you?
- A. Internally yes and at the back.
- Q. And you've given evidence that one brick would have been enough to kill?
- A. Yes, but if it is dropped freely on the person, not on the roof.
- 25 Q. And were you aware of the particular dangers posed by parapets in unreinforced masonry buildings?
- A. On the street frontage, yes. Can I elaborate slightly on that one, especially you're going to ask me about the props anyway I think. The verandah for the old shops where people walk past the design of the
- 30 verandah has got one important function, it's to stop anything falling down and hurting the people walking underneath and parapet is to design to protect the people from falling parapets, but the recent science in earthquake has now prove that that verandah is not big enough. It got

to be one and a half times the height of the building to protect anybody walking past there, so I think we got to come to the fact that all parapets need to be removed if it's masonry.

5 Q. And are you saying that you had distinguished in some way between a parapet which was at the side of the building and a parapet at the front of the building?

A. Yes, the danger is slightly different. We were, as I say, under no more scenario, this is an unusual scenario. I cannot excuse myself or anybody for that matter but it was a natural act that is beyond our control in this stage and we are now wiser. We increase the code to .3 for that reason and if we are known that it is going to be such a ferocious force, of course we would have earthquake increased to .3 a long time ago.

10 Q. Do you learn any lessons from what has happened here?

15 A. Yes.

Q. What do you learn?

A. A lot. I learn that number one, we've got to remove all masonry building or strengthen to a degree of the code value and I learn also that you've got to learn to defy maybe some of the Acts of the New Zealand HPT who tend to protect the parapets so badly, you know, so there's a lot of thing we learn from this thing, yes I learn to treat life more preciously too.

20 Q. What would you do differently if you had the time again?

A. If I had again, I would have to remove the parapet to a reasonable level before.

25 Q. Yes.

A. If I really know that it is going to happen so badly.

Q. Do you think also that you should have warned people in the next door property about the danger posed by that parapet?

30 A. I look at a roof next door. It is actually a (inaudible 14:10:45) thing, generally it's quite strong and normally under normal scenario if something fall on it it would just have enough energy and won't cause any fatal injury. That is what I was perceiving. I didn't really perceive

that the big block can fall down together especially when the mortar is all lime and sand, but it happened okay, and in fact correct me if I'm wrong, that part of the parapet that fell down and killed the people in the shop at the front where there's no cracks at all, so we are human. We are asked to do a lot of work in this earthquake time and we may make one or two different decision on hindsight (inaudible 14:11:45) or otherwise of course we can actually postulate now what is going to happen in the future.

5

Q. You referred to damage, but what the point I'm making here is that this was a parapet which was above the roof line –

10

A. Yes.

Q. – of significant height. The parapet itself unrestrained and the only connection can have been via the wall and so even without damage and especially given that you seem to have contemplated that some bricks might fall onto the adjoining property, you really should have gone next door and said, there is a potential danger. Do you agree?

15

A. As I say the roof was a very good roof next door and I assumed that any brick falling on it were not benefit to – and I also assumed that the Council is the authority on placarding the shops and normally when you placard yellow shop, they got to look at next door and see whether the next door should be placard or not. Typical there is one of my job in Colombo Street, the building is modern building, placard yellow because next door building is placard yellow, you see so.

20

Q. Given your perception of the possibility of at least some bricks falling onto the adjoining property and given your ethical obligations don't you think you could have at least called the Council and said, well there is a possibility of this happening, you might review your decision?

25

A. A very good point. I – as I say I really don't perceive there'll be any serious consequence number one. Number two I have had one other job that I contact the Council, CERA and everything and nothing is done about it at all so I don't know what response and how fast can they act regardless of what we do and nobody – a lot of people seems to be quite complacent regarding buildings still. I, yes I could have ring up the

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Council but because the Council say the building's already placard yellow and in fact Opus in their report say they placard the building red after the February the 4th. What more can we do to do that.

5 Q. Thank you Mr Ling, is there anything else that you would wish to say to the Commissioners and the people who are here today listening to what you say?

A. Yes, I want to say that it is most unfortunate that this thing has happened and as it turn out I know the owner of next door as well. Had I known the owner before things might have been a lot easier, but I
10 didn't know my other friends own the building, so sometimes I have a lot of misgiving for not doing what I should do but I know that by doing so I get a lot of rap from the people too sometimes, they say it's green stickered, why are you pushing me about, so it is no win situation and on top of that I repeat it many times, the ferociousness of the
15 earthquake which mean that you got a vertical acceleration first and then horizontal after that which mean to say, every loose that is not attached or push out of plumb and go down because it has been pushed out that way. Normal earthquake would not do that.

CROSS-EXAMINATION: MR LAING

20 Q. Good afternoon Mr Ling. You said in evidence previously that the building consent application in 2007 was abandoned because of the cost of strengthening work?

A. That's right.

1416

25 Q. And you seem to have disagreed with Mr McCarthy that –

A. I didn't disagree. I say Mr McCarthy is not the person directly involved with the PIM process and most probably there is information pending on the computer which means may be there's something else about a brick. They ask me one question about a brick provide me with the
30 sheer capacity of this brick.

Q. No, I'm asking you about the building consent application to convert the property upstairs into apartments?

A. Yes.

Q. You know what I'm talking about?

A. Yes I know.

5 Q. I understood you to say previously that you had provided all the necessary information to the Council?

A. Mhm.

Q. Is that correct?

A. Not all.

Q. Not all the information?

10 A. Because you can provide as much as you know and the Council sometimes find out some small thing you haven't provided.

Q. Well Mr Ling, did the Council ask you for further information?

A. As I said, I remember very clearly the question they ask is, provide me with the sheer capacity of the mortar of the brick and I say, "We can't
15 because there is nothing."

Q. Well, so your answer was incorrect previously wasn't it? You said previously, as I understood your evidence, that you had provided the Council with all the necessary information?

A. I deemed necessary.

20 Q. That you deemed necessary?

A. Yes.

Q. Right. Can I ask you to look at BUI.COL382.0018.1. Now, is that an email you sent to Mr Zarifeh?

A. Yes, yes.

25 Q. "Dear Mr Zarifeh. Beg your pardon for the delay. Life could not be busier." Could I ask you to look at the eight paragraphs starting, "During the consent approval process."

A. Yes.

30 Q. It says there, "During the consent approval process the plan met with strong request for details of strengthening and so much was the requirement the refurbishing idea was abandoned."

A. Mhm.

Q. Doesn't that suggest to you that you hadn't supplied the Council with all necessary information?

A. No, I don't think I mean it that way. I mean to say that the design process needs a lot of request for strong information and which we already, some of it we have provided and other we haven't, like I say the strength of the brick, we don't know the strength of the brick, so if we were to analyse all those things then it would take a long time and cost a lot of money so I told my client at that time, they ask me to do an estimate of how much it cost to do the strengthening. I give him an estimate of about 250 grand just to do the strengthening.

Q. Well let's come back to the question and leaving aside what you meant by the words there, did you or did you not provide the Council will all the necessary information about strengthening that would have been required to obtain a building consent?

A. You want a yes or no answer?

Q. I want any answer at this stage Mr Ling but yes or no would be a good answer.

A. As I say, I have provided a lot of information regarding the strengthening but I keep saying that obviously there one of two, there is not one building consent over I've done about hundreds or thousands, but that they didn't come back and ask me for more information one way or the other because sometime we tend to overlook small things here and there.

Q. Let's just try and answer the question again, did you or did you not supply the Council with all information that they required for the building consent? Now it's a simple question, it just needs a simple answer.

A. Well, the answer is still the same. I believe I have but they seemed to think that some more was coming.

Q. So as far as the Council was concerned you hadn't supplied all the necessary information, is that correct?

A. Yes.

RE-EXAMINATION: MR ZARIFEH – NIL

QUESTIONS FROM COMMISSIONER CARTER: - NIL

QUESTIONS FROM JUSTICE COOPER:

Q. Mr Ling, were you aware that the Council had issue a notice under section 124 of the Building Act and inspected this property?

5 A. No.

Q. You mentioned in answering questions by Mr Elliott of a case where you had warned the City Council of the dangerous state of a building and nothing had happened. Do you recall saying that?

A. Yes.

10 Q. What was the property?

A. Would you want me to email that to you too?

Q. Sorry.

A. Would you want me to email that to you as well?

Q. No, I'd rather you told me now?

15 A. Okay. It is in Papanui Road.

Q. Papanui Road?

A. Yes.

Q. What's the address?

A. 487 Papanui Road.

20 **WITNESS EXCUSED**

MR MCLELLAN CALLS:**MARK JOHN RYBURN (SWORN)**

Q. Is your name Mark John Ryburn and you are a structural engineer of Wellington?

5 A. Yes.

Q. You have your brief of evidence in front of you?

A. I do.

Q. I'll ask you to read it. Would you read from paragraph 1 and as this brief also deals with a property that the Commission has already dealt with, would you start at paragraph 12. Would you not read those sections and carry on from paragraph 17 when you get to that?

10 A. Okay. I hold a Bachelor of Engineering (civil) honours. I am a member of the Institution of Professional Engineers New Zealand. I have 11 years experience as a civil engineer and construction project manager. Between 22nd April 2010 and the present day I have been employed by Opus International Consultants Limited as a structural engineer. In January 2011 I was seconded to the Christchurch City Council to carry out inspections under the direction of its building recovery office. The inspections of buildings carried out by me and which are relevant to his inquiry were re-inspections of buildings which had previously been
15 subjection to level 1 or 2 rapid assessments. I carried out re-inspections of buildings as directed by Council staff at daily briefings. For the period that I was seconded to the Council I rarely visited Opus' offices. My day would typically begin with a briefing at the Council where I would pick up
20 a manila folder for each property that I was designated to re-inspect. The contents of the folders varied but would include a Council re-inspection form filled out by the Council with the address of the property and sometimes my name and cellphone number as per the form for 187 St Asaph Street. From memory the file would sometimes include, where
25 available, other rapid assessment forms, photographs and any correspondence available. The files generally had limited information. They did not include drawings or building plans. The purpose of the re-inspections differed. Inspections were predominantly re-inspections
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carried out for the purpose of identify damage caused by the September 2010 event or aftershocks that had not been previously identified. Re-issuing the placarding and, in the case of Building Act notices, requiring that works be completed by owners and recommending a timeframe within which works must be completed within the context of the standard notice requirements of 60 days.

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At the end of each day or the following morning I would hand back my completed re-inspection reports to the Council. Any significant concerns were discussed as part of the feedback briefing and separated for more urgent action or review. The re-inspections were visual only. They were not detailed structural engineering evaluations and did not involve calculations of load bearing capacity. As I was working alone I generally did not enter any buildings unless I felt they were safe and there was another person present. By the time of my inspections in January and February 2011 all of the buildings I inspected and which are the subject of this enquiry had been inspected one or more times and there was an existing placard. I was not authorised to downgrade the existing placarding. I was however able to escalate the placarding from for example yellow to red. At the time of my, of the inspections I did not have any information from GNS or any other source regarding the likelihood, location and extent of further aftershocks other than generally available. My assumption was that aftershocks would continue generally following a standard aftershock decay sequence. My re-inspections were carried out within the context of that aftershock sequence and were governed by the damage I could observe, my engineering experience and judgment of the building characteristics. They were not governed by calculations or analytical assessments of residual or original capacity. I was generally aware of the Council's earthquake prone building policy but my re-inspections were not carried out for the purpose of quantifying building strength under that policy. I carried out about 10 inspections each day. Each inspection would take about half an hour, sometimes more, sometimes less.

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382 Colombo Street. I am advised that the Commission's areas of interest for this building are why I inspected the building, my recollections of the damage I observed, and the thinking behind my comments and recommendations for further action. My re-inspection report records that I inspected the building on 4th February 2011."

EXAMINATION CONTINUES: MR MCLELLAN

Q. Can I just stop you there while we bring the report up thank you.

WITNESS REFERRED TO REPORT

Q. Carry on.

10 WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. "The reported noted that the buildings were abandoned although there were signs of occupation in the upper storey".

EXAMINATION CONTINUES: MR MCLELLAN

Q. Can I just stop you there and I'll get you to read into evidence all of your handwriting underneath 'general comments' if that could be enlarged please?

A. Under general comments it says, "Buildings abandoned, however signs of occupation in upper storey. Not investigated as comments from neighbouring tenants indicated occupants are 'slightly unhinged'".

20 Q. What were the signs of occupation. Is that something that you observed yourself or is that from what you were told?

A. I think, I think from memory it was, it was music or you know noises. I didn't, I didn't see anybody.

25 Q. And do you recall where the, where the people were who told you about someone living there?

A. Ah, no. I think, I think it was further, I came round down the right of way round the back of the buildings and I think it was somebody in and around there.

30 Q. Okay well just while we're at that I'll, can I bring up a map so that we can see how you did access the rear of the building and that's 382.0014.10.

WITNESS REFERRED TO MAP

Q. And if we could enlarge that centre area that we had earlier on please?
So did you, when you arrived at the property did you start in Colombo Street?

5 A. Yes. Will this mouse work, yeah, so, so from memory I started on Colombo Street and then came, came up and round the back.

Q. So you went north up Colombo Street and turned right into Wordsworth Street?

10 A. Yes and then came down, there was a right sort of an access driveway down the back.

Q. Okay. And just using that map for a minute how far down were you able to get towards the rear of 382?

15 A. I think I came somewhere towards about the boundary there between 384 and 386 I think there was from memory there was some sort of fence or something there anyway, I didn't, that's as far as I approached.

Q. Okay can we go back to the report please which was 0009.

WITNESS REFERRED TO REPORT

Q. Can you carry on reading from paragraph 19 please?

WITNESS CONTINUES READING BRIEF OF EVIDENCE

20 A. Okay. "My report noted moderate damage and/or structural hazards and that propping and strengthening of the canopies was required or that fencing be extended in front of the shops. Here I was referring to number 382 and the shops to the north since these buildings were similarly constructed of brick with similar parapet designs. The shop to
25 the south, number 380 Tasty Tucker, was a different more modern structure".

EXAMINATION CONTINUES: MR MCLELLAN

Q. Now I'll just stop you there and on the right of that form under 'comments' you've written "cracks in rear walls". I think is that right?

30 A. Yes.

Q. And that's presumably in the west, sorry the east side where you went around?

A. Yes.

Q. You've shown us on the map. Can you carry on from paragraph 20?

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. "I also replaced the yellow sticker with a red sticker".

5 EXAMINATION CONTINUES: MR MCLELLAN

Q. Sorry, I'll stop you again but can you explain why you did that?

A. Um, I can't remember all the exact reasons. I think one of the reasons was that I was aware that there was, there was someone or signs or occupation, and in some cases I guess to avoid any confusion I wanted
10 the you know the red sticker to make it quite clear that there shouldn't be someone in there that maybe someone had misunderstood perhaps what yellow implied. That was certainly one of the, one of the reasons there, and also it didn't appear at that stage at sort of February that there had been much done to the building or that much action was being
15 taken and trying to sort of I guess raise the priority and back through the Council.

Q. Okay thank you paragraph 21?

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. "The gable" – oh sorry pardon me, "My recommendation of propping to
20 canopy and strengthening of canopies was made in order to secure and strengthen the canopies themselves but not to specifically affect the load on the existing gable wall".

EXAMINATION CONTINUES: MR MCLELLAN

Q. I'll just show you a photograph of the front which is .0009.3?

25 WITNESS REFERRED TO PHOTOGRAPH

Q. Now that's a photograph taken after the February earthquake?

A. Mhm.

Q. Can you see the propping in front of the op-shop?

A. Yes.

30 Q. Is that how it was when –

A. From memory, from memory it was like that with some quite, ah, small props.

Q. And what was your concern about the propping that you observed?

A. Personally I didn't really like those props. They, they didn't seem to me
5 to be particularly robust and they could be you know potentially easily removed. So I was you know I felt that if you were going to do something there it needed to be a bit, a bit more than that, and, and also then if you couldn't do something more then perhaps put in some fencing in there to stop people getting under there.

10 Q. So they were alternatives for you were they?

A. Yeah, if perhaps if they needed the footpath open for some reason they would perhaps need to strengthen it significantly or, or just close it off.

Q. Thank you carry on from paragraph 22".

WITNESS CONTINUES READING BRIEF OF EVIDENCE

15 A. "The gable wall on the south side of number 382 is not specifically mentioned in my re-inspection report and as I recall I did not examine that part of the structure. I recall that access and visibility to the area was limited from both the front and rear of the property. It is likely that if I had identified a problem with the gable wall I would have noted this
20 under items 1.1 and/or 2.1 of the re-inspection report.

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EXAMINATION CONTINUES: MR MCLELLAN

Q. Now you've heard Mr Avnell's evidence today and there's also an email which I assume will be read into evidence from Mr Neville Higgs who
25 inspected that part of the building I think from a cherry picker we now know and Mr Avnell of course gave evidence that he went onto the roof. Was that anything or do you recall anything in the information that you had in the file you were given advising you of those inspections?

A. No.

30 Q. 23 please?

A. I do not recall, sorry I do not recall I picked the date of April 2011 for the owner to carry out make safe work.

Q. Just so the Commission knows what we're talking about there. Can I have the .0009 back again, sorry page .2 and if we could highlight the last highlighterd passage on that page. Carry on from "as I have already said".

5 WITNESS CONTINUES READING BRIEF

A. As I have already said I generally regarded 60 days as a starting point reasonable timeframe for owners to carry out works in the absence of information indicating that a shorter time could be recommended as I did for 187 St Asaph Street, for example when I recommended 30 days. I
 10 am now aware that the council had earlier served a section 124 Building Act notice requiring work to be carried out. I do not believe I was aware of this at the time of my inspection. I have been asked by counsel assisting the Commission whether I advised neighbouring occupiers of the hazards at this property. I do not recall giving specific advice to
 15 neighbours of 382 Colombo Street. The sticker system was the primary means of giving advice to the public about the status of particular buildings and the fencing was a further means of communicating the risk. If I had considered that the building at number 382 presented a safety risk to the neighbouring building I would have red stickered that
 20 building.

CROSS-EXAMINATION: MR ZARIFEH

Q. Mr Ryburn, can I just take you through your form and ask you some questions about it. Firstly when you got this form it would have just had 382 Colombo Street on it?

25 A. Yes.

Q. And did you have any other information from the council about this property?

A. I don't recall any information on this particular building as sometimes we had other forms or assessments or maybe some photos or
 30 correspondence.

Q. And I think you said previously it would depend on who had made the file up for you as to how much information was on it?

A. I don't think it was related to who made it up it was more just what information they had at the time when it was made up.

Q. Right so the council copy of the Building Act notice wasn't on there?

A. I don't recall seeing it. It may have been.

5 Q. You said you weren't aware that there had been a Building Act notice served.

A. No, I don't recall that.

Q. So you were already going out, doing a quick visual inspection, external only?

10 A. Yes.

Q. You weren't aware of a Building Act notice requiring work to be done at the time?

A. No.

15 Q. So what was the purpose of your inspection? What were you going there for?

A. What we were looking to do some of these things had had placards, some buildings had had placards or notifications put on them and these were due to expire or nothing had been done so we were out there to update those primarily and to check if there had been perhaps anything different since the last time it was looked at.

20 Q. Right so in relation to this property it was yellow placarded then there was a Building Act notice served on the owners.

A. Right.

25 Q. Right. And what I'm getting at is if you didn't know that, what did you think you were going to look at in relation to the property? Did you know what work should have been done that you were there to check to see if it had?

30 A. I wasn't really there to check if any work had been done as such. It was there, nothing had been done because obviously it was still under the system as either red or yellow. If the work had been done and the Council had been happy it would have been a green and taken off the system so going there there had been obviously no work done.

Q. Right so what was the point of your inspection?

A. Again I understand there was a situation where if any notification expired then potentially the building had no status assigned to it and we were there to update that status and obviously to check then if there had been any further damage in between that it necessitated perhaps a different placard.

5

Q. Okay. So you ended up ticking the red?

A. Yes.

Q. RA on the form?

A. Yes.

10 Q. At the bottom, "significant damage, do not enter", correct?

A. Yes.

Q. And you said a moment ago that the reason that you did that was because there seemed to be nothing done on the building and you wanted to make sure that if the occupants that appeared to be there knew that they shouldn't be there is that right?

15

A. That was some of the reasons yes in particular for this building because –

Q. So did you fix a red placard on the building?

A. Yes I generally did that. That was part of what we were there to do to actually physically put the placard on there.

20

Q. Right which door or which entrance? Was it at the front?

A. It would have been at the front. We tried to put it in a visible place.

Q. Right. And you said it appeared that the shops down on the ground floor was unoccupied or abandoned?

25

A. Yes.

Q. Right.

JUSTICE COOPER:

Q. Could we have a look at 0009.3

30

A. Looks like there's two red placards on those photos.

Q. Sorry.

A. It looks like there's two red placards.

- Q. Does it? Well I can see the red placard or so it appears to me on the door of the Great Opportunity Shop.
- A. And one further down to the left as well.
- Q. There's another one in the area where there is some sort of green advertisement is there?
- 5 A. That's right.
- Q. Just more towards the left does that line up?
- A. I don't recall if that was my one as well. It may have been.
- Q. Can you remember where you put the placard?
- 10 A. Not exactly but that, if I would have done it I probably would have put it somewhere in the middle there on the front door so it's likely to be.
- Q. Of the Great Opportunity Shop?
- A. Yes.

CROSS-EXAMINATION CONTINUES: MR ZARIFEH

- 15 Q. Did you put one on the back of the building in (inaudible 14:44:01)?
- A. Probably not because I don't, I didn't get access right to the back of the building and so as I say I didn't investigate too close round the back of the building.
- Q. Right okay. When you said cracks in rear walls then how did you see those?
- 20 A. From memory I could probably see them from where I got to.
- Q. Right. And you may have seen this photo if you've been in court. I think it's 009.6 of the rear of the building.
- A. Yes.
- 25 Q. Had you seen those cracks?
- A. I think that was likely what I was referring to in my report, cracks in the rear wall.
- Q. Right. So was that, were they the cracks that you saw and you think you might have been referring to?
- 30 A. Likely, I can't say for sure, but likely.

Q. Okay. All right just going back to this issue of the occupation. You saw signs or heard signs of occupation. Neighbour or neighbours confirmed that.

A. Yes.

5 Q. Were you concerned that there was someone in occupation of a then yellow stickered building?

A. Yes.

Q. And that's one of the reasons that you've red placarded it, correct?

A. Yes.

10 Q. And when you went back to the Council you said that any significant concerns were discussed as part of the feedback briefing and separated for more urgent action or review. Did you raise that?

A. Again I don't recall but it is likely. With things that were different or sort of out of the ordinary we tried to raise them up for different action or just to flag it up that somebody could either go there. I understood the Council sort of sometimes have different teams that can go in perhaps as a group or talk to people or remove them.

15

1446

20 Q. There doesn't appear to be any record on the Council's file of it either being raised if it was recorded, and, or more particularly of any action like that.

A. Mmm.

Q. So you're not sure if you did raise it. Is that what you're saying?

A. No.

25 Q. But presumably you knew that there shouldn't be anyone in occupation in a yellow placarded building?

A. Yes.

Q. What other concerns did you have after your re-inspection?

30 A. What go back to what I think, raised in my report, I think I was concerned about the –

Q. We will get the report brought back up, 0009.1, where you mentioned the propping?

A. Yes. The propping to the canopy, cracks in the rear walls.

Q. Why were the cracks in the rear walls of concern?

A. I guess they indicated that potentially the wall had been weakened.

Q. And you would be aware that that building was likely earthquake prone?

A. Likely, yes.

5 Q. And that the mortar would be likely lime based mortar, given the age of the building?

A. Yes.

Q. And we could see in that photo you referred to a moment ago, that a lot of the mortar had come out of those cracks?

10 A. Right, yes.

Q. So would that be indicative of the general state of the building, those cracks? I appreciate you didn't inspect the rear in anymore detail and the sides. Would that be fair comment?

15 A. I don't know if it's a fair comment. There's, you know, there's a general, there could be quite a bit of difference between them, but it was still, like you say, an old building, an earthquake, or unreinforced masonry building, sorry.

Q. And so the cracks in the rear walls you said was a concern. What did you envisage would be – could or should be done with those?

20 A. Oh gosh, a number of things I guess, if they'd wanted to fix it they possibly could have tried to fix it. They could have – it could have been stabilised, other cases, things like that if they weren't necessarily, could have been taken down, there's a number of options I guess.

25 Q. And when you said recommended for work to be completed by 4 April, what was the work?

A. I guess in that there was probably addressing some of those obvious issues, within work I guess I probably would have expected some form of detailed inspection. Obviously what we were doing was external only and it was quite brief and so there would need to be somebody else who would have a more detailed look at it.

30 Q. And who would that be generally?

A. Generally my understanding that was the owners to do, the Council sort of raised it up but the owners were expected to engage and do their detailed inspections and evaluations.

5 Q. So I'm just trying to understand the process though. You go out, you look at it, you have concerns with cracks in the rear walls and the canopy propping, and you indicate that those things, you recommend that the work be completed within 60 days and what happens to that form there? What were you thinking would happen and how would that work be done that you are recommending?

10 A. My understanding that form would then go back into the system which went back to the case managers and they would then sort of log the actions and either send out the notices again or try and contact the owners, or worse case try and take some action themselves if they had to.

15 Q. And you're not aware whether that had commenced after your inspection?

A. No, no, I'm not. I understand there was a meeting after that based on evidence I've seen, but at the time no.

20 Q. The propping, there had already that propping that we've seen. That was there when you went?

A. Yes, from memory yes.

Q. But you thought that was insufficient as you said?

A. Personally I didn't like just that as propping.

Q. And that's the reason for your reference to it there on the form?

25 A. Yes.

Q. And did you envisage the owner or the Council would make it more substantial or put up fencing as you've said?

30 A. Probably in the first instance I would have expected the Council to do it just because that seemed to be the quicker way of getting things done at the time and obviously my sort of communication was back through the Council so.

Q. And what was your concern? Why did you think there should be more substantial propping? What could potentially happen?

- 5 A. I just didn't think it looked significant and also with those props there I'd seen some cases round the city where it looked like there had been propping and there wasn't and that they could have been taken or easily taken away which you know I didn't think – I didn't think it should be so easily removable if it was going to do its job, it would be a bit more substantial.
- Q. And it's not fencing to prevent access?
- A. Mmm, yeah.
- 10 Q. Were you aware there'd been fencing before that propping had been put in?
- A. No, no.
- Q. So you didn't have anything to do with the propping so the fencing could be removed?
- A. No.
- 15 Q. When you ticked on the second page of the form "damage to parapets and/or chimneys and/or ornamental features that may pose a risk to the public and/or adjacent property", what were you referring to?
- A. I think on that there might have been some cracking along the front of the Colombo Street façade.
- 20 Q. What hence the danger, potential danger to the public?
- A. Yeah, it wasn't related to, I don't recall it being related to that south wall.
- Q. And would that also be a reason for the propping or the fencing?
- A. It could be, yeah.
- Q. You just can't remember now.
- 25 A. No, no.
- Q. The loose and insecure parapets in 2.5, is that the same thing, or what?
- A. Likely, yes.
- Q. And I take it 1.1 was that ticked and then you've crossed it out?
- A. Yes.
- 30 Q. So that wasn't a concern?
- A. I mean the structural condition was always a concern, but based on what I'd seen, no, no. Not in this building.

Q. So in relation to the south wall, as I understand your evidence you did not examine that wall?

A. There's no note in my report and I certainly can't recall any issues that came out of my overall inspection. I don't recall that wall specifically.

5 Q. Well you said at paragraph 22 that the gable wall on the south side of 382 is not specifically mentioned in my re-inspection report. That's correct isn't it?

A. Mmm.

10 Q. And as I recall I did not examine that part of the structure. So your recollection is that you did not examine the south wall at all?

A. I don't recall it, no.

Q. So you can't help us with whether it was – there was a slight lean, whether it was cracked or anything like that?

15 A. No, no. Except possibly by exclusion, if there was some significant damage it's likely I would have raised it.

Q. Or only if you'd inspected it?

A. Yeah.

Q. You're saying you recall, as you recall you didn't (overtalking 14:54:47)?

20 A. We saw – when we looked, sorry when I looked at the buildings obviously we tried to look as much as I can, so the process was to try and look at all parts of the building, so it's likely I did, but I don't recall specifically that wall.

25 Q. So in that case are you saying that unless it was something significant that stood out, which you think you would have then noticed and recorded, that's why you say you can't recall examining it at all?

A. That's right.

Q. Do you agree with the matters that were put to Mr Ling about that wall and what I'm talking about is that it's an unrestrained masonry wall.

A. Mmm.

30 Q. And it's quite high isn't it, when you look at that old photo, particularly the front piece, the piece nearest to Colombo Street. If we get 0006.3 brought up please. If you look at the photo and that we're talking about the wall on the left obviously in the south?

WITNESS REFERRED TO PHOTOGRAPH

A. Mhm.

1456

Q. What I'm saying is it's quite a heavy and solid wall?

5 A. Yes.

Q. Do you agree?

A. Ah, yes.

Q. And it extends quite a distance from the roof, extends up, it's quite high above the roof?

10 A. Um, yeah, yeah, not unreasonably for a parapet but yeah.

Q. No, but all of that parapet is essentially unrestrained. The only fixing if you like if it's there and we don't know for sure what it would be is at the roof level?

A. Yes.

15 Q. But above the roof level it's unrestrained?

A. Yes.

Q. So it's an unreinforced masonry building in an earthquake there's a real risk of that parapet or wall but particularly the top portion of the wall collapsing?

20 A. Yes.

Q. Would you agree?

A. Yes. Yes.

Q. Is that something that you would have thought about when you looked at the building?

25 A. Yes.

Q. Is that something that you don't recall thinking about that but you say you would've?

A. Yes.

30 Q. All right and did that, you don't recall that causing you any concern and wondering whether that should be looked at any closely, any more closely?

A. No, no. Again I was, I was there looking specifically at damage, um, so...

- Q. Right but what I'm saying is when you saw that feature?
- A. Mhm.
- Q. Would that not have caused you to think, "Well I'd better have a look at that because that's a real potential risk in a building like this", given what
5 you'd seen say in the rear wall and the crumbling mas- crumbling mortar and masonry cracks? Did you not think to, to look at that wall?
- A. Um, as I said I possibly did I just don't recall anything from it or any damage from it so, I'd tried to, we tried to have a process where we did
10 look at the whole building rather, rather than trying to sort of come in and just say, "Look this part's critical we'll only look at it". We tried to look at you know we were there trying to look for damage so I didn't sort of focus on one part at the exclusion of others.
- Q. Right and when you finished with your inspection and handed the form back you can't now recall if you raised anything specific or not?
- 15 A. No.
- Q. But am I right that you're saying that because you'd red stickered it you thought that that would go into the Council records and what there might be a more detailed inspection by the Council?
- A. Ah –
- 20 Q. Is that what you're saying?
- A. – necessarily by the Council no.
- Q. But what they might write to the owner and –
- A. That's right or there would have been some action –
- Q. – require the owner to, to what, so do the propping?
- 25 A. Either take some action or, or I guess just the fact that it was red stickered meant the owner couldn't do anything with it and so they may then start that process of trying to get their engineering evaluation done such that they could then get a green, a green placard and get the use of the building again.
- 30 Q. Although if the building was if the owner was likely to demolish it given its state in the earthquakes that had occurred that might never occur mightn't it, the repair?

A. Um, it might not but again I understand part of the process with the issuing the notice is, is that the owner was given a reasonable amount of time to do something and then if nothing was done then, then the Council could look to, to take some action themselves on it. But part of

5

Q. Right well if you had concerns about the canopy in particular and propping, why did you give 60 days? Why didn't you give a shorter period?

A. Ah, I guess based on, based on the damage I saw I felt that that 60 days was the sort of the reasonable time period that they were working to, and, and if we'd gone through on every building that we'd looked at sort of put five days for everything that wouldn't have helped the Council in trying to you know –

10

Q. I understand that but is it indicative of the concern level or, or what?

15

A. Um, there would be an element of that yeah.

Q. Right, did you give any thought to the potential for that wall to endanger neighbours?

A. Not based on the damage I saw no.

Q. The damage you saw to what?

20

A. Or sorry the damage I observed.

Q. Which damage the rear walls?

A. Or lack of damage yeah.

Q. Right but you're not talking about the south wall?

A. No.

25

Q. No.

A. As I say I didn't see any.

CROSS-EXAMINATION: MR ELLIOTT

Q. Thank you Your Honour. If your form could be brought up please, BUI.COL383.0009.1?

30

WITNESS REFERRED TO FORM

Q. Mr Ryburn what you're saying really is that you were looking for damage?

A. Yes.

Q. And I take it that the form that you were given by the Council was what you used to guide your assessment?

A. Yes.

5 Q. Of the building. The parapets are referred to just in the centre of the form so you're invited to look at non-structural hazards or damage?

A. Mhm.

Q. Parapets and ornamentation?

A. Mhm.

10 Q. And your tick there of moderate related to the front of the building?

A. Mhm.

Q. And then on the next page which is 0009.2, the first heading is "Type of Damage"?

A. Mhm.

15 Q. And so in 1.2 you're invited to look at damage to parapets and other things?

A. Yes.

Q. And then the second heading is "Characteristic of Damage", and what you're invited to look at there is loose or insecure parapets and other, other features. So was that the basis of your reason for looking for damage when assessing this building?

20

A. Yes.

Q. Was it possible to assess whether there was any damage to that south parapet without getting up on the roof and having a closer look at it, do you think?

25

A. Um, depending on the extent of damage yeah that there could have been. If, if parts of bricks had already fallen off it perhaps or it was, it was, there was evidence that there had been some damage to it I guess the top flashings or something had, had gone that would have indicated that, if it had lost some bricks, you probably could've seen that without getting up on the roof.

30

Q. So you felt comfortable in being able to assess the damage to the, if any, to the southern parapet by looking at it from ground level?

A. Yep.

Q. You heard my questioning of Mr Robert Ling?

A. Yes.

Q. Did you about parapets?

5 A. Yes.

Q. And I was asking him about the inherent dangers of parapets, irrespective of whether they may be damaged?

A. Mhm.

10 Q. Did the Council give you any directions to look for parapets as a dangerous feature irrespective of whether they were damaged?

A. No, not specifically parapets over and above any other part.

Q. Was there any discussion within the Council that you're aware of about those inherent dangers posed by parapets whether or not damaged?

A. No.

15 **CROSS-EXAMINATION: MR LAING – NIL**

RE-EXAMINATION: MR MCLELLAN

Q. Just one question. You were asked by Mr Zarifeh about what you thought was required to be done when you stipulated in your form that works had to be completed by the 4th of April 2011?

20 A. Mhm.

Q. Can I just take you to a document which is WIT.MCC.0008.16.

WITNESS REFERRED TO DOCUMENT

25 Q. Now this is a rapid assessment form for a level 1 inspection carried out just two days before your inspection on the 2nd of February where a, where the recommendation of the inspector was for a level 2 or detailed engineering evaluation structural should be undertaken apparently by the owner's engineer. Do you see that down towards the bottom of that form?

A. Yes.

30 Q. Would you have been aware of, of that recommendation or do you have any recollection of having had that re-inspect –

A. No.

Q. That inspection form?

A. No.

QUESTIONS FROM COMMISSIONER CARTER

5 QUESTIONS FROM JUSTICE COOPER – NIL

WITNESS EXCUSED

10 JUSTICE COOPER ADDRESSES MR ZARIFEH – STATEMENT OF MR UNKA

15 STATEMENT OF NEVILLE HIGGS READ TO THE COMMISSION

“My inspection of 382 Colombo Street and buildings further north on 10 November 2011 involved the use of a cherry picker to lift me up so I could inspect the top of the front fascias of the building and the connection of the front fascias to the return party walls. The purpose of this was to assess the risk to the road and footpath from the buildings with the aim of removing the protective fencing at the front of the buildings to improve the traffic flow in Colombo Street. There was no apparent significant earthquake damage to the 382 Colombo Street building. There was damage to the buildings further north in the block with very noticeable front façade separation occurring to the buildings from about 398 Colombo Street north. My opinion at the time was that the 382 Colombo Street building looked to be in a similar structural condition to what it was before the September earthquake. I recommended that before the protective fencing in front of the building was removed that the verandah be propped essentially as a reasonable means of covering any unobserved structural damage that may have occurred. The recommendation

was made in the light of the acceptable level for re-occupation of buildings being set at them having a structural strength similar or greater to what they were before the earthquake. This level had been established in conjunction with advice from the DBH, Department of Building and Housing, and to some extent was based on the premise that knowingly or unknowingly the public had accepted this strength level before the earthquake and even though there was some indication of the likelihood of higher seismic activity such a strength level was reasonable”.

10 **STATEMENT OF STEVEN JARM READ TO THE COMMISSION**

“My full name is Steven Jarm. I reside in Christchurch. I own the building at 380/380A Colombo Street. The building was divided into two tenancies, Tasty Tucker Bakery at 380A Colombo Street and next to it a branch of the ANZ Bank at 380 Colombo Street. After the 4 September 2010 earthquake, the Tasty Tucker premises were green placarded and there were no real issues with the structure of 380/380A Colombo Street. I was aware from seeing barricade fencing in front of 382 Colombo Street, which is immediately adjacent and north of the Tasty Tucker Bakery, at some stage that there must have been some damage to that building, however I was not aware of the nature of that damage. There was no communication to me by the owner of 382 Colombo Street, the Christchurch City Council or anyone else as to the nature or the damage of 382 Colombo Street or the potential for any danger that 382 Colombo Street posed to the adjacent building and the Tasty Tucker Bakery premises. During the 22 February 2011 earthquake, part of the south gable wall of 382 Colombo Street immediately adjacent to the Tasty Tucker Bakery and directly above it, given that the Tasty Tucker Bakery was only one storey and 382 Colombo Street was two stories, fell onto the roof of the Tasty Tucker Bakery, collapsing the roof and filling the inside of the Tasty Tucker Bakery premises with rubble. I understand that a customer who was in the bakery premises at the time was killed as a result”.

MR LAING CALLS:**STEVEN JAMES MCCARTHY (SWORN)**

Q. Your full name is Steven James McCarthy?

A. Yes it is.

5 Q. And you're the environmental policy and approvals manager at the Christchurch City Council?

A. Yes I am.

Q. You've worked at the Council since 1 May 2006?

A. Yes.

10 Q. And during the state of emergency following the 4 September earthquake were you one of the building evaluation managers in the Council's emergency operation centre?

A. Yes I was.

Q. Can you start reading your evidence at paragraph 6 please.

15 **WITNESS READS BRIEF OF EVIDENCE**

A. Events between the 4 September 2010 earthquake and 22nd February 2011 earthquake. On 7 September 2010 a level 1 rapid assessment was carried out on the block of shops from 382 to 402 Colombo Street and the buildings received a yellow placard. The assessment form does not recommend a barricade. The yellow placard was due to expire in
20 early November 2010 under the provisions of the Canterbury Earthquake (Building Act) Order 2010. The Council therefore issued a section 124(1)(c) Building Act notice dated 29 October 2010. The section 124(1)(c) notice was affixed to the building. I attach a
25 photograph taken on 29 October 2010 which shows the Building Act notice affixed to the building. A copy of the notice, along with a cover letter dated 29 October 2010, was posted to the owner Boi Fong Yan at the owner's last known address, in this case the address recorded by the Council for rating purposes.

EXAMINATION CONTINUES: MR ZARIFEH

Q. If I could just ask you to pause there. Was that the main mailing address that the Council would have used in the normal course of events?

5 A. Yes it was.

WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 9

10 A. The cover letter also refers to a section 124(1)(b) notice. The Council has not been able to locate any separate section 124(1)(b) notice in its records. The Building Act notice states that the building had significant damage to structural walls, party walls, fire walls and/or structural frame (cracking, bowing, failed connections, spalling). The Building Act notice contained a deadline of 15 November 2010 to carry out work on the building to remove the danger. The cover letter accompanying the

15 Building Act notice advised the building owner to contact the Council's building recovery office to discuss any building assessments and the particulars in the Building Act notice before undertaking any steps to remedy the danger and the letter recommended that the building owner contact their insurer. As a CPEng report would have been required to

20 certify that the danger had been removed, the Council's letter also recommended the building owner seek structural engineering advice from a qualified structural engineer on how to remove the danger. The Council's files do not include any record of work being undertaken by the building owners to remedy the danger in response to the notice.

25 However, a case management file note for 490 Colombo Street, which is also owned by Boi Fong Yan, states that Robert Ling advised on 28 October 2010 that his clients had not had the building inspected and that they were still waiting to hear from the insurance company. It seems likely that a similar situation existed in relation to 382 Colombo

30 Street. I am aware that Mr Neville Higgs, an engineer contracted to the Council at the time, inspected the exterior of the building on 10 November 2010. The details of this inspection are recorded in an email dated 13 November 2011 which is attached. On 2 February an

assessment was carried out by Raj Unka, an Opus engineer working with the building recovery office. The assessment recommends that a detailed structural engineer evaluation be carried out by the owner's engineer. Council records indicate that the building was re-inspected on
5 4 February 2011 by Mark Ryburn, an engineer contracted to the Council from Opus. The re-inspection form noted that the propping to the canopy and strengthening of canopies should be carried out or – extend fencing to in front of these shops.

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10 A. The form also stated that there were cracks in the rear walls and that there had been damage to parapets, and/or chimneys, and/or ornamental features that may have posed a risk to the public and/or adjacent property. On page 2 of the form, a recommendation was made that work be completed by 4 April 2011. This assessment occurred as a
15 result of the Building Recovery office undertaking a reassessment process in January 2011 for all buildings with Building Act notices which had not been complied with, as outlined in section 4.2 of the Council's Report into Building Safety Evaluation Processes in the Central Business District following the 4 September 2010 earthquake. The
20 Council's records do not indicate that any work was done as a result of this reassessment and no engineer's report was received by the Council. I understand that a meeting was held between Michael and David Yan, the Council's case manager, Katie Smith, and Neville Higgs on the morning of 22 February 2011 to discuss progress on all the
25 owner's properties including 382 Colombo Street.

Cordons. The Council's records show that the building was cordoned as a result of the yellow placard issued on 7 September 2010. I understand that the Council subsequently instructed Opus to investigate the safety barriers and traffic flow arrangements in the area. In
30 conjunction with Opus a draft traffic cordon update was prepared by the Council's Building Evaluation Transition Team (BETT). The revised traffic cordon update was circulated by BETT on 6 October 2010. The aerial photos of the building shows the proposed cordon. The Opus

plans illustrate the more detailed aspects of the proposed cordon. However I understand that the proposal was rejected by the Council as the proposed cordon systems for Colombo Street were not deemed to improve the traffic safety. The existing cordons remained in place. The Council's position concerning cordons was outlined in the cover letter dated 29 October 2010 enclosing the Building Act notice. This letter stated that the Council had erected traffic management systems such as hoardings, fences and/or barricades around the building for safety. The letter stated that as the building owner's damaged building was causing the need for the fences and barricades to be in place, any future responsibility and costs for the cordons would rest with the building owner. However I attach an email from Gary Lennan dated 11 November 2010 which states that the owner of the building had advised that he was waiting for his insurance company to come back to him before undertaking any work. It seems unlikely therefore that any work had been carried out by the owner by the deadline date of 15 November 2010. As stated in paragraph 13 above, on 10 November 2010 Mr Neville Higgs carried out an assessment of the exterior of the building and determined that the cordon could be cleared if supports were established for the verandah. It appears that the verandahs were subsequently propped by Fulton Hogan at the Council's cost. I am unable to ascertain from the Council's records exactly when the cordon was removed, however it seems likely that the cordon was removed soon after the propping of the verandahs in accordance with Mr Higgs' advice of 10 November 2010. There was a visual assessment of the building in January 1993 and the building was assessed as category B/C. The building was noted in the Council's records as a possible earthquake prone building. The building would have been deemed to be earthquake prone in terms of section 66 of the Building Act 1991. After the commencement of the Earthquake Prone Building Policy 2006 if a building consent application for a significant alteration was received, the strength of the building structure would have been assessed and dealt with in accordance with the policy. The building owner applied for

5 a Project Information Memorandum, a PIM, in February 2007 for a project to carry out internal alterations to create living quarters upstairs. The PIM advised that the building was a potentially earthquake prone building. The owner applied for a building consent for the work in March 2007 but did not provide all the information required and the consent application was subsequently cancelled.

EXAMINATION CONTINUES: MR LAING

10 Q. Just pausing there for a moment. When you say that not all information was provided, has that been expressed following a view of the Council's building records has it?

A. Yes.

Q. Thank you, 33.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

15 A. I note that at page 2 of the Spencer Holmes report in relation to 382 Colombo Street, it is stated that the Council records provide no basis for assessing what appears to be a change of use of the upstairs tenancy at that time. In response to an application for the owner, the Council issued PIM ABA 10072956 P08 which identified that the building was
20 potentially earthquake prone building. The owner then applied for a building consent ABA 10074599. The application was later cancelled at the request of the owner, after the Council asked for more information.

EXAMINATION CONTINUES: MR LAING

25 Q. I ask you to pause there again. You've heard the evidence today relating to the change of use position. Could you provide the Commission with any further information about why there was a change of use?

30 A. If a building changes from commercial use to commercial and residential use that track is an upgrade to, as close as is reasonably practical, to 100 percent of the new building standard. In respect of the Salvation Army building it had previously been a commercial use on the first and

second floor, so establishing a separate residential unit at – on the upper storey of that building, would have required a change of use application and that would have been into the building consent.

Q. Yes, thank you. 33.

5 WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. I note that page 6 of the Spencer Holmes report states that the Council knew that the building was being occupied when it assigned a yellow placard to it, and yet took no action to enforce evacuation. I attach a photo taken on 29 October 2010 which indicates that the bottom floor of the building was vacant. I refer to the rapid assessment dated 2 February 2011 which notes that the building was vacant. I refer to a re-inspection report dated 4 February 2011 completed by Mark Ryburn, which is the first record the Council has that the building was occupied.

COMMISSION ADJOURNS: 3.24 PM

15

COMMISSION RESUMES: 3.42 PM

MR LAING ADDRESSES JUSTICE COOPER – 487 PAPANUI ROAD

EXAMINATION CONTINUES: MR LAING

20 Q. Mr McCarthy, you were here when Mr Ling made the comment that he had contacted the Council in relation to 487 Papanui Road?

A. Yes.

Q. Can you tell us what you have managed to find out about that from Council records?

25 A. Certainly from an initial review of our file there was a request made by Mr Ling on the 7th of March 2011 so it was post the February earthquake. This was regarding damage that he perceived to a, to a building. We received at the Council a Harrison Grierson report which covered generally the engineering for that building. There was a further request by Mr Ling through CERA on the 3rd of June and CERA carried out an initial inspection and couldn't find any of the damage that Mr Ling

30

was referring to. Mr Ling was rung back for more information and he made the suggestion that someone climb on the roof of the building to ascertain the damage. Harrison Grierson did that and gave a confirmation that there didn't appear to be any damage that they weren't aware of and hadn't resolved so the, we're pretty confident that that was responded to at the time.

CROSS-EXAMINATION: MR ZARIFEH

Q. Mr McCarthy the Building Act notice that was sent out on the 29th of November?

10 A. Yes.

Q. Refers to significant damage to structural walls, party walls, fire walls and/or structural framing. Do you know what that is a reference to, what inspection?

15 A. Ah, broadly I think that, that refers to the, the initial rapid assessment first inspection of that whole block. There was damage to, significant damage further north at 406 and 404 in that block so broadly the, all of the buildings were yellow placarded and that notation was made in respect of all of those buildings.

20 Q. Right so is it a general description of structural damage but not intended to refer to any particular part of the building?

A. That's correct.

Q. And in this case from the Council point of view there was no work done by the owner at any stage on the building post September?

A. That's correct.

25 Q. So no compliance with the Building Act notice?

A. None at all.

Q. What work was the Council expecting would be carried out though with that kind of general notice, you expecting the owner to get an engineer in and do whatever was required?

30 A. Yeah, our prime, our primary concern with that whole block was the, the façades.

Q. Right.

- 5 A. Right along the streetscape, they were all part of a continuous block and the, all of the façades were joined so our concern principally related to public safety around the footpaths, but clearly these were old buildings and they needed to be assessed individually by the owners prior to reoccupation.
- Q. Right. And did – we know that Mr Ling was engaged by the owner and that he had some contact with the Council, Katie Smith was mentioned?
- A. Yes.
- 10 Q. Did he ever provide an engineering assessment of any kind to the Council?
- A. No he didn't.
- Q. And that meeting that you referred to between Michael and David Yan and Katie Smith and Neville Higgs?
- A. Yes.
- 15 Q. On the 22nd of February, you said that was in relation to all the properties owned by the Yans or Mrs Yan?
- A. Yes it was.
- Q. So was this property 382 and the lack of action if you like, was that isolated or was it wider in relation to other properties?
- 20 A. I think that was consistent with the approach that, that Mr Yan was taking at that time. He was clearly communicating with his insurer and pending anything from the insurer I don't think there was an intention to undertake any work.
- Q. Okay. And how, well how did that meeting come about, what was, do you know why it was set up?
- 25 A. Ah, not specifically, but there was a lot of pressure to reopen part of Sydenham to get it back to a state of normality so we assigned a case manager specifically to that suburb, Katie Smith, and her role was to get the buildings back to a normal and safe state as quickly as she could.
- 30 Q. Right.
- A. And as far as we could we wanted to remove the cordons so we were, we were working particularly on the Ascot TV building which was a bit further north.

Q. Was that on the corner of Wordsworth and Colombo?

A. Yeah, and there was a bit cordon around that one and we, we really needed to resolve that matter.

5 Q. Right. So the main concern the Council had was with the façades and that's why there was a cordon?

A. Yes.

Q. Initially. But the cordon was removed soon after the 10th of November after Mr Higgs' inspection?

A. Yes it was.

10 Q. And the propping?

A. Yes.

Q. And you'll recall the email from Mr Higgs referred to the, his recommendation that the cordon could be removed once there was propping?

15 A. Yes.

Q. And that he said that that was made in the light of the acceptable level for reoccupation of buildings?

A. Yeah.

Q. Do you remember that paragraph?

20 A. Yes I do.

Q. That was read out?

A. Yes.

Q. Does that accord with the Council policy or approach at that time?

25 A. Yes we were looking to get buildings back to the state that they were in prior to September but where there was the opportunity to repair to a better standard obviously we were taking those, those opportunities.

Q. You mean if legally the Council could?

A. Yes. Or in agreement with the, the owner.

30 Q. Right. And where he says that to some extent that was based on the premise that knowingly or unknowingly the public had accepted the strength level before the earthquake?

A. Yes.

Q. And even though there was some indication of the likelihood of higher seismic activity such a strength level was reasonable. Do you agree with that?

5 A. Broadly the, we were, we were working to upgrade buildings for our earthquake-prone policy but the effect of that hadn't really taken its full course yet so we were trying as much as possible to get the buildings back to a pre-September state.

Q. Right. Where he says that there was some indication of the likelihood of higher seismic activity, where did that come from? That indication?

10 A. That yeah, the, all of the engineers were meeting regularly with GNS, Department of Building and Housing, taking what advice they could as to the likely seismic activity going forward and basing a lot of their decisions around that information really.

Q. Right so were you aware of that indication that he speaks of?

15 A. Yes. Yes we were.

Q. And did that come from GNS?

A. Yes.

Q. So was that as opposed to a decaying sequence in terms of strength that there might be higher?

20 A. I think the indications were very much of a decaying sequence but to expect another earthquake approaching moderate, that was the general intent of what GNS was saying.

1552

25 Q. The re-inspection by Mr Unka, I think it was on the 2nd of February, a couple of days before Mr Ryburn's?

A. Yes.

Q. Was that, was there any follow-up of his recommendation for an engineer's report? You put from the owners on the form, what happened to that re-inspection form do you know?

30 A. I think clearly that would have – we don't have a complete file and unfortunately what happened was we surmised that the meeting on the 22nd, there was an earthquake during the course of that meeting. We have surmised that we have lost the hard copy file during that event, but

we believe that both of those reports would have fed into the 22nd February meeting that Michael and the other Yan brother, were having and hence Mr Higgs was there as well to talk general engineering stuff with those people.

5 Q. So that was the intended follow-up to both of those and re-inspections?

A. I believe so.

Q. And do you know if the issue of there being an occupant in a yellow then red placarded building was raised?

A. I don't specifically know that. I would imagine it would have been.

10 Q. In the letter of 29 October, you talked about, well the Council talk about the cordon issue and I just want to ask you about, on page 2 of that letter which is 0008.2, it will come up in a moment under the heading 'cordons and traffic management systems' – 382.0008.2. I'll read it out while it's coming. It says "the Council has carried the cost of the traffic
15 management for many weeks and is eager to see the city businesses return to normal as soon as possible. Going forward, as it is your damaged building that is causing the need for these fences and barricades, the responsibility and future costs for these traffic management systems will rest with the building owner". Can you just
20 tell me was that a, presumably a policy of the Council at that time or going to be.

A. It was our intention to start charging owners. Our principle concern at that time was that owners weren't doing anything, or it didn't seem to us that they weren't doing –

25 Q. To buildings?

A. – to buildings. And our perception was that if we started charging them for the cordons then they might be encouraged to actually take action on their own on their buildings because those costs would go back to their insurers and back to the building owners themselves so that was part of
30 the philosophy there.

Q. So that's the cost. What do you mean by the responsibility for the cordons then, or the traffic management systems. Were you going to pass on the responsibility for them to manage them?

- 5 A. We, yeah well obviously it was the buildings that were affecting the public place and so the buildings needed to be repaired before we could remove the cordons so our thought was that if the building owners had to start paying it would just encourage them to get on and fix the buildings, so that was just part of –
- Q. Yes I understand.
- A. – a wider strategy.
- Q. I understand the cost aspect but were you going to pass the responsibility for the cordons onto them?
- 10 A. I think we always accepted that we were going to have primary responsibility on the public place. We would have liked to but ultimately we had to take that responsibility.
- Q. And was that ever put into effect or not?
- A. With regards to this building or –
- 15 Q. To any buildings?
- A. It wasn't.
- Q. Did the Council have any policy or procedure in terms of advising a neighbouring property owner of potential danger from a building?
- A. The process was that if there was a perceived threat to next door neighbour then we would placard that building as well. So that was part of the building safety evaluation process that we were following.
- 20 Q. So in this case there was clearly a concern about the façade initially and hence the cordon on the road to prevent danger from falling parapet or façade –
- 25 A. Yes.
- Q. - and there doesn't ever seem to have been a concern or sufficient concern about the south wall at any stage for there to be any placard put on the adjacent building. Is that fair comment?
- A. That's correct. We had no information to suggest that wall was damaged at all.
- 30 Q. Do you agree with me that perhaps in hindsight given what happened in February that if a large earthquake like September happened again a building like 382 Colombo Street which has that relatively high gable

wall, unrestrained gable wall on the end, that a building like that would have to result in some kind of either restraint or placarding of the adjacent building in the future?

5 A. I think there's certainly lessons learned, there's been a number of buildings where, single storey buildings next door to two or three storey buildings in a line where that party wall has failed, so I think we would certainly –

Q. It would warrant closer examination of those circumstances?

A. Yes, there'd be a greater priority.

10 **CROSS-EXAMINATION: MR ELLIOTT**

Q. Just three brief topics today Mr McCarthy. The first in relation to the 2007 building consent application.

A. Yes.

15 Q. Mr Ling said earlier on that from his perspective he believed that the Council thought that the application for consent involved a change of use and from what you've said it sounds like that impression was correct?

A. That's correct.

20 Q. So is it right that from the Council's point of view that means that 382 should not have had a residential tenant without a building consent and upgrade?

A. That's correct.

Q. Did the owner ever tell the Council about any person occupying the premises after 2007?

25 A. No he didn't.

Q. When did the Council first become aware of that, if at all?

A. I think Mr Ryburn's advice to us on the 4th of February would be the only occasion that we were aware of that.

Q. Secondly, just in relation to the Building Act notice.

30 A. Yes.

Q. This appears to have been a building built in about 1915.

A. Yes.

Q. And the Council would have been aware in November 2010 that it was in a poor state?

A. Yes.

Q. And that there had been no upgrading for many years if at all?

5 A. That's correct.

Q. And that it had been vacant since 2007?

A. Yes.

Q. And that the owner was proving difficult to contact?

10 A. Yes, we managed to get in contact with him but that took a while as the evidence suggests today.

Q. This building 382 was demolished after the 22 February earthquake wasn't it?

A. Yes, yes it was.

15 Q. But the Tasty Tucker Bakery building remained intact, and remains intact. Is that right?

A. I'm unsure about that.

JUSTICE COOPER:

Intact? Parts of it remain standing perhaps.

20

MR ELLIOTT:

I have a photograph Your Honour which is not on our system, I'm happy to hand it.

25 **JUSTICE COOPER:**

Well we've just seen damage, I mean it was in a rather damaged state wasn't it, as a result of the earthquake, which is why we're here.

1602

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MR ELLIOTT:

The photograph just shows that it's standing. Of course it's damaged through the roof and appears that the adjoining property has been demolished completely.

JUSTICE COOPER:

5 Yes.

MR ELLIOTT:

Whereas the other one remains.

JUSTICE COOPER:

10 Yes.

MR ELLIOTT:

But in a damaged state.

CROSS-EXAMINATION CONTINUES: MR ELLIOTT

15 Q. And my question for you Mr McCarthy was just upon expiry of that Building Act notice in 15 November 2010 why not just go ahead and demolish 382?

A. I think in order to do that we would have required a more detailed engineering assessment. There was no immediate and obvious structural damage that would warrant us demolishing that building and if we'd I suppose adopted that approach we would have had to extended that to some of the other buildings in Sydenham so we were awaiting information and hence we were asking the owners to come up with detailed engineering evaluations so that we actually knew the true state of, of buildings.

20

25

Q. Thank you and thirdly and finally just in relation to parapets you've heard my questioning of Mr Ryburn?

A. Yes.

Q. And Mr Ling. Professor Ingham's comment that the greatest threat to public safety posed by unreinforced masonry buildings is that of falling

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masonry, the hazard can be due to chimneys that fail by rocking usually at the roof line and fall through the building's roof or over the side of the building, parapets that are not properly secured to the building can fail similarly?

5 A. Yes.

Q. That is something the Council was aware of before the 22nd of February wasn't it?

A. Yes we were.

10 Q. But it's evident from Mr Ryburn's evidence that the Council directed him and others to focus on damage. Do you agree?

A. Yes, the only difference in this case is that we did have some advantage in so far as we had been up in a cherry picker, one of our engineers, and looked at the you know looked at the parapets and established at a date that they were in a reasonable state.

15 Q. So as a general question did the Council consider for the inspection process asking its inspectors to focus on parapets as a particular source of danger irrespective of whether they were damaged or not?

20 A. They did generally focus on the parapets I think. That was certainly the area where we'd seen the most damage and I think broadly all of the engineers were, had a focus on parapets.

Q. Whether or not they were damaged or only if they were damaged?

A. I think they looked at, as Mr Ryburn said he looked at the whole building as much as that were possible.

CROSS-EXAMINATION: MR MCLELLAN – NIL

25 **RE-EXAMINATION: MR LAING – NIL**

QUESTIONS FROM COMMISSIONER CARTER:

30 Q. Just with respect to that last question from Mr Elliott, the question I think you replied that there would be consideration for parapets since the engineer saw that there were parapets that thought might be dangerous. Is that not in contradiction to the other expectation that as long as an

engineer examined it and saw that the building had not deteriorated beyond where it had been on the, prior to the earthquake, so I can imagine some confusion arising as to whether they were or were not looking at a reduction in what had existed prior to the event. Could you comment on that?

5

A. Yes –

Q. We've heard from several engineers that all they were doing was examining for damage so there didn't appear to be a concern and that we've heard from other engineers that were picking up this point that perhaps there were dangerous elements in a building that they should identify?

10

A. I, I would hope that we were looking at both damage and danger.

Q. Yes.

A. And if there was a danger that was not occasioned by damage specifically that that would be addressed. I would have – and that's why we, we engaged fully competent engineers to do that work for us as opposed to people with a lesser knowledge. So we were, we were certainly looking for feedback from them as much as that were possible on how we could best ensure the safety of the public.

15

20 Q. Yes thank you.

A. Thank you.

QUESTIONS FROM JUSTICE COOPER:

Q. Mr McCarthy in this case there's a notice served under the Building Act section 124 soon after the 29th of October?

25

A. Yes.

Q. I understand the evidence that it wasn't read but nevertheless it was served in accordance with the Building Act?

A. Yes it was.

Q. And the use of the address in the rating records as I recall it would have been one of the ways of serving the notice lawfully provided in the Building Act?

30

A. I believe so.

Q. And it required work to be done to reduce or remove the danger by the 15th of November 2010?

A. Yes it did.

5 Q. Now nothing happens and there's a re-inspection by Mr Ryburn on the 4th of February and approximately four months later and the file that he is given doesn't have the earlier notice on it?

A. That was his recollection. I'm not, I can't confirm or deny that.

Q. You don't know that that's the case.

A. I don't have a –

10 Q. Is there a corroboration it seems to me exists in the fact that he serves another notice or he notes on his report that the occupiers should be given until the 4th of April to do the works. Now he wouldn't have done that would he if he was aware that there was a notice requiring works, there was a pre-existing notice that required the works to be done on
15 the 15th of, by the 15th of November?

A. It would be surprising if he did that, I, I agree with you. Can I just clarify
20 though that whilst there was no works done by the owner the, the Council did act to support the verandah which I was pleased to see may have had some beneficial effect insofar as the façade didn't fall on to the street in February so in a temporary way some work had been effected on that notice.

Q. Yes.

A. It was only temporary so the notice was still in force and the, the owner had to put more permanent repairs in place but I agree with you that
25 Mr Ryburn's recommendation as to the 4th of April might not have been taken up and I suspect that was partially going to be the subject of some debate on the 22nd when Mr Higgs discussed it with the owners.

Q. Well what Mr Ryburn said in his evidence was that, "I generally
30 regarded 60 days as a starting point reasonable timeframe for owners to carry out works in the absence of information indicating that a shorter timeframe could be recommended". I just wonder whether four months later some more pre-emptory approach was requisite?

A. I certainly would have preferred a more, a shorter timeframe and more direct approach sir.

1612

5 Q. Because the wording of the notice which the Council used with reference to the 15 November date was followed by “or such other date agreed by the Council in writing” and if there were written advice that the works could be done by the 4th of April, arguably that would have been sufficient to extend the period of that notice.

10 A. I think you make a fair point sir and that’s certainly a lesson I’ll take forward.

Q. It’s just one has seen a number of instances where the Council has issued notices and for one reason for another in all of the circumstances there doesn’t seem to be much evidence of the notice actually being enforced. Some people complied with the notices.

15 A. Yes.

20 Q. But I’m not aware of a case that we’ve come across in our inquiry of the Council taking any enforcement action in respect of a notice notwithstanding its expiry and I suppose part of the answer must be I suppose, the timing of the February earthquake but here was a notice that, on the face of it, had expired on 15 November.

A. Yes.

Q. So there would have been time to get onto it?

A. There was an approach from the owner I think to Mr Lennon which said, “Look, I’m still negotiating with my insurer.”

25 Q. Yes.

A. And it still drifted and it was unfortunate. The Council action helped a little but we were still waiting for that engineering evaluation so we truly knew the state of that building.

WITNESS EXCUSED

MR ZARIFEH CALLS:**PETER SMITH (SWORN)**

5 Q. Mr Smith, you are a structural engineer with Spencer Holmes Limited and you've prepared an independent assessment on the earthquake performance of the building that was at 382 Colombo Street for the Royal Commission?

A. Correct.

Q. And the report is dated November 2011 and I think is some 14 pages?

A. Correct.

10 Q. Can I ask you please to summarise the main points of the report and firstly, just tell us a little about the building and its age and construction and what seismic restraint it had, if any?

A. If we start with that, enlarging that photo on the front and I apologise it's not a particularly good one, but it's one of the few we have of the front elevation before the earthquakes. Basically it was an unreinforced masonry building. It had a party wall between the two tenancies. There was a, as I understand it the building on the right was 382, the building adjoining that, the tenancy adjoining that was 382A. Clearly the building had a very open façade to the street frontage at the lower level and reasonably generous proportioned openings on the first floor, to the street elevation. It had masonry walls running back into the site including the south wall which is the one that failed over 380 Colombo Street tragically, a party wall between those two tenancies and then what appears to be a party wall with the adjoining building at 384
20 Colombo Street. The roof framing is understood to have spanned between the party walls and it supported a light weight roof. The first floor again is expected to have been spanning between the party walls and that will have been timber construction. The building in the, if we talk about the east-west which is the direction perpendicular to the street, it had quite a lot of reserve strength because it had three walls
25 running back in the east-west direction. In the north-south direction, the building had a lot less in the way of lateral resistance. If we can go to
30 382.00006.3 and enlarge the bottom photo please. That's a photo taken

of the rear. You can see again there was some reasonably significant openings in the first floor wall at the rear. That's the two storey portion. At that point it actually stepped down and there was an extension. There's a single storey construction beyond that. It's quite possible, although we don't know for sure, that there was an internal division wall beneath the rear or what would be the west wall of the building on the ground floor but clearly the building had quite high parapets and up stands to the party walls, or adjoining walls. It had a chimney which is evident in the south wall towards the front and I think from a later photo if we go to WIT.AVN0001.6. There's a projection in that photograph which is not that far from the west wall which I take to be another chimney so it appears there were two chimneys along the south wall. I think it's worth looking at that photograph while we've got it. There's quite a significant horizontal crack in the parapet and if we look at that photo the reason for that crack I think is quite evident, that there is a metal fixing securing a vent to the rear of that wall and I am almost certain that corrosion of that fixing in the mortar bedding has resulted in the lifting of the brick work and the formation of that crack so I'm quite convinced that was –

20 **JUSTICE COOPER:**

Q. How does corrosion cause that?

A. Corrosion is quite amazing how steel when it corrodes expands and it's simply, it forms the corrosion by-products which I've actually experienced them lifting a three or four storey building just through corrosion. It's a very powerful force. So I don't question that that was pre-existing but I do suggest it was an identifiable deficiency in the parapet and one that would have been of concern.

EXAMINATION CONTINUES: MR ZARIFEH

Q. Concern for what reason?

30 A. I think that clearly that upper portion of the parapet in particular was ineffectively restrained. It was relatively high up at 1.2 metres and with

that horizontal crack there was very little restraint of that portion of the parapet, however that's not where it failed ultimately as we'll see later.

1622

Q. And the front of that wall was higher still wasn't it from the roof?

5 A. I'm not sure it was that much higher than the – it stepped if we go back to 382.0006.3 and if we can enlarge that bottom photo again please. You'll see that there was a step in that south wall which looks about a metre high but the roof would have been rising, going forward, so probably the highest point of the parapet was midway along that south wall. It was still reasonably high at the rear or the west side. It probably had less upstand from the roof towards the front by the appearance of that photo.

10

Q. And is that just discolouration on this south wall that we can see in that photo?

15

A. I believe so.

Q. What's the significant of the openings that you mention at the front and back of the property?

20

A. They create a weakness or reduce the lateral load resistance of the building and from an earthquake which has a directionality north-south, especially heading north, they do raise concerns as to the restraint of the south wall.

Q. Now you were telling us about the resistance that the building had in the east-west direction because of the walls.

A. Yes.

25

Q. But not so much in the north south. What did that mean to that wall at the end on the south?

A. It really means that the south wall is more vulnerable to an earthquake which is orientated north-south, particularly heading south.

30

Q. And being on the end of the building, the upper portion of it being above the roofline, does that have any significance?

A. Yeah, certainly any extension of the wall above the roof becomes vulnerable in an earthquake, especially where it's not – it's vulnerable anyway, it's particularly vulnerable where it's an end wall and the fixing

between that wall and the timber roof framing is probably relatively ineffective.

Q. It would appear from the evidence that the building was in its – in a relatively original condition?

5 A. It would.

Q. So it would be undoubtedly earthquake prone as at September?

A. I would believe so, yes.

Q. And you heard the evidence of Mr Ling about in 2007 about a proposal to develop the building and the significant structural strengthening that would have been required?

10

A. Correct.

Q. Is that an indicator of the fact that it would have been earthquake prone as well?

A. I believe so, yes.

15 Q. So would it have taken significant strengthening to upgrade that building?

A. Yes it would.

Q. Well can you tell us about the failure mechanism then in February?

A. Yes, if we can go to 382.0009.3. Perhaps if we just hold that photo where it is while we've got it. It's evident that after the earthquake in February from that photo which is of the frontage, that very little damage occurred to the frontage of the building. If we go to 9.4, just while we're there, I think it's interesting to note that the yellow placard on the Great Opportunity Shop which was there in a previous photograph has been removed by some party when the – and also the notice that was under the yellow placard has been removed when the – and the red placard replaced. The 9.4 shows substantial failure of the upper portion of the south wall. You can see that it – where is the crack that we observed in the parapet for the south wall on the previous photos was approximately 20
25
30
600 or more above the roof line has actually failed along starting at the roofline almost or just below at the west end, it's then reduced in height slightly almost following what appears to be the ceiling lining and as if the ceiling has provided some restraint to that wall and stopped a total

façade failure and then it continues towards the front along much the same height, so in the severity of shaking that we had in the 22nd of February, clearly the vertical acceleration and the lateral accelerations that were experienced caused that to topple unfortunately towards 380, and to have penetrated the roof with tragic results.

5

Q. And I just want to ask you about issues that arise out of your review and if you like lessons that can be learnt from this tragedy. You talked about that crack in the wall as being significant in concern, and we've heard about this damage based approach.

10

A. Yes.

Q. If a more risk based assessment had been adopted and perhaps coupled with an assessment of the strength of the building, do you think that that would have made a difference to how the building was treated?

15

A. I think there's two issues really arising from that. I think firstly a wall in that condition both with a crack at the upper level but also with the securing that it had to the roof framing, does pose a threat and I suspect that in a future earthquake it will be the initial event that will cause the loss of life, not an aftershock which was a little bit unique in the Christchurch event and I think unless action was taken to secure these buildings and strengthen them, we will see a repeat of the Christchurch experience elsewhere in New Zealand in the initial event. From the assessment of buildings following an earthquake I think it's very important that an internal inspection and a level 2 assessment is made and passed on to the local authority as quickly as reasonably practical before these buildings are occupied or buildings which fall within the fall distance of those buildings are occupied. Clearly there is a risk which exists. The orientation of any future earthquake may not be determined with any accuracy and clearly it was the change in orientation of the earthquake I think which contributed towards the failure of that parapet wall.

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25

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Q. Thank you. I think we've covered the issues, you've combined them. Is that right?

A. Yes I think it is important that when rapid assessments are being made the potential for a portion of an adjoining building to fall onto the building of lower construction needs to be carefully considered. I understood that if a building was given a yellow placard and the risk was assessed to affect the adjoining building that would also be given a yellow placard. I think in this instance as I interpret the evidence the concern was for other portions of the building other than the south wall but I think if one looked at assessing, that south wall had a relatively low level of seismic resistance for failure towards 380 Colombo Street and I would hope in future that that risk is identified and the adjoining building is also not occupied until that risk is addressed.

Q. But that requires an assessment to be based on the potential for – or the risk of features such as a wall like that, an unrestrained wall?

A. Yes it does, and it certainly needs an internal inspection of the building which the initial level 1 inspection does not provide for. To get a level 2 inspection that means access has to be arranged into the building and the owner's cooperation is needed for that assessment.

Q. And level 2 in a building like this to establish what kind of thing?

A. The level 2 establish the presence of the crack which existed in that parapet. It I think should include for an assessment of the connection of that wall to the roof framing under some minimum strength level dictated by the controlling authority depending on the level of aftershock which might be expected in the area.

1632

25 **CROSS-EXAMINATION: MR ELLIOTT**

Q. Mr Smith just one issue which is a more generic one. To a layperson there may appear to be an anomaly with some of these buildings we're looking at. Very old buildings in most cases earthquake prone, bricks and mortar construction of a hundred years old or more, with a major earthquake in September and then thousands of aftershocks and some many URM buildings remaining standing or in some cases showing evidence of little or no damage and then problems in February. I'm just

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wondering how that can be that these building which sound so potentially dangerous can have got through so many earthquakes without much or any damage?

- 5 A. I think the factors contributing to that are the short duration of the September event; the orientation, predominant orientation of that event; there is a certain amount of energy absorbed when you break a, or crack the original walls in the first earthquake which assists that building to stand but not necessarily be safe after the event. The level of the, or the intensity of shaking that was experienced in the February event was
- 10 almost as high as has been recorded anywhere in the world and that certainly contributed significantly as did the vertical acceleration experienced in that event to the failure of in particular of the upper floor of unreinforced masonry buildings. You're correct in that engineers are running calculations on a building and assessing it at say 10% strength
- 15 doesn't mean it will fail in an earthquake shaking which has an acceleration in excess of that. These buildings do have an ability to absorb energy without failing but they are very vulnerable in, to earthquake shaking.

CROSS-EXAMINATION: MR LAING – NIL

20 **CROSS-EXAMINATION: MR MCLELLAN**

- Q. Mr Smith I just want to ask you a couple of questions about the, about Mr Ryburn's inspection. You were here when he gave evidence and you heard the cross-examination of him I believe?
- A. Correct.
- 25 Q. Given what you've heard about the I suppose the guidelines that inspectors like Mr Ryburn were given which was to use effectively a damaged based assessment. Can I just ask you to comment on what he did on the 4th of February, he – his recommendation was to, well firstly he didn't observe damage from his ground level inspection of that wing
- 30 wall?

A. Yes I – my observation the high façade to 380 Colombo Street prevented any inspection of the south wall from Colombo Street so that that, if we look at that photograph it's actually on the cover of our report.

JUSTICE COOPER:

5 Q. 9.3, on the cover of your report?

A. I think, well yeah, either that or yeah 9.3 will do it sir.

WITNESS REFERRED TO PHOTOGRAPH 9.3

A. 9.3 is taken after the earthquake. You get this sort of white out that appears on the right-hand side of that photograph but that is the up
10 stand to the front of the Tasty Tucker tenancy and clearly from the street that obscures any view of the south wall. Similarly, when Mr Ryburn went to the rear of the building he was unable to get any closer as I understand it than the north side of 384 and therefore really did not have a very good view of the south wall and certainly wasn't able to see if that
15 wall was damaged.

CROSS-EXAMINATION CONTINUES: MR MCLELLAN

Q. He recommended improved propping for the front verandah, we heard him say?

A. Yes I think that was a recommendation made in the light that the risk
20 was predominantly from a parapet failure and not as we experienced over much of Colombo Street of façade failures.

Q. And he changed the placard from a yellow to a red we heard?

A. Correct.

Q. So can I just ask you to comment generally given the nature of the re-
25 inspection process that he was being asked to do on the general diligence of his work?

A. I think the change from yellow to red was appropriate given that he was aware of occupancy occurring following the yellow placard.

RE-EXAMINATION: MR ZARIFEH - NIL

QUESTIONS FROM COMMISSIONER CARTER – NIL**QUESTIONS FROM JUSTICE COOPER:**

Q. Can we go back to the document with the suffix 6.3.

WITNESS REFERRED TO DOCUMENT SUFFIX 6.3

5 Q. And expand that please. I've been experiencing difficulty with this photograph which I'd like you to help me over?

A. Certainly.

Q. It's a matter of perspective and view I think but you see the wall that collapsed?

10 A. Yes.

Q. Now immediately adjacent to that, is that the roof of number 380 or is it, it looks like it could be a ramp of some sort?

A. No that area there is the up stand of the façade to the frontage.

Q. That's the façade?

15 A. And that's a brace that comes back on to the top of the block wall of 380 to hold that façade up.

Q. I see.

A. So that's why from the Colombo Street that façade obscures the view of this wall predominantly.

20 Q. Yes.

A. And then this appears to be the form of the roof of the single storey Tasty Tucker tenancy, this appears, and I don't know for sure, but appears to be a two storey portion to the ANZ bank but I haven't actually seen that. It appears, certainly appears to be a two storey building at that point.

25

Q. So where's the roof of Tasty Tucker?

A. Down at that level Sir.

Q. Under there?

A. And in behind that.

30 Q. Yes. All right, well I take your word for it.

A. I don't think there's a better photo unfortunately.

Q. No the photos have not been as good in this case as –

A. Maybe the one after the earthquake might be the better one Sir actually there might be one.

Q. The one we were looking at previously?

A. If you look at, yes it's number –

5 Q. 9.3.

A. 9.4.

Q. 9.4

WITNESS REFERRED TO PHOTOGRAPH 9.4

A. I think.

10 Q. Yes.

A. Yes 9.4.

Q. Yes.

A. You see that area in the centre left?

Q. Yes.

15 A. Is the up stand of the façade which is –

Q. Yes, no I've –

A. Almost one storey high.

Q. I've followed that all along.

A. Yes. And the roof –

20 Q. I have no difficulty with this photo.

A. The roof –

Q. But the other one is difficult.

A. The other photo is taken from the rear of this single storey building.

Q. Yes.

25 A. And obscured a lot of that area.

Q. All right well just –

A. You can see the prop, the brace down the, on the –

Q. That's the brace holding up the façade?

A. Yes.

30 Q. It's a different colour from the one in the other photo?

A. Yes.

Q. It's sort of black and yellow?

A. It may have some brick on it now Sir.

Q. It appeared to be white.

A. It may have some brick on it.

Q. I see.

A. Because it would have been within the fall zone of that masonry.

5 Q. Yes. Well then do we know anything about what was erected on the site of the Tasty Tucker before the Tasty Tucker which seems like a comparatively modern –

A. No.

Q. – building was constructed?

10 A. We hadn't investigated that, it's – it would appear as though that, the building at 382 may have been in separate building to the adjoining one that was demolished but we really don't know. Certainly that wall if it was a party wall has been plastered over to weather proof it at the, around the time that the single storey building was constructed.

15 Q. And is it, why are you saying, why are you able to say that?

A. Well it's clearly there's a plaster surface to that wall now.

Q. Yes.

A. It's, if there was an adjoining building there at the time the building was constructed it's unlikely that would have been plastered because there would have been no access.

20

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Q. What explains the different colours?

A. I think advertising at some stage.

Q. Advertising on the side of 382?

25 A. I would suspect so, yes.

WITNESS EXCUSED

COMMISSION ADJOURNS: 4.44 PM