

COMMISSION RESUMES ON THURSDAY 1 MARCH 2012 AT 9.32 AM

738 COLOMBO STREET

5 JUSTICE COOPER:

Our work today is to enquire into the failure of the building at 738 Colombo Street in the February 2011 earthquake. The façade of that building then collapsed into Colombo Street sadly killing Desley Thomson. We acknowledge the presence here today of close members of her family, including her mother Rae, her stepfather Dave, and her aunt Roslyn. I understand also that her friend Megan is also present. We extend our deepest sympathy to you in the sad loss that you have had.

Appearances: Mr Zarifeh and Mr Elliott for the Commission, Mr Laing and Ms Daines for Christchurch City Council, Mr Jones for Powell Fenwick Consultants.

MR ZARIFEH:

If the Commissioners please the building that was situated at 738 Colombo Street and shown on the aerial photograph on the screen was a two storey structure with brick infill walls to Colombo Street, and concrete beams and columns. The building adjacent to it at 736 Colombo, so that's to the south, was a four level concrete-framed building with brick infill walls and at first floor level the two buildings were open to each other to allow a larger space to be utilised and I think I'm correct in saying that as a result some earthquake or seismic resistance for 738 came from the adjoining building. So in the photograph the Commissioners can see 738 which housed the OK Gift Shop, as seen on the veranda, and 736 appears to have been built in the early 1900s. 738 appears to have been built in 1937.

Although some earthquake strengthening was carried out to 738 in the past because this was pre 31 March 2005, the building was still considered, as at the September earthquake, to be earthquake prone.

JUSTICE COOPER:

Can we see 736 in that?

MR ZARIFEH:

5 If I can perhaps get a photograph 738.0010.52 –

JUSTICE COOPER:

Some of these photos are more relevant to the other side of the road aren't they?

10

MR ZARIFEH:

Yes they're a combination and if perhaps the bottom left could be focused on and turned around, this is post the February earthquake – bottom left. So 738 is in the foreground and 736 to the south of it to the right.

15 Following the September 2010 earthquake there was a level 1 rapid assessment of the building on behalf of the Christchurch City Council on 5 September which noted minor damage and the building was green placarded. This was consistent with a walk through inspection of the building by Powell Fenwick Consulting Engineers on the morning of 4 September. That appears
20 to have been at the instigation of the tenants, the OK Gift Shop, who, I understand, did own the building but had sold it to a Jonathan Liu who's giving evidence as the owner sometime before September. As I say that walk through inspection by Powell Fenwick was consistent with the green placarding.

25 The engineer who inspected the building on the morning of the 4th is overseas somewhere in Western Australia, I think working in a mine, but we're going to hear from Malcolm Freeman who's a director of Powell Fenwick and structural engineer who conducted an inspection of the building on the 26th of December after the Boxing Day aftershock. That was essentially a level 2 inspection
30 because he looked inside the building as well as the outside and there was also, on the 27th, the day after Boxing Day, a level 1 rapid assessment on behalf of the Council. That resulted in the building being green placarded and on the form for that level 1 is a reference to a Powell Fenwick report that was

cited but there was no record of that report on the Council file. As I say Malcolm Freeman was the Powell Fenwick engineer who inspected the building on the 26th and is presumably, his report is what is referred to in that level 1 rapid assessment. So the building remained open and tenanted

5 throughout.

In the February earthquake the building was substantially damaged, including the collapse of the façade onto the street, and you can see in the top photo, the bottom one is the other side of the street, the top photo the façade collapsing into the street.

10 The Christchurch Police confirmed that Desley Thomson was a pedestrian on Colombo Street at the time of the earthquake, was found under collapsed building material outside 738 Colombo Street and a Detective Sergeant Mark Reid confirmed this location as being on the footpath roadway outside the premises known as the OK Gift Shop, at 738 Colombo Street, and that's
15 another photograph of both sides of Colombo Street after the February earthquake.

0940

JUSTICE COOPER:

It is some time afterwards, isn't it, because the rubble has all been –

20

MR ZARIFEH:

Yes it is Sir.

JUSTICE COOPER:

25 They've made a path through the road.

MR ZARIFEH:

That's correct Sir and 738 obviously to the right and 753-759 on the left Sir.

The likely issues in this hearing: the application of the council's earthquake
30 prone policy to the building, and the assessment of the building following the September earthquake and the Boxing Day aftershock. As I mentioned before there had been some earthquake strengthening to the building some time

ago. I don't anticipate that that will feature largely. It was not such that it didn't make the building earthquake prone but that can be touched on by Mr Smith.

As to the witnesses Your Honour, firstly, you will hear from Mr Jonathan Liu, who as indicated is the owner of the building. He will have or speak through

5 an interpreter, Mr Zhang, and he will be the first witness. I was going to call and there's a witness indicated Luke Rees-Thomas from Knight Frank Property Managers. I had anticipated calling him perhaps late in the day because I hadn't heard back from Mr Liu, emails that I'd sent to him, and really thought that it would help to have Mr Rees-Thomas here. He was, as I

10 understand it, acted as a property manager and instructed or was instrumental in instructing Powell Fenwick. It's not entirely clear and I was hoping to clear that up but certainly had involvement with the building. When I had trouble getting in touch with Mr Liu last week I arranged for a summons to be served on Mr Rees-Thomas. That wasn't served till Monday. He was overseas I think

15 until the weekend and it was served on Monday. I think Knight Frank have taken advice about the timing of the serving of the summons. If it's served by registered post it has to be served 10 days before the hearing and have taken the position that because that 10 days has not been complied with then he doesn't need to appear so I don't anticipate he'll be here from the letter I
20 received. I'm not sure why that technical point is being taken.

JUSTICE COOPER:

No.

25 **MR ZARIFEH:**

I can't really understand that. I have tried to contact the director that wrote the letter but he hasn't returned my call.

JUSTICE COOPER:

30 This is the only time we've had such a difficulty during all these hearings.

MR ZARIFEH:

Yes Sir, and I'm not sure why. I don't see there is any real reason for it but what I intend to do is, it's disappointing, but what I intend to do is to see how the hearing eventuates and if there is a need to get further information then I'll summons Mr Rees-Thomas to appear before the Commission.

5

JUSTICE COOPER:

Is he in Christchurch today?

MR ZARIFEH:

10 I imagine so.

JUSTICE COOPER:

Well, we'll see how we go but it might be an idea if you or Mr Elliot were able to make contact with that firm and pass on our concern about the stance that is being taken which, as I say, nobody else has taken in all these weeks.

15

MR ZARIFEH:

No Sir, and I've left a message on Mr Bell, who is the director who wrote the letter, his cellphone saying that I was disappointed in that approach, taking a technical point and I am sure the Commissioners would be tomorrow so.

20

JUSTICE COOPER:

Well if need be of course we can reconvene the hearing if they insist on this technical stance. Most inconvenient for us because today is the day we want to focus on this and not very fair on the family members who are here expecting us to focus on the matter today so perhaps if those thoughts could be passed on to Mr Bell or whoever else it is at Knight Frank that might induce some change in attitude.

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30

MR ZARIFEH:

Yes Sir, I'll do that, and I had in my email to him last week said that I wanted to have him present because I wasn't sure if Mr Liu would be available but also whether he could answer all the questions, so we'll see how it eventuates

but we may need to come back to Mr Rees-Thomas. Mr Freeman who I mentioned, Malcolm Freeman from Powell Fenwick will give evidence. He conducted the inspection on the 26th of December but he will speak to the written report that is there from Powell Fenwick in relation to the 5th of September and there is also a Powell Fenwick report following the February earthquake which is of less significance in terms of the failure but he can address that and perhaps summarise the failure as Powell Fenwick saw it. Mr McCarthy from the council will give evidence, and finally Mr Smith, structural engineer who has prepared an independent report for the Commission will give evidence. So I commence, Commissioners, with Mr Liu.

MR ZARIFEH CALLS

JONATHAN LIU (SWORN)

INTERPRETER (SWORN)

15 Q. Mr Liu, can you give the hearing your full name please?

A. My name?

Q. Yes your full name.

A. My name is Powen Liu.

Q. Thank you, and you reside here in Christchurch?

20 A. Pardon?

Q. Do you live here in Christchurch;

A. Yes sir.

Q. Did you own –

25 **JUSTICE COOPER:**

Let us just get into the practice that you say the question, you translate it every time, all right? That way there is no uncertainty about whether it has been understood. Thank you.

0950

30 **EXAMINATION CONTINUES: MR ZARIFEH**

Q. Did you own the building that was situated at 738 Colombo Street?

A. Yes.

- Q. When did you buy that building?
- A. In August or September 2008.
- Q. Who did you buy it from?
- A. The previous owner of the OK shop.
- 5 Q. So the OK Gift Shop was OK Gift Shop Limited?
- A. No.
- Q. But it was the owner of the OK Gift Shop?
- A. Yes.
- Q. Did they remain as tenants in the building?
- 10 A. Yeah, when I bought that property, one condition is that he need to sign a lease of at least 10 years.
- Q. Were there any other tenants in the building?
- A. No.
- Q. When you purchased the building, did you make any enquiries about the structure of the building and whether there had been any strengthening to the structure?
- 15 A. I have asked it and they said the building has been or had been enforced.
- Q. Did you have any work carried out on the building after you purchased it?
- 20 A. No.
- Q. Did you have any knowledge of the City Council's earthquake prone policy or approach?
- A. No.
- 25 Q. Following the September 2010 earthquake, did you go to the building and inspect it?
- A. No.
- Q. Did you make any inspection of the building between September and February?
- 30 A. Because I've got property manager that I handle everything to my property manager to do.
- Q. Who was your property manager?
- A. Knight Frank.

Q. Who at Knight Frank?

A. Luke Thomas.

Q. Is that Luke Rees-Thomas?

A. Yes.

5 Q. How long had they been your property managers?

A. I think five years.

Q. And had they been the property managers before you purchased it?

A. Yes, no. No.

10 Q. All right, they hadn't been, so after you purchased the building you engaged them as your property manager?

A. Yes.

Q. After the September earthquake did you have any contact with Mr Rees-Thomas about the building?

15 A. After the September 2010 earthquake the shop owner called me and said that they need to do an engineering check and report. Only with that report they can reopen that shop. So I called Luke Thomas to ask him to arrange an engineer inspection and a report. So he is the person to arrange that inspection.

20 Q. Were you aware of the Christchurch City Council inspecting the building following the September earthquake?

A. No.

Q. Were you aware of buildings being placarded green, yellow or red?

A. No.

Q. So you were not aware of the placard that was given to your building?

25 A. No, I don't know.

Q. Did you receive advice from Mr Rees-Thomas or the tenant about the engineer's inspection?

A. No.

30 Q. I want to show you a document that's – I'll get it brought it up on the screen in front of you, it's BUI.COL738.0010.24.

WITNESS REFERRED TO DOCUMENT

Q. Can you read that? Can Mr Liu read that? Can he read it to himself, is he able to read it? No, you don't need to read it out, I just wanted to check he can read English.

5 **JUSTICE COOPER ADDRESSES MR ZARIFEH**

Well why don't we ask him if he can read English.

EXAMINATION CONTINUES: MR ZARIFEH

Q. Can he read English?

A. Yes I've got some problem in reading.

10 Q. Do you see that the letter is dated 6 September, and addressed to Mr Liu?

A. I didn't receive this letter. PO Box is not mine.

Q. Do you know whose PO Box it is?

A. No. It might be my property manager's PO Box.

15 Q. Right, and so look at the letter, does he recognise that, did he read that at any stage?

A. No never seen it.

1000

20 Q. In the letter it says, in the second paragraph, "*Preliminary indications are that this building is not in immediate danger of structural collapse.*" Was he told that at any stage?

A. No.

WITNESS REFERRED TO NEXT PAGE, .25

Q. This was attached to the letter, has he ever seen that?

25 A. I cannot recall.

Q. At the bottom of that inspection summary you'll see "*Follow up action recommended: Full structural inspection required*".

A. I have no, I cannot recall seeing.

Q. Do you recall receiving any advice to that effect?

30 A. No.

- Q. After the inspection was arranged through Mr Rees-Thomas, following the September earthquake, what was the next thing that Mr Liu heard about the building?
- A. No, nothing.
- 5 Q. Nothing till when? Till between September and February?
- A. Actually until now.
- Q. Well what about Mr Rees-Thomas, his Property Manager, did he have any contact with him after the initial arranging for the inspection?
- A. Yes I have contact with him before.
- 10 Q. So when was the next contact that he had after the September earthquake with Mr Rees-Thomas?
- A. I haven't seen him but I just make phone calls to him.
- Q. What was he told about the building?
- A. I just ask him that have you arranged an engineer to do the inspection.
- 15 He said, answered yes and then that's okay.
- Q. Did you ask him what the result of that inspection was?
- A. No.
- Q. Why not?
- A. Because I go to overseas quite often and I just contact him.
- 20 Q. When were you overseas between September and February?
- A. I don't recall.
- Q. Were you overseas between September and February?
- A. Taiwan.
- Q. Sorry?
- 25 A. Taiwan.
- Q. When?
- A. Cannot recall exactly but maybe in September or October.
- Q. For how long?
- A. About three weeks.
- 30 Q. When you came back did you have any contact with Mr Rees-Thomas about the building?
- A. No.
- Q. Were you not interested to know the state of the building?

A. Cannot say that I'm not interested. Maybe because I have spend money to hire the property manager to do everything including rent collecting and everything else and if they'd done that and sent me a report that's okay for me.

5 Q. Did they send you a report?

A. Just a monthly statement from them.

Q. What did the monthly statement say about the building after September?

10 A. I didn't read that carefully I just see the amount appeared on the statement.

Q. The what sorry?

A. The monetary amount.

Q. So how did you know about the state of the building then?

15 A. I don't know. If there is a problem for the property the shop owner will call me and then I will call my property manager to arrange repairing also.

Q. So was the OK Gift Shop manager looking after the property for him as well?

A. Yes look after yeah.

20 Q. And did you have any contact from the manager of the OK Gift Shop about the state of the property?

A. Yeah, after the earthquake in September the manager of the shop, manager, called me that, as I mentioned, we need an engineering report.

25 Q. I understand that, but did he have any contact with the manager of the gift shop after the inspection to be told what had happened?

A. No.

Q. So between September and February Mr Liu, as the owner of the building, had no idea about the state of it?

30 A. That's correct.

1010

Q. And relied totally on the property manager or the Gift Shop manager to look after that building?

A. Correct.

Q. After Boxing Day, after the Boxing Day aftershock, did you have any contact with the property manager about the building and whether it should be inspected?

5 A. I didn't know that aftershock. Maybe I was not here and I was overseas.

Q. Were you aware that an inspection had been arranged after the Boxing Day aftershock I think by maybe perhaps the manager of the OK Gift Shop?

A. No I didn't know.

10 Q. Did you have any contact between Boxing Day and February with anyone about the building?

A. I think so I had.

Q. With who?

A. I think is the manager of OK Shop.

15 Q. What was his name?

A. Akira.

Q. Akira, thank you, and were you aware that the building remained occupied throughout September to February?

A. Yes I know.

20 Q. After the February earthquake did you have any contact with the property manager?

A. Yes.

Q. Did you have anything to do with arranging an inspection of the property?

25 A. After the February earthquake is red zoned and we cannot enter that area.

Q. When did you learn that someone had been killed as a result of the collapse of the building?

30 A. After the 22nd of February earthquake it might be in March, I was aware that someone was killed. I heard of from my, one of my friend.

Q. You would have heard me today in opening saying, and you heard His Honour saying that a woman, Desley Thomson was killed. She was a

pedestrian on Colombo Street and some of her family are here today.
Does Mr Liu want to say anything to the family?

- 5 A. I would like to say to the family members, and I don't really know how to say it, my sincerest sorry about this incident. I express my condolence to them and it's you know just a natural disaster and no one can control it so I just want to express my condolence to the family members.

CROSS-EXAMINATION: MR ELLIOTT

- 10 Q. Good morning Mr Liu, this question is for you and not for your interpreter. Can you understand what I'm saying to you now?
- A. Yes.
- Q. Could we try to speak to each other in English please?
- A. Sorry, could you repeat.
- 15 Q. Could we speak to each other in English?
- A. Yeah.
- Q. When you speak to your property manager do you use an interpreter or do you speak in English?
- A. I speak English, some time I talk to my staff to transport to manager.
- 20 Q. How long have you lived in New Zealand?
- A. Thirteen years.
- Q. You're able to read English are you?
- A. Pardon.
- Q. You can read English?
- 25 A. Ah, a little.
- Q. Have you signed documents before in English?
- A. Yes.
- Q. What is your occupation?
- A. Businessman.
- 30 Q. Businessman, what sort of business do you run?
- A. I own a factory in Hornby. I'm doing a (inaudible 10:17:43) supplement in the cosmetic.

Q. I see. Do you have an email account?

A. Email.

Q. Email?

A. Yes.

5 Q. Is that treasure@ihug.co.nz?

A. Yes. But sometime I not exactly sure, sometime our company name is Triple Treasures, so sometime the email, last one have 'S' or not, until now sometime I forgot it. You know what I mean?

Q. Yes I do.

10 A. Yeah, if you not put the 'S', maybe I put in letter the email.

Q. People can get it wrong sometimes and the email may not get to you?

A. Yeah, yeah.

Q. I'll just show you the document Mr Zarifeh has shown you, BUI.COL738.0010.24.

15 **WITNESS REFERRED TO DOCUMENT BUICOL738.0010.24**

Q. The document will come up there on the screen in front of you. This is the letter dated 6 September 2010 to you.

A. Mmm.

20 Q. I'll just show you the second page of that document, 10.25. Do you see at the top there it says owner details, and your name, and an email address?

A. Yes.

Q. That is your email address is it?

25 A. In (inaudible 10:19:36) we have the 'S' on the treasures last one, so therefore some of my friend also send email to me but I didn't get it, the email. So sometime the people has lost the 'S', do you know what I mean?

1020

Q. Yes. I see what you're trying to say.

30 A. Yeah, I didn't go to the (inaudible 10.20.10)

Q. Well have you received an email from Mr Zarifeh?

A. Who?

Q. This man here – on about the 21st of February?

A. 21st of February?

Q. This year.

A. 24th?

Q. I'll show you. May I approach the witness.

5 **LEAVE GIVEN TO APPROACH WITNESS**

A. Yeah I gotta this one.

Q. You received that?

A. Yes.

10 Q. And you see that's the same email address as the email address on the screen in front of you?

A. Sorry?

15 Q. I'm not necessarily asking you to read the whole thing just. I think you've said that you received it and my point was that the email address there is the same as the one that's on the document on the screen. You would agree with that?

A. I speak too fast and now I'm not sure I received this email or not.

Q. What is that Mr Liu? You pulled out a piece of paper. What is that piece of paper that you pulled out?

A. My friend faxed to me, this is a fax.

20 Q. Does that relate to this building?

A. No. I may receive this email.

25 Q. Now try not to speak too quickly so that we get things right. Look back at the document on the screen it says "*Follow up action recommended: Full structural inspection required*". You understand what that means don't you?

A. I just only know the English word require the other two I don't know the meaning.

Q. Of all those words in that line you understand what 'required' means.

30 A. I know the (inaudible 10.24.17) but the other two English I don't know what it mean but the last one 'require' I know the meaning.

Q. You said to the Commission earlier on that you did not receive this report. Mr Freeman will say that the report was emailed to that address.

So do you want to reconsider your answer about whether you received this report in September 2010?

A. Sorry I couldn't understand.

Q. Well perhaps the interpreter would like to translate that to you. I'll just
 5 take it step by step. Mr Freeman is from Powell Fenwick. Mr Freeman will tell the Commission that this letter was also emailed to this address. He will also say that this letter was emailed to Akira. Let me clarify that, emailed to another email address which appears to be the OK Gift Shop. So it would appear from what he says that it was sent to your
 10 email address and also to your tenant in September 2010. So did you receive this letter in September 2010?

A. I have, I cannot recall.

Q. Could you try a little bit harder to recall.

A. I cannot recall.

15 Q. Were you not concerned about how safe your building was after the September earthquake?

A. I concerned. After Akira called me I have called my property manager to arrange an engineer and report with action.

Q. Could we keep trying to talk in English if it's possible?

20 A. I want to say that because this property is managed by the property manager – okay I use my poor English. I took the management company, I spend the money to you, I pay money to you, you should arrange all of my property and not just only OK Gift Shop, this property. I have some property ordered Knight Frank to management, and I talk to
 25 them if there was something broken or something or insurance or rates. You arrange all, you just only give me the report and I see oh money, who pay, how much, how much it, (inaudible 10.28.56) how much I say okay that's all. That isn't my job. The other one is their job so the September earthquake, 2010 September earthquake the Akira call me,
 30 should have the engineer report. If not they couldn't do in the business so I quickly talk to the Luke Thomas please quickly arrange the report to Akira and after I no concern. I think management company can do all the job for me.

Q. So as far as you know did Luke get this report?

A. Luke have talked to me. They have the September report but the February report until now last year, February earthquake report until now we not get it.

5 Q. Did Luke say to you I've got a report that says we should get a full inspection by an engineer?

A. Mhm sorry?

Q. Did Luke say I've got a report.

A. You've got a report?

10

1030

Q. Did Luke say I have a report, Luke?

A. Mhm.

15 Q. I have a report and the report says that we should get a full inspection from an engineer?

A. I cannot understand, sorry.

JUSTICE COOPER ADDRESSES MR ELLIOTT

20 I presume you have some forensic purpose for asking the questions in English but I'm not sure it's helping and I'm not sure it's going to speed the process up or lead to more precise answers. I'm just conscious there's Supreme Court Authority now that where somebody isn't fluent in English there needs to be careful translation of everything that is said and speaking as a Judge I
25 sometimes find that if people do attempt to answer questions in English which is less than perfect that can sometimes get in the way rather than assist.

CROSS-EXAMINATION CONTINUES: MR ELLIOTT

Q. So my question to be translated is whether the property manager said to Mr Liu, "I have a report and the report recommends a full structural
30 inspection"?

A. No.

Q. Do you think looking back on it that you should have asked for a full engineer's report on this building?

A. Can you repeat the question please?

5 Q. Do you think looking back on things that you should have asked for a full report on this building?

A. Yes.

CROSS-EXAMINATION: MR LAING, MR JONES – NIL

RE-EXAMINATION: MR ZARIFEH – NIL

10 **QUESTIONS FROM COMMISSIONER CARTER – NIL**

WITNESS EXCUSED BUT MUST STAY IN HEARING ROOM

MR JONES CALLS**MALCOLM THOMAS FREEMAN (SWORN)**

Q. You are Malcolm Thomas Freeman, you reside in Christchurch and you are a structural engineer. Is that correct?

5 A. Yes.

Q. Thank you very much. If you could please read your witness statement to the Commission starting at paragraph 2.

WITNESS READS STATEMENT

10 A. "I attended the University of Canterbury, completed a Bachelor of Engineering with Honours degree in 1994.

Since November 94 I have practised as a structural engineer at Powell Fenwick Consultants Limited. During the time I have become first a registered engineer, then later a Chartered Engineer when that qualification became available. I'm also on the International Engineering Register.

15 Following the earthquake on the 4th of September 2010 we were asked by the tenant at 738 Colombo Street to conduct a walk through inspection of the premises to assess the structural integrity of the building and whether it was imminent danger of structural collapse. Two of our staff conducted the inspection and their findings are contained in our letter dated 6 September 2010 addressed to the lessee of the premises. As stated in the letter no items were seen requiring urgent attention to ensure the ongoing stability of the building. The only other damage noted was minor cracking of linings.

25 On the 26th of December 2010 Powell Fenwick Consultants Limited was asked to undertake an inspection of the building at 738 Colombo Street which housed the OK Gift Shop. This request came to us from the tenant of the building as they had previously used us for such an inspection following the September 2010 earthquake. I do not recall who specifically asked me to do the inspection, however it would have come from someone who was manning the phones and taking calls requesting such inspections.

As I was already in the city undertaking other inspections I was asked to undertake the inspection for this property. At the time that I arrived on site which I estimate to be approximately 4.30 pm, the shop was operating in a normal manner with staff and customers throughout the building.

I was given a limited tour of the property which included access to the lower shop level, access to the rear storeroom in the lower level and access to the storeroom in the first floor level in the rear of the building only.

The tenant of the shop on site who showed me round did not have access to the upper level tenancy which extended to the Colombo Street frontage of the shop. I was also able to inspect the shop frontage from Colombo Street but not the rear of the building from the sides or behind. We were not invited during our inspection to conduct any intrusive testing or remove shop fit-out items to gain better access to structural elements of the building.

My inspection was limited to a visual inspection only and given the extent of fit-out in the lower level of the shop was very limited.

I recall seeing minor damage consisting of cracking to lath and plaster walls in the rear area of the shop only. These walls were not considered to form part of the main structure of the building and were of a partition nature only. There was no visual damage to any of the masonry walls that were observed in my inspection which included the front wall of the building which was inspected from Colombo Street.

The observed damage was not considered to be detrimental to the structure of the building. Based on my inspection I did not consider that the structural integrity of the building had been diminished by the earthquake of the 26th of December 2010.

At the time of my inspection we did not access to information such as the building plans, any information from GNS relating to the likelihood of future aftershocks, nor did I conduct detailed calculations for the seismic strength of the building.”

We were not aware that there had been previous strengthening work to the building as this was not visually evident on sight.”

EXAMINATION CONTINUES: MR JONES

Q. Mr Freeman just pause there. If you wish to make a change to your written statement. Your written statement says “As this was visually
5 evident on sight,” should that read “not”?

A. Very definitely, yep.

WITNESS CONTINUES READING STATEMENT

A. “This research or further calculations regarding the building strength
10 were not requested as part of our brief. The brief that day was to provide an inspection and comment on any damage to the building and whether the building remained occupiable.

Based on the limited damage to the building observed on site I did not consider the building to be any worse off than it had been before the
15 26th of December earthquake.”

EXAMINATION CONTINUES: MR JONES

Q. Mr Freeman I just ask if you could be shown document 738.0010.24 which is the report from your firm dated the 6th of September. So that will come up on the screen in a moment.

20 **WITNESS REFERRED TO DOCUMENT 738.0010.24**

1040

Q. Thank you, there it is on the screen. That is the report from your firm dated 6 September which you referred to at paragraph 4 of your brief?

A. Yes.

25 Q. Correct. It’s addressed to Mr Jonothan Liu. Is it your understanding that that Jonothan Liu is the same gentleman who just gave evidence immediately before you?

A. Correct.

Q. So if you go back to paragraph 4 of your brief, you told the Commission
30 the fourth last line, you referred to the report being addressed to the

lessee of the premises. Mr Liu told the Commission he is in fact the owner of the premises?

A. Yes.

5 Q. So in fact this letter was sent to Mr Liu the owner rather than the lessee?

A. That's right.

10 Q. You heard Mr Liu tell the Commission that he doesn't recall receiving this letter or the attached inspection summary on the next page. Can you tell the Commission please how this letter was dispatched to Mr Liu?

A. Our records show that it was emailed to their email address on the second page along with another address which was a name and then @theokgiftchristchurch.co.nz.

15 Q. So if we just bring up the next page please, .25? So just to be clear you're telling the Commission that the letter and this attached inspection summary were, according to your records, emailed to that address treasure@ihug.co.nz?

A. Correct.

20 Q. I think Mr Elliott put to Mr Liu that the letter had also been sent to an address starting Akira?

A. No, it was Yosh and Nikki or something at OK Gifts.

Q. OK Gift Shop.

A. But –

JUSTICE COOPER TO MR FREEMAN:

25 Q. Just a minute. There is a slight tendency to talk over each other. Will you speak up please? Start your answer again.

A. Sorry, my answer?

Q. Yes.

30 A. Our records show that it was emailed to that address on the screen there along with another address which had a name in the front and then @OKGiftChristchurch.co.nz and our records also show that Akira was the name of the person on site we were to contact to arrange our inspection.

Q. Right, but you can't recall the name @OKGifts –

A. I haven't –

Q. Just let me finish.

A. Sorry.

5 Q. There are people off site who are transcribing this, all right?

A. Yes, sorry.

Q. And we assist them if we let a question finish and then the answer is given rather than having both going on at the same time. I just wanted to clarify that you can't now remember to whom that email @OKGifts was sent?

10

A. I made a call to our office about 40 minutes ago.

Q. Yes.

A. And I have it written down but I don't recall the name, it was an unusual name that had to be spelled to me.

15 Q. And have you written it down you say?

A. Yes I have and passed it on to Mr Elliott.

JUSTICE COOPER ADDRESSES MR ELLIOTT RE NAME

20 **WITNESS:**

If I spell it, yoshikane@okgiftchristchurch.co.nz.

EXAMINATION CONTINUES: MR JONES

Q. You will have also heard Mr Liu's evidence that he expected his property manager, Luke Rees-Thomas, to make the arrangements regarding inspections and so forth. Can you tell the Commission as far as you know who was Powell Fenwick dealing with, with respect to this premises and its inspections?

25

A. I don't know who contacted the office. I know that I was contacted by someone within the office and that a person for us to contact on site in my case it was the store manager but in the 5th of September case or 4th of September it was Akira.

30

Q. So as far as you know Powell Fenwick was dealing with somebody from the OK Gift Shop?

A. Correct.

CROSS-EXAMINATION: MR ZARIFEH

5 Q. Mr Freeman, it seems like the, Mr Liu's evidence was that he had a call from Mr, or from Akira at the gift shop and then he contacted his property manager to arrange an inspection but that it may have been the OK Gift Shop who contacted Powell Fenwick. You're not certain?

A. I can't clarify that. We will have it buried in our system somewhere.

10 Q. And the name that I have for the gift shop manager is Akira Yoshikane, that's the name you had?

A. I don't recall but Akira was certainly on the records, yes.

Q. But in any event the report that Powell Fenwick did and that was countersigned by yourself was sent to Mr Liu at his incorrect email address so Powell Fenwick must have been given that presumably by the OK Gift Shop as we know now the owner but as someone to send that report to?

15

A. Yes.

Q. And do you know from Powell Fenwick records whether there was any further contact from either party? So Mr Liu, Mr Akira or Knight Frank following that September report?

20

A. To my knowledge there was no further contact until the 26th of December.

Q. And 26 December was the inspection you did. Someone contacted Powell Fenwick offices and you were in town doing other inspections so you completed it. You don't know who contacted Powell Fenwick either?

25

A. No.

Q. But you think it was the tenant again? The OK Gift Shop?

30 A. I can't be sure but the number we have for contact was Akira.

- Q. Just talking about the September inspection. You've countersigned it but it was carried out by an engineer at your firm Ben Niven who was there at the time?
- A. Yes.
- 5 Q. The other chap, Gavin Chinnery, that's mentioned on the letter. Is he, was he an engineer or not?
- A. No.
- Q. So it was Mr Niven's opinions that were being expressed in the letter as a result of the inspection?
- 10 A. Correct, yep.
- Q. Mr Niven, I believe, is somewhere in Western Australia?
- A. Yes.
- Q. But what was the purpose of you or the name going out in your name? Your name at the bottom of that letter?
- 15 A. I suspect at the time it was because I'm a director of the firm, albeit I, we sort of review things as they, before they go out as a standard practice.
- Q. Now I appreciate you didn't go there but you can see the terms of the letter and the summary. It would appear that it was a visual walk through inspection only?
- 20 A. Correct.
- Q. So was that any different from your inspection 26 December?
- A. No.
- 1050
- Q. So it was an internal and external inspection?
- 25 A. Sorry which one?
- Q. Well both, would they be internal and external?
- A. I would believe they would be yes.
- Q. We've heard reference to rapid assessments level 1, level 2, you'd know those terms?
- 30 A. Yes.
- Q. How would you equate your inspection on 26 December? Was that a level 2?

A. It would be in line with a level 2 inspection, however, I had limited access to the building.

Q. And the inspection on the 4th of September by Mr Niven, would that equate to a level 2?

5 A. I would expect it would.

Q. Mr Niven, I presume, wrote the letter in the summary?

A. Yes he would have.

Q. He noted minor cracking of linings and nothing that required any urgent attention in terms of structural stability.

10 A. That's right.

Q. So is that consistent with the green placard that had been given by the Council?

A. Yes.

Q. And yet Mr Niven recommended that a more detailed structural inspection and evaluation be conducted to confirm the ongoing structural stability of the building – that was his words in the letter.

15

JUSTICE COOPER:

Well he actually says structural suitability.

20 CROSS-EXAMINATION CONTINUES: MR ZARIFEH

Q. He does too, right whether he meant that or not but anyway, he recommended a detailed structural, a more detailed structural inspection and evaluation. Do you know why that would have been done?

A. I suspect that was, in those early days we were doing visual inspections only and in many cases we were recommending that, especially where there was some question over the building's strength.

25

Q. What if it was an unreinforced masonry building?

A. Correct.

Q. You didn't recommend that following the Boxing Day inspection you made did you?

30

A. No.

Q. So was there a reason for that, for not recommending it in your inspection?

A. Um, at the time of my inspection I hadn't seen the previous report but, in my opinion, the previous report would stand and still make that recommendation.

Q. The previous report would stand, and what I'm asking is why didn't you make that similar recommendation after Boxing Day?

A. At the time of my inspection I left a record of my inspection on site and when I returned to the office either that day or next reviewed the previous report that was done on the building and understood that the recommendation within that would stand.

Q. Right but you wouldn't have been aware whether or not the owner or anyone had acted on that recommendation?

A. No I wouldn't have been aware of that.

Q. And Powell Fenwick weren't engaged to conduct a more detailed inspection.

A. No.

Q. What I'm asking though is when you left your report on the 26th of December you didn't recommend any further inspection. Was that because of the state of the building?

A. In answer to that the report that I would have left on the 26th of September, which was one of our own forms –

Q. 26 December.

A. Sorry 26 December, which was one of our own forms, actually would have had a little sentence at the bottom recommending further structural inspections are carried out, that it is based on a preliminary inspection only.

Q. I'll come back to that in a moment. Just to finish off dealing with the September report. The inspection summary says, and I'll get it brought up so you can see it – 0010.25 – you see the portions highlighted at the bottom under 'Advice Given on Site' it says "*Okay for staff only at this stage*". Can you explain that? That seems a bit odd doesn't it? If it's okay for staff to be in there why not anyone else?

A. The only reason I could think why that recommendation was made on that basis was perhaps there was limited access to the CBD at that time.

5 Q. Oh okay. And there's the full structural inspection required as a follow up recommended action.

A. Correct.

Q. So what would be your understanding of this report in terms of whether the building was safe for occupation?

10 A. Our understanding of that report and the details in it would be that the strength of the building was not diminished from before the earthquake.

Q. And so, therefore, it was safe to occupy by the staff, if there was a cordon at that stage, but open to the public if the cordon was removed?

15 A. We, well I guess the same comment applies. We're saying it wasn't diminished. That doesn't, in the definition of the Building Act, doesn't make it safe.

Q. But in effect you were, the report was consistent with the green placard that had been given, albeit on a level 1 assessment by the Council but the Powell Fenwick report was confirming that.

20 A. Yeah, I guess if ours was a level 2 inspection it wouldn't have stood to change the level 1 inspection.

Q. Sorry I missed the last bit of...

A. It wouldn't have stood to change anything from the level 1 inspection.

JUSTICE COOPER:

25 Q. If you're going to move on from this can I just ask Mr Freeman why does the description of building say it was concrete frame three storeys? I'd understood it was two.

A. It's correct, it is a concrete framed two storey building yes.

Q. So that's simply incorrect.

30 A. Yes.

MR ZARIFEH:

I think there's a later Powell Fenwick report that says the next one is five storeys, Sir, the 736 and that's incorrect as we know.

CROSS-EXAMINATION CONTINUES: MR ZARIFEH

5 Q. Turning to the 26th of December in your inspection, you get the call from Powell Fenwick office and you go to the building. Were you aware of, it would have been shortly after the Boxing Day aftershock from what you said?

A. I believe it was late afternoon.

10 Q. Right and you carry out this level 2, albeit with limited access shown through the building by the tenant.

A. I don't recall who it was but it was the building, sorry the shop manager or the guy in the shop.

Q. And I'm just trying to understand where you went in the building. You said you had limited access. You didn't go anywhere round the back.

15 A. We went out into the storeroom at the rear of the shop and we went upstairs to the landing area which was sort of used as a bit of a storeroom. There were doors and offices or doors beyond that that we couldn't get through.

WITNESS REFERRED TO PHOTOGRAPH 0013.1

20 Q. I'm not sure where it's from, it might be from Google I think, but just to understand where you went. If you can just focus on the photo please. So looking at that photograph can you tell us where you went in the upstairs?

25 A. We were away from the Colombo Street wall. At the rear of the lower level there was a storeroom and some stairs up to the upper level.

Q. Okay so at the back of, how many offices or rooms are there? How deep is the building?

30 A. At the top of the stairs there was a space that was approximately five to six metres down to a wall that had doors in it and it was used as a store area and the doors we didn't have a key for.

Q. And the back of the building itself and the back wall, could you see that or not?

A. From the internal area I could see that, yes.

Q. And the frontage, the Colombo Street frontage, you could see that obviously.

A. From Colombo Street, yes.

5 1100

Q. What about internally?

A. Internally in the upper level, no, we didn't have access to that area, and in the lower level it was essentially shop fit-out.

Q. Was essentially what?

10 A. Shop fit-out.

Q. So I'm just trying understand how many walls you could see, internal walls and how limited it was?

A. It wasn't many.

Q. Could you see the wall between 738 and 736?

15 A. At the upper level you could see a portion of it, in the lower level it was behind a fit-out.

Q. And in terms of damage then, what did you observe?

A. The damage was to the internal partition linings that had formed cracks above doorways and around areas where they joined onto the external walls.

20

Q. And did they concern you?

A. Not hugely because they weren't big cracks and in that type of building those types of walls don't form part of the structure.

Q. So which were the structural walls then?

25 A. The external walls of the building, the floor area and any roof structure.

Q. So which external walls were you able to assess?

A. Able to assess the front wall from the street and the exposed areas of the upper levels walls at the landing area, and from my recollection there were some of the external walls at the lower level that could be viewed from the inside of the building.

30

Q. And was there any damage to those walls that you could see?

A. No.

- Q. What about the façade to Colombo Street. I think I'm right in saying that was a concrete façade?
- A. I understand that it was, yes.
- Q. Were there any cracks in that externally?
- 5 A. Externally there were no cracks that I would have considered to be new, there were some cracks through the paintwork that were aged.
- Q. But nothing that concerned you?
- A. No.
- Q. What about any sign of the façade pulling away from the building structure of the walls?
- 10 A. No there was no evidence, no.
- Q. Did you look for that?
- A. That was what I was looking for from the front of it, yes.
- Q. What about internally, were you able to look?
- 15 A. Internally I did pay attention to the lower area around the front wall where it meets the external walls but there was no damage to the shop fit-out in that area.
- Q. So you essentially concluded that the building was not any worse off as a result of the Boxing Day earthquake? Is that fair?
- 20 A. Correct.
- Q. And that it remained structurally sound and occupiable?
- A. Correct.
- Q. And do you consider, or did you consider that the lack of access to those areas you've described hindered or affected your ability to come to that conclusion?
- 25 A. In retrospect I would say yes it perhaps did, however there was no evidence of damage throughout the building that would suggest that those areas would also would be damaged where the rest of it wasn't.
- Q. Right. So why do you say in retrospect?
- 30 A. Because having seen what we've now seen throughout many buildings in town you can never be sure.
- Q. And is that perhaps a reflection on what, lessons learnt from February do you mean?

A. Correct.

Q. And what the need for a perhaps more detailed inspections following an earthquake like September or Boxing Day?

A. Absolutely.

5 Q. So in retrospect would you consider that what, a level 2 or certainly the level 2 that you conducted would not be sufficient?

A. I would think any level would not be sufficient given the lack of exposure of the structural element to the building.

10 Q. So to inspect it and be able to properly inspect the structural elements, would that require removing linings?

A. Correct.

Q. Looking at plans?

A. If they were available.

Q. What else?

15 A. Probably going further and undertaking minor preliminary type calculations also.

Q. So to test or work out the capacity of the building?

A. Correct.

20 Q. But back then following September and following Boxing Day, that wasn't – wasn't your approach anyway and I think you were, to be fair you were acting in the same way as a lot of engineers?

A. The generally accepted approach was not to do that, yeah.

Q. So it was a damage based assessment?

A. Correct.

25 Q. We heard yesterday from some engineers from Lewis Bradford who said that after Boxing Day they changed their approach and adopted a more cautious approach because the Boxing Day aftershock appeared to have been on a different fault and was under the city. Did you, do you recall yourself or your colleagues at Powell Fenwick coming to that view or not?

30

A. No I don't recall.

Q. So you inspected on the 26th of December, you complete a form, was it a standard Powell Fenwick form you said?

A. Yes it was.

Q. So it's not the level 2 rapid assessment form is it?

A. No it's not.

5 Q. But it's a Powell Fenwick form that has what, boxes for you to fill in in terms of damage?

A. That's right.

Q. And presumably from what you've said though you noted minor damage?

A. Yes.

10 Q. And what was your conclusion on the report, can you recall?

A. Our form was essentially a green, yellow, red form but on our own – with our words so I would have ticked the green box and noted minor damage to internal linings.

15 Q. So, and it would have indicated that it was a level 2, or essentially an internal and external inspection?

A. Probably used the words visual internal and external.

Q. And my understanding is Powell Fenwick don't have a copy of that report. Is that because you left it at the building?

A. Correct.

20 Q. So was it left with the tenant or left actually affixed to the building?

A. With the tenant.

Q. So that would explain, I'll just get this document brought up, 0010.27.

WITNESS REFERRED TO DOCUMENT 0010.27

25 Q. This is the next day, the 27th, there's a Council level 1 rapid assessment, and unfortunately someone's put a post-it sticker over the original and you can see where it says "where is engineer's letter?", you see that."

A. Yes.

30 JUSTICE COOPER ADVISES REPORT

CROSS-EXAMINATION CONTINUES: MR ZARIFEH

Q. And you can see to the right just underneath that you can see what appears to be Powell Fenwick written there, and I think we're going to hear from Mr McCarthy at the Council that if you look on the screen in the original, one can read the complete sentence or words that are under that at the bottom, and it says something to the effect that this has been carried out by Powell Fenwick. Now there's also a reference under comments, do you see that, "*Powell Fenwick have inspected and approved report sighted, 10.30, 26/12*". I'm not sure what that next word says, but that's presumably your report that was done on the 26th, the time is wrong, but that might be an error because you said it was in the afternoon?

A. It would – it would seem as if it makes reference to that, but certainly I wasn't there at 10.30 in the morning.

Q. But certainly you were the only one from Powell Fenwick who went to the building on the 26th and you completed the report you've told us about, and left it at the building. So it would seem that that was the report would have been sighted by the Council inspector?

A. Yes.

Q. And from – on the face of it anyway a report that really relied on your report, that was a level 1 but it was noting that there had been a level 2 effectively by yourself?

A. Yes.

1110

Q. Now I think post-February Powell Fenwick did a report on the building and I'll get it brought up, 0010.43. We don't seem to have the whole report in that it's not signed, there's no page with a signature on it. I take it though you're not the author of it?

A. No, I'm not.

Q. Sorry you're not?

A. I'm not.

Q. No, but do you know who was from your records?

A. I understand that Luke Pickering wrote that with the guidance of the three engineers who had visited the site with him.

Q. And if we turn to 0010.44, the second page of it, that under 'Earthquake damage to the building' it essentially summarises the damage to both
5 736 and 738?

A. Yes.

Q. And describes the damage as severe?

A. Yes.

Q. In the first line under that heading, and under 'First floor', the second
10 bullet point in relation to 738 *"failure to the west wall (738). Sections of west wall have fallen out to street and offices are completely exposed"*.

A. Yes.

Q. And you probably saw the photographs that we were referring to, that's obvious from the photographs in terms of what happened on the west
15 wall in Colombo Street, correct?

A. Correct.

CROSS-EXAMINATION: MR ELLIOTT

Q. Mr Freeman, Mr Zarifeh has already covered this point to some extent so I won't take long but just for the sake of Desley Thomson's family
20 really to understand what you were doing, the question you were asking yourself was whether the building remained occupiable when you carried out your inspection in December? I think that's what you said in your brief. Is that the test?

A. That is what I said in my brief, it's based on whether it was, the strength
25 was diminished on previous to the earthquake.

Q. So your enquiries were damage-based in the sense that if there was damage you would assess it. If repair was necessary you would recommend it, the purpose being to bring the building back to its state pre-September 4?

30 A. Yes.

Q. And by contrast an engineer can do a more detailed assessment where they look at the building's capacity, look at what percentage of building

code it might be, look at critical structural weaknesses, that sort of thing, is that right?

A. Correct.

Q. But that's something that wasn't done on this particular building?

5 A. No, that wasn't our brief.

Q. And it's not a criticism of you because as Mr Zarifeh has said it's what everyone was doing. I suppose it's a criticism of your whole profession, it may not console you, but do you agree now that in determining whether a building such as this, URM, unreinforced masonry buildings
10 occupiable it would be better to do the latter of those two tests where you assess the building's capacity overall and its ability to withstand ongoing earthquakes?

A. That would be more appropriate.

CROSS-EXAMINATION: MR LAING

15 Q. Just one question. Could we go back to your report, well the Powell Fenwick's report of 6 September 2010, BUI.COL738.0010.25, that's the inspection summary. There have been previous questions about the email address there, treasure@ihug.co.nz. Now I think your evidence is that that was the address that you, email address that you sent the
20 report to?

A. Yes.

Q. Do you recall whether the email bounced back or not?

A. No, I'm sorry, it wasn't sent by me, it was sent by our office –

Q. Right –

25 A. – I don't, I can't answer that question.

Q. No, thanks very much.

RE-EXAMINATION: MR JONES – NIL

COMMISSIONER CARTER:

30 Q. The building is described as a reinforced concrete building, and was there any, was it very obviously a reinforced concrete building? I mean,

were the surfaces of the concrete off the form as opposed to plastered, you know, you were able to see that it was a reinforced concrete building?

A. Yes it was a reinforced concrete frame with brick infill.

5 Q. And the infill panels were sometimes brick but for the façade I think you referred to that as a poured concrete façade was it?

A. Yes.

Q. You could see that it was that?

A. It appeared poured concrete from the street frontage, yes.

10 Q. And would you have been aware of the age of that building when it was built?

A. Not at the time of our inspection, but I would have guessed it was probably in the early part of the 1900s.

15 Q. Would you, because reinforced concrete was not a very usual form of construction in those early days? I am just wondering whether you appreciated that it was possibly a 1937 building?

A. My guess would have been probably between 30 and 50.

Q. Have you had any experience with what sort of extent of reinforcing was placed into old concrete buildings?

20 A. I knew it would be low.

Q. So it was quite apparent to you that it was reinforced concrete and that you saw no fractures within those reinforced concrete members that suggested the building had been damaged by the earthquakes preceding your inspection. Have I interpreted your word correctly?

25 A. Yes.

Q. Thank you.

JUSTICE COOPER:

30 Q. Mr Freeman, in paragraph 4 of your statement, you used the word tenant and Mr Jones questioned you about that and you've changed that to owner so that it should read, "We were asked by the owner". Do you recall that?

A. Yes.

Q. In paragraph 5 you refer to the inspection after the Boxing Day earthquake and you say Powell Fenwick was asked to undertake an inspection and in the third line, "This request came to us from the tenant". Should that be the tenant or the owner or don't you recall?

5 A. I can't confirm that. I wasn't in the office when that call was taken so it was relayed to me by someone in the office.

Q. Did you have any dealings with anyone from Knight Frank in relation to this building?

10 A. Personally I haven't, but I'd have to check our internal recording system of who made the calls to the office requesting the inspections.

Q. And how long would that take?

A. A quick phone call.

Q. All right, perhaps you could do that over the morning adjournment, if that would be possible.

15

MR JONES:

Sir before we rise could I perhaps, Your Honour, just raise one matter.

JUSTICE COOPER:

20 Certainly.

MR JONES:

In my examination in chief of the witness in terms of making corrections in paragraph 4 of his statement I just wonder whether the Commissioners misunderstood the question and answer. The correction was to the word
25 'lessee' which appears in the fourth to last line so the word 'lessee' should have been, I think Mr Freeman confirmed that the letter is in fact addressed to the owner but it was not intended to change the word 'tenant' in the second line.

30 **JUSTICE COOPER:**

Well I did misunderstand that. Sorry.

MR JONES:

So the instruction was given by the tenant but the letter was addressed to the owner.

5 JUSTICE COOPER TO WITNESS:

Q. Just as well you cleared that up. Is that the position Mr Freeman?

A. That's my understanding, yes.

COMMISSION ADJOURNS: 11.19 AM**10 COMMISSION RESUMES: 11.37 AM****JUSTICE COOPER:**

[No audio available (11:37:46)]

Q. – Inspections of this property. Have you been able to do that?

- 15 A. Ah yes we have, on record we have only one dealing with Knight Frank which was in December 2010 relating to the invoices for the inspection done in September. The query for the invoices came from them. We have no other record of them anywhere in our database.

QUESTIONS ARISING - NIL**20 MR ZARIFEH**

- The only thing I was considering that can't be done now but Mr Freeman might be able to check whether the email that was sent, the September report, whether there's any, he was going to check if it had bounced back or not. He was asked that by Mr Laing, said he couldn't say but he might well be able to
- 25 say if he looks at his records and perhaps he could advise the Commission of that at a later date.

JUSTICE COOPER:

Q. Are you happy to do that?

A. Absolutely.

Q. Could you do that reasonably soon please, in the next week?

A. There's someone looking at it now, Sir.

Q. Thank you very much, yes you may go now, thank you.

5 WITNESS EXCUSED

**JUSTICE COOPER ADDRESSES MR ZARIFEH: RE AVAILABILITY OF
WITNESS**

MR LAING CALLS**STEPHEN JAMES MCCARTHY (SWORN)**

Q. Your full name is Stephen James McCarthy.

5 A. Yes it is.

Q. You are the Environmental Policy and Approvals Manager for the Christchurch City Council.

A. Yes I am.

Q. You've been in that position since 1 May 2006.

10 A. Yes.

Q. You've prepared a brief of evidence.

A. Yes I have.

Q. Could you start reading at paragraph 6 please.

WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 6

15 A. "Events between 4 September 2010 earthquake and 22 February 2011 earthquake. It appears that on 5 September 2010 a level 1 rapid assessment was undertaken and the building received a green placard. The assessment form is undated and notes the inspector as "SR1". The Council's spreadsheet that records the rapid assessments carried out
20 for each building shows that a level 1 rapid assessment was carried out by inspector SR1 on 5 September 2010. On that basis it is likely that the undated level 1 rapid assessment form completed by SR1 on the file is a form that relates to the inspection carried out on the building on 5 September 2010.

25 The Council has no record of further inspections being carried out on the building between 5 September 2010 and 27 December 2010. A level 1 rapid assessment on 5 September 2010 did not recommend a level 2 assessment or a detailed engineering evaluation. Not all buildings that had level 1 rapid assessments had a level 2 rapid
30 assessment. The process that was used to determine which buildings were to receive a level 2 assessment is detailed at page 13 of the Council's "Report into Building Safety Evaluation Processes in the

Central Business District Following the 4 September 2010" (the Council's report).

On 27 December 2010 at 11am, a USAR Damaged Building Reconnaissance Report was completed and noted side parapets and cracks in the lower façade.

On 27 December 2010 at 4pm a level 1 rapid assessment was carried out and the building received a green placard. The assessment form states that *"Powell Fenwick have inspected and approved. Report sighted at 10.30 26/12/10"*. The Council has been unable to locate a copy of any Council, of any Powell Fenwick report on its records.

The person who filled out the level 1 form was Declan Bransfield who previously worked with the Council as a building inspector. I understand that Mr Bransfield now works for the Fletcher Project Management Office. While Mr Bransfield signed the form it is likely that he would have been working in an assessment team with a CPEng engineer.

The Level 1 rapid assessment form completed on 27 December 2010 appears to recommend a level 2 assessment. The Council has no record of whether or not a level 2 assessment was carried out."

Q. Could you just pause there please.

20 WITNESS REFERRED TO LEVEL 1 FORM – BUI.COL738.0010.27

A. Now at the top of that form you'll see inspector initials DB and from your investigations that appears to be Mr Bransfield.

A. Yes.

Q. And then we've got the comments down further *"Powell Fenwick have inspected and approved. Report sighted 10.30"* – and not certain why that time's there – *"26/12/10"* and I'm equally unable to work out what last word is. And then we have got the gap where there's a yellow sticker, that doesn't come up as yellow there but it says *"Where is engineers report?"*. Now have you carried out some further investigations as to what words are underneath the sticker towards the bottom of the sticker?

A. Yes we were able to blow up the yellow sticker and actually to see the wording underneath so as indicated earlier the actual wording is that

"Has been carried out by Powell Fenwick" is the exact wording shown that is obscured by the yellow sticker.

JUSTICE COOPER:

5 Q. So you think its referring back again to the report that was sighted as recorded in the earlier comments?

A. Yes, that's correct.

Q. The only thing perhaps inconsistent with that is that, well it's not necessarily inconsistent but it appears that this is a standard form and
10 that the second box down on the left-hand side has been ticked, so that at the time what would have been called for was a full structural assessment in accordance with the standard form. Is that right?

A. A level 2 assessment yes and the implication of what I'm reading is that inspector considered that level 2 assessment had been effected by
15 Powell Fenwick.

Q. And you say that because of the placement of this partly obscured comment on the form?

A. I do and also linking the wording on the, under the comments section, which says that Powell Fenwick have inspected and approved. The
20 report was sighted and it refers to that 26th of the 12th date, the day previous, when Powell Fenwick indicate that they did, in effect do an inspection.

1147

Q. And in the standard form for level 1, that the wording alongside the box
25 that's been ticked is always the same: level 2, or detailed evaluation recommended, and then there are three further subsidiary boxes as it were, does your research reveal which if any of those subsidiary boxes were ticked?

A. No, no I'm sorry.
30

MR LAING ADDRESSES THE COMMISSION

I don't think we can take that further Your Honour.

EXAMINATION CONTINUES: MR LAING

Q. Mr McCarthy, could you now continue at paragraph 12 please?

WITNESS CONTINUES READING BRIEF OF EVIDENCE

5 A. "As a general comment, I understand that it is not normal practice for
the building inspectors and the respective engineers to refer to the
USAR reports. After the Boxing Day earthquake the USAR teams
completed USAR Damaged Building Reconnaissance Forms for the
buildings inspected. The USAR assessments were made from vehicles
10 and involved only a drive by assessment of the walls that could be seen
from the road. As such they were a very preliminary assessment only.
As far as I'm aware the USAR teams did not issue rapid assessment
placards. Given the emergency circumstances it is unlikely that the
building inspector who completed the level 1 rapid assessment form on
15 27th of December 2010 would have been provided with the USAR
assessment carried out at 11.00 am on the same day."

Q. If you could pause there, can we have up document 0010.28 please? Is
that the USAR report that you're referring to in paragraph 12?

A. Yes it is.

20 Q. Do you want to make any further comments at this stage about that
report?

A. I have spoken to the manager who was engaged with sending out
assessment teams at that time.

25 JUSTICE COOPER:

Q. Who was that?

A. That was a Mr Kelvin Newman.

Q. Kelvin –

A. Kelvin Newman, N-E-W-M-A-N. Kelvin Newman advised me that the
30 USAR teams were doing rapid drive bys but they were indicating areas
of damage in buildings, or buildings that needed further assessment. So
he was taking that information and deploying assessment teams to
some extent based on these USAR reports and to some – that I think

explains why this building was given a rapid level 1 assessment when that wasn't, when not all buildings in the city were being subjected to that after the Boxing Day event.

EXAMINATION CONTINUES: MR LAING

5 Q. Right, can you just continue at paragraph 13 please?

A. Yes.

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. "There was no record of any further assessments between 27 December 2010 and 22 February 2011 on the Council's files.

10 Application of relevant legislation and the Council's earthquake prone policy. In 1996 the building was strengthened to a level (0.1G) that was more than the defined level below which it would be classified as an earthquake prone building under section 66 of the Building Act 1991."

EXAMINATION CONTINUES: MR LAING

15 Q. Can I now ask you to look at a document please, BUI.COL738.0010.23?

WITNESS REFERRED TO DOCUMENT BUICOL7380010.23.

Q. Now you say in your evidence that the building was strengthened in 1996, but is it correct that there was some previous strengthening carried out in 1991?

20 A. Yes there was.

Q. And could I ask you to look at that fax, Buchanan Fletcher Limited and under message, *"your letter of 23.5.06 on the above project. A building permit was granted in July 1991 for the first stages of securing work at 734-744 Colombo Street"* and that is – that accords with your own
25 understanding of what happened in 1991?

A. Yes it does.

Q. Could you continue there with therefore?

WITNESS CONTINUES READING BRIEF OF EVIDENCE

A. "Therefore after the strengthening work was done in 1996 and prior to
30 the change in the defined earthquake strength level in 2005, the building would not have been considered to be earthquake prone. I understand

that further details of the strengthening work carried are available on the Royal Commission's secure website.

However the building regulations 2005 which commenced on 31 March 2005 raised the required strength level and therefore the building would then have been considered to be an earthquake prone building under the Building Act 2004, and for the purposes of the Council's Earthquake Prone Buildings policy 2006.

After the commencement of the Earthquake Prone Building Policy 2006, if a building consent application for a significant alteration had been received, the building application would have been dealt with in accordance with the policy (in particular section 1.7). However no such building consent application was received."

CROSS-EXAMINATION: MR ZARIFEH

Q. Mr McCarthy, I've just got one issue that I want to ask you about and that's the Boxing Day level 1 assessment if we can just get that form brought up, 0010.27.

WITNESS REFERRED TO DOCUMENT 0010.27

Q. If there's a tick next to the box where it says level 2 or detailed engineering evaluation recommended, on that form.

A. Yes.

Q. That means either level 2 or a detailed engineering evaluation?

A. Yes.

Q. Then if there's a tick under or next to either the structural geotechnical or other, what does that mean then in terms of the box above? Does that qualify level 2 or detailed engineering evaluation?

A. I think the intent that it directs the investigation to the area of concern.

Q. Right.

A. In this case I'm sure it would be structural, that would be fairly obvious.

JUSTICE COOPER ADDRESSES MR ZARIFEH

People in the room won't be able to follow this, perhaps we should display –

MR ZARIFEH

Display the page before, .26.

MR LAING

- 5 Your Honour, I'm sorry I don't want to interrupt, but I've now got up on the screen the form in a blown up state, and I think Mr McCarthy said that there structural box was not ticked but I'm thinking (inaudible 11:55:48) but I think I can see it on the screen here, so we can ask him to come and look at this document blown up, if it's helpful. I don't know if it's going to be material or
- 10 not.

MR ZARIFEH

Or Sir, that was going to be something I covered because I've got a blown up version too and it's ticked, structural is ticked.

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

Q. Do you accept that?

A. Yes.

- Q. But my question really was if level 2 is ticked and we'll get, if we can get .26 brought up so that people can follow it and if we can focus on the
- 20 box two-thirds of the way down.

WITNESS REFERRED TO DOCUMENT .26

- Q. So on the form, this is the form back in September, but the same level 1 form that was used on the 27th of December, and on the 27th of December there's a tick next to level 2 or detailed engineering
- 25 evaluation recommended, correct?

A. Yes, yes.

Q. And then there's a tick next to structural?

A. Yes.

1157

- 30 Q. My question is does that mean that what's being recommended is a detailed engineering evaluation structural or a level 2 structural?

A. I believe it would be a level 2 structural.

Q. How can you say that from that form?

A. The natural progression of our rapid assessment process is for a rapid 1, a level 1 assessment to be carried out which is a quick visual inspection of the outside of the building. That is followed by a level 2 in the normal course of events where access is gained to the inside of the building and the structural elements are checked out in a rapid assessment methodology so that's not a, it's not a detailed engineering assessment, it's a more rapid assessment. If a level 2 rapid assessment determines that there are issues, danger, then it would be normal to ask for a detailed engineering evaluation which is a much more in-depth one or two day evaluation of the building conducted by the owner's structural engineer so the natural progression would be to go straight to a level 2.

Q. Right, but just leaving aside what might have happened here and just looking at the form itself?

A. Yes.

Q. There's a big difference between a level 2 and a detailed engineering evaluation, correct?

A. Yes.

Q. And are you saying that the level 2 would be something the council would do?

A. Normally.

Q. On this recommendation?

A. Yes.

Q. But the council wouldn't have done the detailed engineering evaluation?

A. That's correct.

Q. That would be for the owner?

A. Yes it would.

Q. So my question is, how was the council to know once they got this form back if it had a tick next to level 2 and a tick next to structural, what the inspector was recommending?

A. Well clearly the inspector was recommending the level of investigation that Powell Fenwick undertook because he was satisfied with the report that Powell Fenwick –

Q. I'm asking a more general question. I understand what you're saying about the comments here and the implication is that Powell Fenwick had looked at it already.

A. Yes.

5 Q. But just talking about the form generally and the construction of it, how was the council to know if those two boxes have been ticked what the inspector was recommending?

A. It's not, it would be better to have separate boxes for either a level 1, a level 2 and then perhaps another box for a detailed engineering
10 assessment so if you were looking at the construction of the form for the future you would be I think much more definitive in asking the inspector to make that determination.

Q. Because that is something we've come across in other forms –

A. Yes.

15 Q. – in relation to other buildings isn't it?

A. Yes it is.

Q. Yes, thank you.

CROSS-EXAMINATION: MR ELLIOTT

Q. Mr McCarthy, firstly I think this being the last of the hearings on
20 individual buildings. This is the last time you will give evidence and I wanted to acknowledge the time that you've put in no doubt to familiarising yourself with all of the files and for answering all of our questions.

A. Thank you for that.

25 Q. These questions have been asked of you before.

A. Yes.

Q. But again they're for the benefit of Desley Thomson's family just so they can understand some of what's taken place here and what the council suggests could happen in future. So firstly, just dealing with the green
30 placard. This building was green placarded after the September earthquake?

A. Yes it was.

Q. And its status remained green –

A. Yes.

Q. – through until the 22nd of February earthquake. The green placard encourages owners to obtain a detailed structural engineering assessment, doesn't it?

A. Yes it does.

Q. And in this case we've heard that the letter from Powell Fenwick also recommended a full inspection of the building but it appears this particular building never actually received a full detailed assessment. Is that the council's understanding?

A. That's our understanding.

Q. The effect of the green placard in this and other cases was that older buildings and potentially earthquake prone buildings were left open and occupied during an ongoing sequence of earthquakes without ever receiving a detailed engineering assessment. Would you agree with that?

A. That's correct.

Q. And in effect that all started with the decision to place a green placard rather than for example a yellow placard which could have kept a building closed until an inspection was undertaken?

A. Yes.

Q. Would you just explain please once more what the council's position now is on that issue and what should happen moving forward?

A. I believe the council is considering its position in respect of rapid assessments or the rescue and recovery phase after a major emergency, will be making a submission to the Royal Commission. I think the direction that it's going in is that they would look to prioritise buildings that were most at risk and ask for a detailed engineering evaluation prior to those buildings actually being reopened and that approach as sought is according really with what CERA is currently doing with all commercial buildings in the city.

Q. And that approach could be particularly directed towards earthquake prone buildings as identified by council records?

A. Yes and that's the prioritisation that would go on depending on the degree or the nature of the emergency or the severity of it. So there would have to be a, I guess, a prioritisation based on how big the earthquake was, what the effect of the earthquake was. So there is a bit of a thought to go into that process.

Q. And secondly, and finally, just to assist Desley Thomson's family in understanding the implications of the earthquake prone policy of 2006 that you referred to in your evidence?

A. Yes.

Q. The council adopted what the Mayor described as a relatively passive approach in its 2006 earthquake prone policy. Is that right?

A. Yes.

Q. And the effect of it was the council did not require an owner to carry out an upgrade unless the owner applied for a building consent for a change of use or a significant alteration of the building?

A. That's correct.

Q. But it was open to the council to have taken a more active approach including identifying potential, identifying earthquake prone buildings, even cordoning them off at that point and requiring work to be done to upgrade them?

A. The earthquake prone policy was, in 2006 was a legislative outcome of the 2004 Building Act required councils to enact an earthquake prone policy. The council went to public consultation, didn't have a full picture of all of the earthquake prone buildings in the city and they determined at that stage that we would not define any timeframes for strengthening around buildings until we fully knew what we were dealing with and fully appreciated the economic consequences of some of our decisions. So there was a study, a number of studies that were done between 2006 and 2009. In 2009/2010 we reviewed the policy and imposed some timeframes which changed the policy to a more active policy. As we heard yesterday the council was also concerned about the economic impact of that and was going to deliberate on providing some funding to assist in some building owners to upgrade their buildings so it was an

ordered and systematic approach that the council was actually doing in terms of better trying to get the buildings upgraded. We would have only cordoned off buildings that we saw to be dangerous and there's a – and we've got that power under the Building Act so we can issue a section

5 124 notice to make sure buildings are upgraded where there is an obvious danger. Where there is an obvious danger Council has always acted and cordoned off buildings or erected hoardings or in some way stopped the occupation of the buildings, but there needs, there needed to be an obvious danger before we would actually take that approach.

10 1207

CROSS-EXAMINATION: MR JONES – NIL

RE-EXAMINATION: MR LAING – NIL

QUESTIONS FROM COMMISSIONER CARTER – NIL

15

JUSTICE COOPER:

I have no questions either but I would just like to record that over the five weeks that we've now had looking at the failure of buildings which caused loss of life, you've been the Council's witness on every occasion and you have

20 essentially brought before the Commission the record of what Council's role was in relation to all those buildings. We're very grateful to you for the work that's gone into that and for the extent to which you have been able to inform the Commission about what occurred. I appreciate this cannot have been an easy task for you and I would like to thank you for diligently going about that

25 very important task that you have had.

MR MCCARTHY:

Thank you very much Sir.

WITNESS EXCUSED

MR ZARIFEH CALLS**PETER SMITH (SWORN)**

Q. Mr Smith, you have prepared an independent assessment of the earthquake performance of the building that was at 738 Colombo Street for the Royal Commission and it's some 15 pages dated December 2011?

A. Correct.

Q. Can I ask you to please to speak to a number of issues in that report and firstly to just tell us a little more about the building and the construction of it and that's been touched on a little this morning. I just want you to confirm the construction elements and then to talk about the strengthening that had been done in the past and then the structural failure in the February earthquake, and then perhaps look at some issues that you see arising from this building failure and perhaps lessons to be learnt from it.

A. Certainly.

Q. So dealing firstly with the building itself.

A. Could we have BUI.COL738.0013.1 and enlarge the photograph on that page please. That is a photograph of the building prior to the earthquake. It shows the two buildings. 738 is the two storey building central in the photograph. 736 which is to some extent inter-connected is the building, the four storey building to the right. We know from some of the records that the 736 which is the four storey building was constructed initially as a two storey building, and subsequently had a floor added in subsequent years to eventually extend it to a four storey building. We know less about the two storey building other than we do know there was a single storey building at the back. If we go to BUI.COL738.0010.6. Perhaps if we can enlarge the right-hand side please. The long rectangular building on the right-hand side is 736. The building on the left-hand side which is wider is 738. From the records those new steel beams commented on, on that plan in the front portion, and just to get orientation, Colombo Street is at the bottom of the sheet. They were beams which were installed after the – well they were an

alteration to the building when it was two-storied. Originally it had additional columns in the ground floor which supported the timber floor. I'll just get the date – 1958 we understand that that work was undertaken when they removed the internal columns to open up as a large ground floor retail space. The front portion of that building is the two-storey one. There's a comment, reinforced concrete wall about just over 50 percent of the way back from the street frontage. That's the end of the two-storey portion. The rear portion is single storey. I'm a little uncertain as to whether that front portion of 738 was built as a one or two storey building. If I can go back to that photograph we had previously on the screen, 13.1. One of the interesting I guess issues coming out of the collapse is that there does not appear to be any steel connecting the panels between the windows at first floor level and the parapet façade below, and I do question whether that building originally was one storey with a parapet running through the frontage and then the façade extended when the building was extended to a two storey, and that's really because the panels are referred to as having doubly reinforced concrete construction. That's the panels between the windows, whereas there seems to be no connection between those panels and the parapet, and one would have expected if the technology was such that they reinforced those panels the parapet itself would have been reinforced and the two would have been cast integrally. So it's just some uncertainty I think in terms of how that building came to be. I think if we can now go to BUI.COL738.0030.8. Can we have enlarged the top photograph please. The building at 738 is that building which shows the office walls exposed. The building to the right is 736 and it's obvious that the wall above that what may have been an original parapet has collapsed outwards revealing the internal layout to the first floor. That tragically fell out onto Colombo Street collapsing the canopy and having tragic result.

The building was strengthened. If we go back into BUI.COL738.0010.4, and highlight 3.3C. This is a report by Buchanan and Fletcher who did some a report on the building and subsequently strengthened the

building. It refers to *“the upper level concrete walls at 255 millimetre thick, reinforced concrete each face. These require securing at the ceiling and first floor levels using an epoxy bolting system. Loads would then be transferred to the north and south resisting system via steel*

5

bracing at ceiling level and horizontal ply and steel beams at floor level”. And if I can now move to BUI.COL738.0010.5, and highlight the northern building which is just towards the bottom of the text. You’ll see that the northern building’s 738 and it refers to 3.3C which is the one we just read, being addressed immediately so although we have not sighted plans for that work we understand that that securing of the façade was undertaken at that time. The documentation which has been presented which relates to the latter stage 2 strengthening and that was dated in 96 appears to relate to the rear building at 738 and to the four storey building. So we assume that the strengthening of the front portion of 738 was undertaken in 91, and that’s referred to in subsequent fax by Buchanan and Fletcher.

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1217

Q. Do we know for sure that that work was done?

A. The only evidence we’ve seen is the firstly the second stage work proceeded in 96 so one assumes that if the firm was engaged to do the less urgent work they would have already completed the more urgent and they subsequently advised in a letter that that work had been done.

20

Q. So the tying of the façade, the concrete façade to the rest of the building structure, assuming that was done, we know from Mr McCarthy’s evidence and I think there’s a document on the file that he referred to, that given the date that that was completed and the changes to the earthquake level, if you like, that the building would have been earthquake prone as at September 2010?

25

A. That’s correct, the strengthening work was done to a lateral code co-efficient of .1G which is a relatively low level of strengthening.

30

Q. Right.

A. Which was not uncommon in 91.

Q. So can you tell us about the structural failure of the building in the February earthquake?

A. Yes. If we can bring up BUI.COL738.0010.32. That's again another view of the Colombo Street frontage of 738 and again it's quite evident that those concrete panels which appeared in front of each of the timber partitions which are left exposed together with the upper portion of the façade has rotated outwards and fallen onto Colombo Street. The building otherwise appears to have suffered relatively minor visual damage from the street although there's records from the Powell Fenwick report which shows the four storied building was reasonably significantly damaged. One thing I omitted to mention previously is that 738 in a direction perpendicular to the street had a reasonably strong wall along the boundary at the north end but it relied on the strength of 736 in the direction parallel with Colombo Street so that there was very little lateral load resistance in 738 Colombo Street. It really relied on the adjoining building.

Q. What's the damage at the intersection of 738 and presumably 740 –

A. I think the failure of the façade has –

Q. – damaged that building?

A. – pulled out onto the masonry at that adjoining building.

Q. Right.

A. There may have been some pounding at that point and that may have had a contributing factor.

Q. So just going back to the earthquake strengthening that you talked about and the tying in of that façade. That would have been ineffectual the tying in that was there to prevent what happened in February from what we can see?

A. Yes, so unfortunately we haven't been able to verify that work was done, that the bracing was in there and that the connections were adequate but we've no reason to believe that that wasn't done to a standard that was of .1G.

Q. But it was ineffectual in preventing the façade peeling off?

A. Clearly the shaking that occurred in February was significantly higher than that level of load and its failure was not unexpected.

Q. Do you want to say anything more about the failure? I think you've covered it.

5 A. I don't believe so.

Q. Now I just wanted to ask you about any issues that arise. Firstly you raise a general one that you've raised in relation to other buildings, similar buildings, and that's the upgrading of unreinforced masonry buildings and that was covered I think or touched on briefly with Mr
10 Freeman.

A. I think that –

Q. Tell us your views on that?

A. Yes I think this building does highlight the need to look beyond the unreinforced masonry. There was an extent of unreinforced masonry in
15 the boundary wall at the north end but this building otherwise appears to have been largely of reinforced concrete and structural steel with timber floor, and clearly this building was not significantly stronger and more resistant than the unreinforced masonry so that I think in considering the buildings that need to be looked at more carefully after a significant
20 earthquake these early reinforced concrete buildings also need to be considered. I think another aspect of this building which is highlighted. It would be very helpful to any engineer undertaking an assessment of the building to know some of the history of the building. I think it's particularly relevant to the four storey building that if you know the building was originally constructed as a two storey building it was
25 extended at an early date to a four storey building it would lead the engineer to be more considered in the assessment process.

Q. And how would that be achieved from an engineering point of view?

A. It would be nice to think there was some sort of information available in
30 the, in a building, plans and other documentation that would be very helpful to an engineer doing an assessment if such information was available.

Q. Or to have it available electronically?

A. Yes.

Q. In a central point -

A. Indeed that's the other alternative.

Q. – territorial authority?

5 A. If the territorial authority had that information available it would be very helpful and hopefully we'll have those sort of electronic aids available in the future.

Q. How common are these, this type of building in New Zealand?

10 A. There's quite a lot of early reinforced concrete buildings that once, after the Napier earthquake, this type of construction evolved from what was previously unreinforced masonry and it probably wasn't until about '65 that significant changes were made to the integrity of buildings and I think you know '76 was probably the date at which more reliable structural forms were created by the codes.

15 1227

Q. You also mention an issue of research?

20 A. Yes I think that this – I think quite an urgent need for further research on retention of the façades of these buildings and unreinforced masonry buildings. Clearly the methods that have been used are inadequate and we need to adopt a level of securing of those façades which is reliable and has some degree of robustness and I think there is some research needed to assist in establishing that.

25 Q. Thank you. I want to ask you about another possible issue you haven't mentioned in your report but it's been highlighted this morning, and that's an issue you've touched on in other buildings and that's assessment following a substantial earthquake, such as September. In this case there were level 1 assessments on behalf of the Council but there were what in effect was level 2 assessments by Powell Fenwick after the September earthquake and then after the Boxing Day aftershock, and after the September earthquake in that level 2
30 assessment, a full engineering inspection was recommended. The level 1 assessment on the 27th of December from the Council recommended a structural level 2 or detailed engineering evaluation, and you recall

Mr Freeman saying that in retrospect he believed that the level 2 assessment, he described his as a level 2 with limited access, but that a level 2 assessment was insufficient in his view for a building such as this. Have you got any comment about that?

- 5 A. Yes I think there's sort of two phases to it. I think because of the limited access and particularly access to view the façade at the first floor level from the interior of the building, one can't have great confidence that any damage was necessarily identified. I think it's very important that a level 2 should be comprehensive if we are to identify areas of damage and to provide greater public protection. I think again on the circumstances of the earthquake, further assessment on the strength of the façade connection in reference to the Council records in this case would have established it was a relatively low level of securing would justify further consideration of whether that was an appropriate level of securing for occupancy of the building and public access around the building.
- 10
- 15

CROSS-EXAMINATION: MR ELLIOTT, MR LAING AND MR JONES - NIL

QUESTIONS FROM COMMISSIONER CARTER – NIL

20

JUSTICE COOPER:

- Thank you Mr Smith. Can I just say to you that this is the last of the buildings on which we'll be hearing from you, in a formal hearing, and you have put in a lot of work bringing relevant information before the Commission and giving us the benefit of your opinions on the causes of collapse and the adequacy of the inspection process after September. I would like to thank you for the great effort that you have put in and for your attendance at five weeks of hearings and all the work that has gone on beforehand and in between. We are very grateful to you. Thank you Mr Smith.
- 25

30 WITNESS EXCUSED

MR JONES:

Sir, Mr Freeman has, I've heard back on those enquiries he was requested to make. Would you like to hear the results of those enquiries?

5 **JUSTICE COOPER:**

Yes please. Mr Freeman, would you just acknowledge to me that you remain on the oath or affirmation that you swore before you gave evidence please?

MR FREEMAN:

10 Yes.

MR JONES RE-CALLS**MALCOLM FREEMAN (RE-AFFIRMED)**

Q. Mr Freeman, I think you were asked to check on these two matters,
15 there is the issue of the email that had been sent to Mr Liu and whether that had bounced back?

A. Correct, yes, we have confirmed that we have sent the email to those of two addresses. Neither of them bounced back. One of them came back with acknowledgement of receipt.

20

JUSTICE COOPER:

Q. Do you know which one it was?

A. It was the one from the OK Gift shop.

EXAMINATION CONTINUES: MR JONES

25 Q. I think the other issue was what your records shows as to who you were dealing with in terms of that premises?

A. Yes, it was relating to the Knight Frank comments. The only – the Knight Frank Trust actually paid our invoices but that was – they were not addressed – though payment had come through Knight Frank but it
30 wasn't addressed to them.

Q. So the invoices were addressed elsewhere but Knight Frank paid them. Is that what you're saying?

A. Correct.

CROSS-EXAMINATION: ALL COUNSEL – NIL

WITNESS EXCUSED

5 **MR ZARIFEH ADDRESSES THE COMMISSION RE AVAILABILITY OF
WITNESS**

COMMISSION ADJOURNS: 12.34 PM

10

COMMISSION RESUMES: 1.14 PM

JUSTICE COOPER ADDRESSES COUNSEL REGARDING AVAILABILITY

5 **OF WITNESS:**

I wonder if we could just check to see if Mr Liu is here before we go any further. Because we're a little early, by that clock anyway.

Not there? I think we'll just wait for that clock to go to 1.15.

Yes, alright Mr Zarifeh. I think it's 1.15 now.

10

MR ZARIFEH:

Sir, I had no contact from Mr Ress-Thomas or Mr Bell from Knight Frank. And there are, I submit, some issues that need clarification arising, in particular from the evidence that's been given this morning, and I will arrange for another summons to be served on Mr Rees-Thomas for a date for the matter to be adjourned and his evidence can be heard.

15

JUSTICE COOPER:

Yes, alright. Regrettable as it may be.

20 **MR ZARIFEH:**

Yes, Sir.

JUSTICE COOPER:

I understand that we could deal with the matter at 9.00 AM on Thursday 15th March. Mr Elliott, have you spoken to Ms Thomson's family about that?

25

MR ELLIOTT:

Yes I have, Your Honour.

JUSTICE COOPER:

Q. And that's convenient if they wish to come?

30

A. Yes, thank you.

**JUSTICE COOPER ADDRESSES COUNSEL REGARDING
ADJOURNMENT UNTIL 15 MARCH:**

So this matter will be adjourned to be resumed at 9.00 AM on Thursday 15th March, when we'll expect Mr Rees-Thomas to appear in answer to a summons which will be served in the meantime. The attendance of Mr Liu is also required at that date and at that time, and we'll need the services of the interpreter again.

Mr Zarifeh you should make contact, or some other member of the Commission's staff will need to contact with Mr Liu and point out as I assume is the case that the summons to which he has responded today makes it plain that he is required to attend from time to time in accordance with any adjournments that there may be.

So Mr Laing it's over to you as to whether you wish to be present on that day – here's Mr Liu now – or send somebody, send a delegate.

MR LAING:

I will talk to Mr Zarifeh in due course as to what happens. Thank you, Your Honour.

JUSTICE COOPER:

Thank you. And Mr Jones, the same to you.

MR JONES:

I think I will be here, Sir.

JUSTICE COOPER ADDRESSES THE INTERPRETER AND MR LIU:

Alright. Now Mr Liu. Would you stand please, Mr Liu. And perhaps this could be translated for Mr Liu. We have adjourned this matter to Thursday 15th March, at 9.00 AM. Your presence on that day, at that time, will be required. And we're going to hear evidence from a representative of Knight Frank on that occasion. Alright?

A. He says that, "I cannot attend that day."

Q. Why is that?

A. "I bought a ticket to fly out of country on 10th March."

Q. For what purpose?

A. A business trip.

Q. A business trip. Mr Zarifeh, what do you suggest?

MR ZARIFEH:

A. Well Sir, I think that's problematic for the Commission because it's sitting that week of the 12th March, that's the week we're trying to fit this into.

5 Q. Yes.

A. And if it's not fitted into that week then there's not going to be another week for some time and in fact the weeks that will be available will be full I imagine.

10 **JUSTICE COOPER ADDRESSES THE INTERPRETER:**

Q. Will you ask Mr Liu when he currently intends to return to New Zealand, please?

A. Three months later.

Q. Yes, alright. Well, he'll have to put off his trip, I'm afraid. He's required to
 15 be here on the 15th March at nine o'clock. Do you understand?
 (Response inaudible).
 He understands. Very well. Thank you.

MR ZARIFEH:

20 Q. Sir, just one other matter. Yesterday I raised the possibility of Mr Freeman commenting today on the strengthening of 753–759. I just wanted to indicate that I spoke to him before the hearing commenced this morning and he had a look at the Powell Fenwick material and didn't disagree with what Mr Smith had said, and so didn't need to get in
 25 to comment. Just so that's on the record.

JUSTICE COOPER:

Thank you. Yes, alright, so this matter is adjourned as I've already said for resumption later and our next sitting will be on next Tuesday when I
 30 deal with the application being made by Mr Cvetanov.

COMMISSION ADJOURNS: 1.23 PM

