

## **PUBLIC INQUIRY INTO THE BLUE MOUNTAINS CITY COUNCIL**

### **PUBLIC HEARINGS INTO TERM OF REFERENCE 4**

#### **OPENING STATEMENT BY COUNSEL ASSISTING THE INQUIRY**

1. As set out in the public notice published on the Inquiry's website, this first round of hearings – currently listed to occupy today, tomorrow and (if required) Friday - is confined to term of reference 4.
2. In short, term of reference 4 requires you to inquire into and report upon whether in exercising its functions, the Council's process of engaging Clyde & Co and McCullough Robertson lawyers – including, but importantly, not limited to the management of any conflicts of interest - to conduct independent investigations was in accordance with the guiding principles contained in sub-sections 8A(1)(b), (h), (2)(e) and 8B, and the role of the governing body as contained in sub-sections 223(1)(c) and (l) of the *Local Government Act*.
3. Section 8A sets out the general principles that apply to the exercise of functions by Councils. Relevantly for the purposes of the Inquiry into term of reference 4:
  - a. sub-section 8A(1)(b) provides that "*Councils should carry out functions in a way that provides the best possible value for residents and ratepayers*";
  - b. sub-section 8A(1)(h) provides that "*Councils should act fairly, ethically and without bias in the interests of the local community*".
4. Section 8B sets out principles of "*sound financial management*" that apply to councils, including that "*Council spending should be responsible and*

*sustainable" and that "Councils should have effective financial and asset management, including sound policies and processes for [amongst other matters] funding decisions."*

5. Section 223 deals with the role of the governing body. Relevantly for the purposes of the Inquiry into term of reference 4:
  - a. sub-section 223(1)(c) provides that it is the role of the governing body to ensure as far as possible the financial sustainability of the Council; and
  - b. sub-section 223(1)(l) provides that it is the role of the governing body to be responsible for ensuring that the Council acts honestly, efficiently and appropriately.
6. The Blue Mountains City Council local government area extends over 1,431 km<sup>2</sup>, of which approximately 70% is occupied by the Blue Mountains National Park. The Council area has a population of approximately 80,000 people, residing in 27 towns and villages.
7. The Governing Body of the Council is comprised of 12 councillors, representing 4 Wards.
8. The Mayor at all times relevant to the current public hearings was Councillor Mark Greenhill, OAM.
9. Dr Rosemary Dillon was appointed as Acting General Manager on 14 November 2017, taking effect on 17 November 2017. Her appointment was subsequently made permanent. Both will be called to give evidence during this round of public hearings.

10. The submission made to the Inquiry on behalf of the Mayor and Governing Body sets out further background about the Council and local government area. It is proposed to tender that submission and accordingly, I will not further refer to those general matters in opening.
11. During this round of public hearings, in addition to Mayor Greenhill and Dr Dillon, it is proposed to call evidence from:
  - a. Mr Trevor Cork, a partner in the firm McPhee Kelshaw Lawyers;
  - b. Mr Michael Tooma, a partner in the firm Clyde & Co; and
  - c. Ms Scarlett Reid, a partner in the firm McCulloch Robertson.
12. It is also proposed to tender a number of documents, which are contained in the Term of Reference 4 Tender Bundle.
13. I now propose to address the general factual background relevant to term of reference 4, and in doing so will identify some of the documents contained in the tender bundle.
14. From about the middle of 2017, concerns about the asbestos management practices of the Council were reported in the media. One example of an article published in the Blue Mountains Gazette on that topic on 9 July 2017 appears at page 1 of the Bundle.
15. Those matters were being reported on in November 2017. At page 3 of the Bundle, is a copy of an article published by the Blue Mountains Gazette on 7 November 2017 referring to concerns which had been raised about certain asbestos management practices by the Council.

16. On about 8 and 9 November 2017, the issue of asbestos management by the Council was the subject of comment by the broadcaster Ray Hadley during his show on 2GB. Additionally, Mr Hadley also referred to allegations concerning the process surrounding of appointment of certain contractors and staff of the Council.
17. Mr Hadley made further comment about those issues at various times during late 2017 and early 2018.
18. Examples of some audio extracts of the statements made by Mr Hadley will be tendered. Those extracts are not intended to be exhaustive and it is not proposed to play that audio during the public hearings.
19. Whilst the media reporting and commentary on those issues provides relevant and important context to the steps taken by Council – including the appointments of Clyde & Co and McCullough Robertson, which are the subject of term of reference 4 – it is beyond the scope of term of reference 4 to inquire into or make findings about the substance of the allegations made.
20. Some of them fall within other terms of reference.
21. For example, to the extent that the matters reported upon in the media concerning issues about the Council's asbestos management practices fall within the scope of the terms of reference, they will fall within terms of reference 1, 2, 5, 7 or 9. As has been advised in the public notice, and you have noted in your opening remarks, the Inquiry into those terms of reference is currently held in abeyance pending the completion of inquiries by various government agencies.

22. To the extent that the matters reported in the media concerning the recruitment and employment of certain staff or contractors by the Council fall within the terms of reference, they will fall within term of reference 3. Term of reference 3 will be the subject of further Inquiry in the near future.
23. However, as noted, the fact that such issues were being reported and raised in the media provides relevant context to the appointments of Clyde & Co and McCulloch Robertson, with which term of reference 4 is concerned.
24. At page 8 of the Bundle: on 9 November 2017, enquiries were made by Mr Steven Nicholson, a partner in the law firm McPhee Kelshaw and a partner of Mr Cork's, with Mr Michael Tooma of Clyde & Co as to whether Mr Tooma would be in a position to be engaged to conduct an independent investigation. Mr Nicholson described the subject of the investigation as "*recent asbestos-related incidents*". The matter was described as being "*urgent*".
25. At page 9 of the bundle is a copy of a resume setting out, in summary form, Mr Tooma's background and experience. That resume records Mr Tooma's experience in health and safety law and his publications on the subject. At the time he was approached by Mr Nicholson, he was the Global Head of Health & Safety for Clyde & Co. He has been listed in the Health & Safety category of "*Best Lawyers*" from 2010 – 2019 and was lawyer of the year in that category in 2016 and 2019.
26. At page 15 of the Bundle: on 9 November 2017 Mr Cork informed Mr Greenwood, the then General Manager of the Council, that enquiries had been made with Mr Tooma who was now "*conducting a conflict of interest check, to ensure that there*

*are no existing relationships which would prevent their acceptance of our instructions".*

27. At page 16 of the Bundle: later on 9 November 2017, Mr Tooma informed Mr Nicholson that he was able to be engaged and that *"there are no conflicts"*.
28. At page 53 of the bundle: on 14 November 2017, at a meeting of the Council, the Council dealt with a number of motions relevant to term of reference 4.
  - a. At page 57 of the Bundle: the Council unanimously resolved to appoint Dr Dillon as the Acting General Manager with effect from 17 November 2017.
  - b. At page 58 of the Bundle: for the purposes of the consideration of the motions regarding the appointment of the investigations, the Council unanimously resolved to have Dr Dillon assume the role of General Manager in place of the then General Manager, Robert Greenwood.
  - c. At page 59 of the Bundle: in relation to what was described as being *"very serious allegations...made against the Council in relation to the management of asbestos...by the Council"*, the Council unanimously resolved to instruct Mr Cork to engage an independent investigator to investigate and report on those allegations, and approved the terms of reference for that investigation.
  - d. At page 60 of the Bundle: the minutes record that in relation to what was described as being *"very serious allegations have been made against the Council and against individual Council officers in relation to the recruitment of staff and consultants"* the Council again unanimously resolved to instruct

Mr Cork to engage an independent investigator to investigate and report on those allegations and noted the proposed terms of reference.

29. On 15 November 2017, Mr Cork made contact with Ms Scarlett Reid, a partner in the firm McCullough Robertson Lawyers, with a view to engaging her to conduct the investigation into issues concerning the recruitment of staff and contractors.
30. At page 62 of the Bundle: later that day Ms Reid replied indicating that she was available to be retained to conduct the investigation and provided Mr Cork with her profile and that of Mr Nathan Roberts, a Senior Associate in that firm who Ms Reid indicated would work with her on the investigation.
31. At page 65 of the Bundle is a CV supplied by Ms Reid to this inquiry.
32. It can be seen from the profile she supplied to Mr Cork, and the CV Ms Reid supplied to this Inquiry, that Ms Reid has practiced almost exclusively in workplace relations & safety law during her career. She has been engaged to conduct investigations, including on behalf of other Councils, and has been recognised in industry guides, such as *Best Lawyers Australia*, over a number of years.
33. At page 70 of the bundle: thereafter on 15 November 2017 a number of items of correspondence passed between McPhee Kelshaw and the Council concerning the appointment of investigators, including:
  - a. at page 71 of the bundle: Mr Cork expressed the view that the allegations raised very serious issues for the Council which warranted “*early but thorough investigation*”. At page 75 of the Bundle: in that same letter, Mr

Cork recommended that the investigators be appointed by McPhee Kelshaw.

- b. at page 78 of the Bundle: this is second letter from McPhee Kelshaw sent on 15 November. At paragraph 4, Mr Cork recommended that Mr Tooma be appointed to investigate the asbestos management issues;
  - c. at page 85 of the Bundle: this is the third letter from McPhee Kelshaw sent on 15 November. At paragraph 4 on page 86, Mr Cork recommended that Ms Reid be appointed to investigate the staff recruitment and appointment issues.
  - d. At page 91 of the Bundle: this is the fourth letter sent by McPhee Kelshaw on 15 November. At paragraph 91, Mr Cork confirmed that both Mr Tooma and Ms Reid had been engaged to conduct the respective investigations.
34. At page 100 of the Bundle: on 16 November 2017, Mr Tooma was formally engaged by McPhee Kelshaw to conduct the investigation into the asbestos management issues and was supplied with terms of reference and a signed copy of the Clyde & Co retainer letter.
35. At page 125 of the Bundle: also on 16 November 2017, Ms Reid was formally engaged by McPhee Kelshaw to conduct the investigation approved by the governing body into the recruitment issues and was provided with terms of reference. Further instructions were provided to Ms Reid on 28 November 2017 - page 131 of the Bundle.
36. Before continuing with an overview of the factual background, it is important to again note that term of reference 4 does not call for a consideration of the

conduct of Mr Tooma and Ms Reid, or their firms. It does not call for a consideration of the manner in which they conducted their investigations or the outcome of those investigations. Some of the matters reported in the media in relation to Mr Tooma's investigation in particular touch upon those matters. It is important to bear in mind that it is the exercise of the Council's functions in the process of engaging Clyde & Co and McCullough Robertson to conduct the investigations that is the focus of term of reference 4 and this round of public hearings.

37. At page 144 of the Bundle: on 12 December 2017, the Council unanimously resolved to adopt amended terms of reference in relation to the investigation into asbestos-related issues. Those amended terms of reference were supplied to Mr Tooma on 13 December 2017.
38. At page 147 of the Bundle: on 12 December 2017, the then Minister for Local Government, the Hon Gabrielle Upton MP, issued the Council with a notice of intention to issue a suspension order. Put shortly, the proposed suspension of the Council was based in significant part upon asbestos management issues.
39. A page 178 of the bundle: on 15 December 2017, the Council held an extraordinary meeting. At that meeting, the Council unanimously:
  - a. noted that Mr Tooma had been appointed as an independent investigator to conduct an investigation into allegations made against the Council in relation to the management of asbestos;
  - b. noted that the amended terms of reference for that investigation adopted on 12 December 2017 had been released to the media and public;

- c. authorised Mr Tooma to conduct his investigation in consultation with SafeWork NSW, the United Services Union and all other relevant stakeholders and to publicly release his report and to make his report available to the Minister for Local Government, SafeWork NSW and the USU;
  - d. resolved that the Council submit to the Minister that was in the public interest for the Councillors as the governing body of the Council to remain in office pending the conduct and conclusion of Mr Tooma's investigation and the delivery of his report, noting that SafeWork NSW is not equipped to conduct, and does not as a matter of practice conduct, investigations that result in publicly available reports.
40. At page 186 of the Bundle: on 19 December 2017, the Council held an extraordinary meeting concerning the proposed response to the Minister's notice of intention to suspend the Council, and resolved (amongst other matters) that the Council provide a submission to the Minister in a form considered during that meeting.
41. At page 189 of the Bundle: on 20 December 2017, the Council provided a submission to the Minister in response to the notice issued on 12 December 2017. That submission comprised a letter from the Mayor and Deputy Mayor, a draft form of performance improvement order, and a submission from the Council.
42. At page 191 of the bundle: in the letter from the Mayor and Deputy Mayor, the position of the governing body of the Council, in so far as it relates to the matters relevant to term of reference 4, is summarised by the matters set out in

paragraphs 15 to 21. In short, the governing body stated that until early November 2017, when the allegations first began to surface in the media, it had understood that all required measures had been undertaken in relation to asbestos management, and that at the first meeting of the governing body after such allegations were made in the media on about 8 November 2017, held on 14 November 2017, the governing body acted in response to those allegations by the appointment of the investigators.

43. At page 314 of the Bundle: on 22 December 2017, the Minister determined not to suspend the Council but issued a notice of intention to issue a Performance Improvement Order.
44. At page 320 of the Bundle: on 18 January 2018, the Council responded to the Minister's notice of 22 December 2017 by, essentially, accepting the Minister's proposed Performance Improvement Order subject to a number of proposed revisions.
45. At page 327 of the Bundle: on 22 January 2018, the Minister issued the proposed Performance Improvement Order.
46. On 13 February 2018, allegations were made in the media about a past relationship between Mr Tooma and Mark Mulligan. Mark Mulligan had been engaged as a consultant by the Council in the latter half of 2016, and was employed as the Acting Director, Service Delivery, from 1 November 2017.
47. It appears that those allegations were first raised by Mr Hadley on his radio program. Further statements on those matters were made by Mr Hadley over the following days, including on 14, 15 and 16 February 2018.

48. Again, copies of some of the audio extracts of Mr Hadley's program concerning those matters will be tendered, however it is not intended to play them during the public hearings. For the same reasons as noted earlier, whilst they provide context in which the Council's actions in dealing with issues concerning Mr Tooma's appointment fall to be considered, it is the Council's conduct that is the subject of this Inquiry – not Mr Tooma's.
49. However, in general terms it was suggested that Mr Mulligan had been interviewed by Mr Tooma during his investigation and that Mr Mulligan had responsibility for some of the areas that were the subject of Mr Tooma's investigation. Mr Hadley in particular made various calls for action in relation to those matters, including that Mr Tooma resign his position as investigator.
50. At page 332 of the Bundle: during the afternoon of 13 February 2018, the Mayor and Dr Dillon sent an email to the office of the Minister attaching correspondence in relation to the allegations aired by Mr Hadley earlier that day.
51. The letter from the Mayor and Dr Dillon, recorded their shock to have heard of the allegations made that morning and attached a letter from Mr Cork in relation to them.
52. Mr Cork's letter (which commences at page 334 of the Bundle) records a number of matters concerning the circumstances of the appointment of Mr Tooma, including that:
  - a. during the period between August 2016 to November 2016, during which time Mr Mulligan had been engaged a contractor to the Council, he was not engaged to develop the Council's asbestos management plan or policies;

- b. during that period, any issues that Mr Mulligan identified regarding asbestos management and policy development were delegated to permanent employees of the Council;
  - c. Mr Mulligan was employed by the Council as Acting Director Service Delivery from 1 November 2017 until 12 February 2018;
  - d. the prior association between Mr Tooma and Mr Mulligan was not known to the Council when Mr Tooma was engaged as investigator;
  - e. the appointment of Mr Tooma was made on Mr Cork's recommendation;
  - f. having regard to the information supplied by Mr Tooma that day, there was no basis for concluding that Mr Tooma's prior relationship with Mr Milligan disqualified him from conducting the investigation.
53. Mr Cork's letter attached an email from Mr Tooma of 13 February 2018 concerning his association with Mr Mulligan. A copy of that email is at page 340 of the Bundle.
54. In that email Mr Tooma explained the circumstances of his relationship with Mr Mulligan, including the following:
- a. he had been engaged by Essential Energy (then Country Energy) to advise it in relation to a WorkCover NSW prosecution at a time when Mr Mulligan was the Chief Safety Officer.
  - b. Thereafter, Mr Tooma had been retained by Essential Energy from time to time.

- c. At some stage during that period Mr Mulligan became an executive of the company and, along with other executives of Essential Energy, Mr Tooma had socialised with Mr Mulligan from time to time.
  - d. At some stage in 2008/2009, Mr Tooma took a stake in a racehorse with a number of the executives of Essential Energy. That interest was disclosed to the managing director of Essential Energy at the time. Mr Mulligan was one of the other executives who also had a stake in that horse. It was sold in late 2009.
  - e. When Mr Mulligan left Essential Energy, he sought a LinkedIn reference from Mr Tooma. Mr Tooma said that such a request was not uncommon and had provided such references for others.
  - f. He had largely lost contact with Mr Mulligan after his departure from Essential Energy until being contacted by Mr Mulligan to act as a referee for a position at the Council. Mr Tooma did not recall whether he was ever contacted to provide such a reference.
  - g. He was not aware that Mr Mulligan had been engaged by the Council until after his involvement with the Council.
  - h. He had declined to be involved in the investigation being conducted by Ms Reid where Mr Mulligan's recruitment was in issue.
55. At page 343 of the Bundle: on 14 February 2018, the Minister issued a further notice of intention to issue a suspension order. At least in part, it appears that the notice was issued as a consequence of the allegations made concerning the relationship between Mr Tooma and Mr Mulligan.

56. At page 353 of the bundle: on 15 February 2018, the Blue Mountains Gazette published an article dealing with the allegations aired by Mr Hadley. That article records at page 354 of the Bundle a statement by Mr Tooma in which Mr Tooma rejected the suggestion that his investigation considered the conduct of Mr Mulligan and that "*my terms of reference do not and have never extended to his [that is Mr Mulligan's] conduct*".
57. There does not appear to have been any suggestion made in the media or elsewhere that there was any similar concern or potential conflict on the part of Ms Reid and McCullough Robertson. No evidence of such a suggestion having been made has come to the attention of the Inquiry.
58. At page 358 of the Bundle: on 16 February, Mr Cork wrote to Dr Dillon and Cr Greenhill setting out in more detail the circumstances of Mr Tooma's appointment and addressing the suggestion that Mr Tooma's prior relationship with Mr Mulligan gave rise to a conflict of interest. That letter records - at paragraph 36 on page 363 of the Bundle - that Mr Cork was not aware of Mr Tooma's prior relationship with Mr Mulligan at the time of his appointment.
59. A page 379 of the Bundle: on 19 February 2018, Mr Tooma wrote to Mr Cork setting out why, during the conduct of his investigation, he interviewed Mr Mulligan. In short, Mr Tooma stated that Mr Mulligan was interviewed in his capacity as the Director Service Delivery (a position which he commenced on 1 November 2017) in order to obtain a better understanding of how each of the directorates operated and their roles and responsibilities in order to understand the organisational structure of the Council and the "*silos at play in the organisation*".

60. A page 380 of the Bundle: also on 19 February 2018, the law firm Maddocks provided the Council with a "*Probity Advice*" concerning the engagement of Mr Tooma. That advice considered the circumstances in which Mr Tooma had been retained and concluded that the process adopted by Mr Cork in retaining Mr Tooma was "*reasonable and adequate in the circumstances*".
61. A page 387 of the Bundle: on 20 February 2018, the governing body of the Council held an extraordinary meeting. For the purposes of that meeting, the Mayor presented a minute. In that minute, the Mayor set out a detailed response to the various issues raised in the notice issued on 14 February 2018. Relevantly the minute:
- a. at page 399, stated that the appointment of Mr Tooma had been made on the recommendation of Mr Cork, a recommendation which the Council accepted;
  - b. at page 399, stated that Mr Mulligan has never worked as the Council's Chief Safety Officer as suggested in the Minister's notice of 14 February 2018;
  - c. at page 399 - 400, stated that the suggestion in allegations raised in the media that Mr Tooma was responsible for investigating asbestos management issues that fell under the responsibility of Mr Mulligan was wrong and that Mr Mulligan was "*never responsible for controlling the investigation of asbestos management or for developing the Council's asbestos management plan*";

- d. at pages 400 - 401, stated that that during the period in which Mr Mulligan was engaged in 2016 as a contractor, he worked on phase 1 of a review of the Council's safety management systems, which was focused on being compliant with the WHS Act 2011 and its regulations;
- e. at page 402, stated that as part of that role, Mr Mulligan was not "*responsible for the development and finalisation of the Council's Asbestos Management Plan*";
- f. at page 402, stated that during the period of his consultancy in 2016, Mr Mulligan was not a member of any asbestos working group within the Council;
- g. at pages 403 - 404, set out the circumstances of Mr Tooma's engagement, including the completion of conflict checks;
- h. at pages 406 - 407, set out the events which followed the airing of the allegations concerning Mr Tooma's relationship with Mr Mulligan on 13 February 2018;
- i. at page 407, stated that whilst the Mayor would have preferred Mr Tooma to have notified the Council of his prior relationship with Mr Mulligan, he acknowledged Mr Tooma's "*undoubted professional opinion that no conflict exists*";
- j. at page 408, set out a number of ways in which the investigation could proceed, those being:
  - i) that Mr Tooma continue the investigation;

- ii) if it be considered necessary for Mr Tooma to stand aside, that Ms Titterton (a partner of Mr Tooma's) complete the investigation; or
- iii) the appointment of a new investigator.

62. A page 441 of the Bundle: during that meeting on 20 February 2018, the governing body resolved that the Council make a submission to the Minister in response to the notice issued on 14 February 2018 in the terms of the Mayoral minute.

63. At about this time, Dr Dillon was investigating the scope of Mr Mulligan's responsibilities and the question of whether any of them fell within Mr Tooma's terms of reference. That process was in train from at least 16 February and appears to have culminated in a memorandum to Dr Dillon dated 21 February 2018 from Megan Tebay, the Acting Group Manager People & Systems. That memorandum appears at page 444 of the Bundle and sets out an analysis of Mr Mulligan's responsibilities

64. That memorandum concluded that Mr Mulligan was not responsible for the Council's Asbestos Management Plan during the period in which he was consultant in 2016 or during the period he was engaged as Acting Director, Service Delivery between 1 November 2017 and 12 February 2018.

65. At page 547 of the Bundle is attachment 10 to that memorandum. That attachment is a table which sets out an analysis of Mr Tooma's terms of reference against Mr Mulligan's areas of responsibility. That analysis concluded that Mr Mulligan was not responsible for any of the matters which were the subject of Mr

Tooma's investigation. That conclusion was consistent with Mr Tooma's statement on that topic.

66. At page 551 of the Bundle: on 22 February 2018, the Council provided a submission to the then Minister in response to the notice issued dated 14 February 2018. In accordance with the resolution passed by the governing body on 20 February, it is in terms consistent with the mayoral minute considered during that meeting and indeed incorporates it.
67. At page 557 of the Bundle: in paragraph 24, the Council stated that it was the view of the Mayor and the elected councillors that Mr Tooma's investigation should continue. However, in the event that the Minister considered that it was not appropriate for Mr Tooma to continue, the Council proposed in the alternative he stand aside, and Ms Titterton complete the investigation.
68. It does not appear that there was any response to that submission by or on behalf of the Minister.
69. On 22 February 2018, the Council sought and obtained an injunction in the New South Wales Supreme Court restraining the Minister from acting on the notice issued on 14 February 2018. On 23 February 2018, the injunction was continued in the proceedings were transferred to the land and environment Court.
70. The Minister appealed. That appeal was heard on 28 May 2018. On 20 June 2018 the New South Wales Court of Appeal allowed the appeal and dissolved the injunction. The proceedings were subsequently discontinued by the Council.
71. On 27 June 2018, this Inquiry was announced by the Minister.

72. No further action has been taken by the Minister to suspend the Council.
73. The Inquiry has received a number of submissions in relation to the terms of reference. Most deal principally with matters falling within other terms of reference. However, some of the submissions received to provide some useful background to the matters the subject of the terms of reference generally, including term of reference 4. They include the submissions lodged by:
- a. the Office of Local Government, which contains useful background as to the various steps taken by the Minister. That submission appears at page 562 of the Bundle;
  - b. the Mayor and governing body, which contains some general background concerning the Council and the local government area. That submission appears at page 571 of the Bundle; and
  - c. the Council, which is largely directed to the scope of the respective terms of reference, including term of reference 4. That submission appears at page 582 of the Bundle.
74. Those submissions have been included in the Bundle for the contextual and background information that they contain. At this stage, it is not proposed to tender any other submission during these public hearings.
75. Before concluding, and consistent with the approach you took at the end of your opening remarks, given that these hearings touch upon the issue of conflicts of interests, I wish to record that:
- a. as far as I am aware, I do not know anyone employed by the Council;

- b. I do not know any of the governing body or any witness proposed to be called in these public hearings;
- c. I have not been retained on behalf of the Council, or by McPhee Kelshaw;
- d. as far as I am aware, I do not know anyone who has a particular interest in the matters which are the subject of this Inquiry, in the sense that any issue, finding or recommendation that may arise has the potential to affect them or their interests;
- e. I do not know Mr Tooma, nor have I been retained by him;
- f. I don't believe I have ever been retained by Clyde & Co;
- g. I do not know Ms Reid, nor have I been retained by her;
- h. I have been retained by McCullough Robertson. The last such occasion was some years ago and prior to Ms Reid joining that firm. In any event for the same reasons that you have already identified, that fact does not give rise to any conflict on my part.

8 April 2019