

## STATEMENT OF JOHN BENNIE

### **Introduction**

My name is John Bennie, and I am the Chief Executive Officer of Greater Dandenong City Council. I have held this position since 2 October 2006.

I thank the Committee for the opportunity to make public a number of pertinent and evidenced facts, that will explain and justify Council's actions. As well as touching on related matters, I will directly address concerns the committee may have arising from the evidence given to the Committee last week by Ian Cook, Paul Brady and Kim Rogerson.

With the Committee's permission, I would like to do three things before answering any questions which Committee members may have.

First, I have compiled some relevant documents for the assistance of the Committee. Reference will be made to a number of these documents. I would appreciate it if a folder containing the documents could be made available to each Committee member.

Secondly, I would like to outline the proposed arrangements for this morning's presentation to the Committee. The arrangements have been approved by the Senior Committee Manager of Legislative Council Standing Committees. After I present and give my evidence:

- Mr Jody Bosman (Council's Director City Planning, Design and Amenity) and [REDACTED] will present and address any questions concerning 'Community Chef' and the prosecution brought against I Cook Foods Pty Ltd and Mr Ian Cook for breaches of the *Food Act 1984*; and
- Ms Leanne Johnson (Council's Coordinator Public Health) and Ms Elizabeth Garlick (Environmental Health Officer) will present and answer any questions concerning the investigation into I Cook Foods and Mr Cook.

Thirdly, I intend to read a brief statement that will both provide an overview of Council's position and deal with the allegation that I somehow acted improperly in declaring a conflict of interest or allowing Council to regulate I Cook Foods (and all other foods businesses within Council's municipal district) when Council had a conflict of interest.

### **Overview**

Mr Cook suggested that Council had an 'agenda' to target I Cook Foods and close down his business. This is completely untrue. There is, and was, no premeditated attempt to regulate I Cook Foods out of business and somehow give Community Chef a commercial advantage.

Council's investigation of I Cook Foods commenced only after notification from the Department of Health and Human Services that an elderly woman had died in circumstances where the evidence suggested a possible link with food supplied by I Cook Foods. As Ms Johnson and Ms Garlick will explain, the investigation was conducted professionally and ethically. At no point did I direct them (or cause anyone else to direct them) to achieve a particular outcome.

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Mr Cook also appeared to suggest that, quite apart from a Council agenda, there was something of a 'conspiracy' between Council and the Chief Health Officer and/or DHHS to target I Cook Foods or destroy I Cook's business. There was **no** such conspiracy. At no point during any discussions with the Chief Health Officer or DHHS was there a suggestion that anyone should deviate from accepted practice or act unethically.

The point I want to make – and here I will be very direct with the Committee – is that Council and its staff have acted with integrity throughout.

I do want to comment briefly on some of the other evidence given by Mr Cook and, in turn, the evidence of Kim Rogerson.

As to Mr Cook:

1. he implied that I Cook Foods had, in many years of operation, an unblemished record.

It might be true that I Cook Foods was not previously prosecuted. A search of Council records does, however, reveal that a number of complaints about I Cook Foods (including complaints relating to the presence of lysteria) were made between April 2016 and June 2018. The complaints are summarised behind Tab 1 in the folder of documents that you have.

On each occasion I Cook Foods was asked to respond and, where appropriate, take corrective action. Throughout this period Kim Rogerson was the Environmental Health Officer primarily responsible for overseeing I Cook Foods' compliance with its *Food Act* obligations; and

2. Mr Cook told the Committee last week that he had not 'hired' a 'PR' firm to represent his company's interests.

I therefore find it surprising that Media Releases have been published by 'Hear Hear Communications' (a public relations company) providing extensive quotations that are critical of Council.

As to the evidence given by Ms Rogerson:

1. contrary to what she said last week I am **not** on the Board of 'JLT' (which I understand to be a reference to Jardine Lloyd Thompson Pty Ltd) or 'MAV Care' (which is a Board of the Municipal Association of Victoria that oversees a self-insured WorkCover scheme for Victorian local government).

I **am** on the MAV Insurance Board but this does not have any connection with WorkCover claims brought by any local government employees (including Ms Rogerson herself);

2. she wrongly said that there had been no attempt by Council to 'reach out' to her following her departure on sick leave.

A number of attempts were made to make contact with her and provide support. It was Ms Rogerson who made it clear that she did not wish to engage with anyone from Council. Ultimately, this was reinforced by a letter

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from her legal advisors in which there was a specific request not to attempt to make any contact with her; and

3. she omitted to mention that her allegation that Council had 'pressured' her to fabricate evidence and make a false statement was investigated by the Ombudsman and found to have no substance.

Can I ask members of the Committee to look behind Tab 2. There you will see an email sent on 24 July 2019 on behalf of the Ombudsman. The email notifies Council's Director Corporate Services that, having reviewed the information provided by Ms Rogerson and Council, the Ombudsman will not be taking further action. I ask the Committee to look at the section of the email from the Ombudsman to Ms Rogerson, which appears below the Ombudsman's email to Council's Director Corporate Services. Specifically, I ask Committee members to look at that Section headed '**Falsification of Documents**'. I might give the Committee a short time to read what is said there.

It is clear that the Ombudsman found no evidence of any attempt to put undue pressure on Ms Rogerson to do anything that was unlawful or unethical. Her evidence about fabrication or falsification of evidence has, then, already been objectively assessed and found to be without substance.

While looking at the email from the Ombudsman to Ms Rogerson, can I also request Committee members to look at the next Section – '**Conflict of interest**'? It is to this issue of my conflict of interest (and Council's so-called conflict of interest) that I now turn.

### ***Conflict of Interest***

1. Members of the Committee will appreciate that Victorian councils have multiple roles and perform a variety of functions. For relevant purposes, they are simultaneously a:
  - (a) service planner;
  - (b) service provider; and
  - (c) regulator.

Each council must plan for an ageing community (or, more particularly, must ensure that adequate services are provided to ageing members of the community). Further, having planned in this way a council must provide services to those aged members of the community who require such services (including the provision of meals). Finally, of course, a council must also regulate food business compliance with the *Food Act*.

2. Traditionally Victorian councils provided meals services directly through a 'meals on wheels' service operated by council staff. So, council staff would both prepare food and deliver it to members of the community.

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By 2006 many Victorian councils found themselves in a position where the costs of producing meals were significantly increasing and tenders for external providers to prepare the meals were met with limited competition. Greater Dandenong City Council was one of these councils. When I began as Council's CEO in 2006, Council was looking at needing to find \$1 million to upgrade its kitchen facilities to meet relevant food safety standards.

Concern about the ability of metropolitan councils to continue to fund meals on wheels services to an adequate level led to discussions about the possibility of a wholly council owned entity operating a 'regional' kitchen facility. Greater Dandenong City Council was one of the metropolitan councils to join in the exploration of this possibility. Ultimately it led to the creation of a new company – trading under the name 'Community Chef' – which:

- (a) was 'owned' by a number of councils (I understand that there are currently 17) as shareholders;
- (b) has been operating from a purpose-built kitchen facility in Altona; and
- (c) since 2010 has been providing meals to councils in accordance with contracts entered into between Community Chef (on the one hand) and a council (on the other).

3. When it was formed, the Board of Community Chef was to comprise a mixture of Council's representatives and independent directors with commercial experience and expertise. I was asked to join the Board. I was a Board member between December 2007 and 2011.

I left the Board, feeling as though it had established itself as a viable and successful service provider and helped contain costs within this area of local government sector operations.

In December 2017 I was asked to re-join the Board, to help maintain the balance between council and independent directors. I remained on the Board until May 2019, when I stepped aside from the Board pending the outcome of any IBAC or related investigation and subsequently any assessment of matters involving Greater Dandenong City Council and I Cook Foods Pty Ltd. This action is recorded in my 'Key Management Personnel – Declaration Form' for Community Chef.

4. I now come to the events of February 2019.

I had not been involved in any aspect of the investigation into I Cook Foods or Mr Cook. I knew little about it.

On 21 February I was advised by members of Council staff that the acting Chief Health Officer had formally and urgently requested that Council issue an Order that I Cook Foods cease production immediately. This, I was told, was imperative because the Order needed to be served before production resumed on the following morning (22 February 2019). I was informed that the Acting Chief Health officer wished to speak to me without delay.

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I knew that Community Chef's operations had extended beyond the provision of meals to councils and included the provision of meals to hospitals. I therefore knew that the closure of I Cook Foods for any period would create a vacuum that Community Chef may fill. I therefore recognised that I had a conflict of interest.

I looked to see whether I could delegate that decision to another. Can I ask Committee members to look behind Tab 3 of the folder, where section 19 of the *Food Act* is set out?

You will see that section 19(2) provides that a 'relevant authority' can make a 'written order' that a 'food premises' must do certain things. Section 19(3) then provides that a 'relevant authority' may, in that Order, direct that until the mandated steps are taken the food premises are not to be used for the preparation of food.

Section 19(9) – which appears towards the bottom of the page – sets out who is a 'relevant authority'. Paragraph (b) refers to a council and paragraph (d) refers to a CEO of a council.

Can I then ask you to look behind Tab 4? It sets out section 58A of the *Food Act*. It defines who can be delegated a power by council.

When, on 21 February, I met with Jody Bosman to discuss the proposed Closure Order it became obvious that there was a problem. I had a conflict of interest and couldn't make the Closure Order. Section 58A did not appear to permit a delegation to another member of Council staff. This is because section 19 was not referred to in section 58A.

Jody Bosman, Leanne Johnson [REDACTED] and I telephoned the Acting Chief Health Officer on the evening of 21 February. I explained that I could not sign the Closure Order because of the conflict of interest. I also explained that, in my opinion, no other member of Council staff had the power to sign or issue a Closure Order.

Contrary to Mr Cook's assertion, only Jody Bosman, Leanne Johnson and [REDACTED] and I participated in the telephone call. [REDACTED] was not present.

The Acting Chief Health Officer accepted my advice as to the existence of the conflict of interest and indicated that he would sign the Closure Notice. It was, however, agreed that, given the urgency of the situation, members of Council staff would serve the Closure Notice by attending I Cook's premises. Eventually, therefore, the Closure Order was signed by Dr Brett Sutton. Arrangements were made for Council staff to serve the Closure Order the following morning.

5. I wish to very quickly mention two other things, both related to this conflict of interest issue referred to by both Mr Cook and Ms Rogerson in their evidence:
  - (a) the suggestion that Council's involvement in Community Chef created a conflict of interest for all members of Council staff, and tainted what they did, is ill-founded.

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Those performing regulatory functions on Council's behalf – including Ms Rogerson, Ms Johnson and Ms Garlick – had no role to play in Council's interface with Community Chef. There was a clear and strict separation of roles.

- (b) if I had attempted to delegate my section 19 closure powers to another member of staff (such as Mr Bosman) – and I repeat that we came to the view that this was not legally permissible – the criticism of me would have been that I was delegating to somebody who was answerable and accountable to me.

The suggestion would then have been that the other member of staff would not have been independent of me, and would have been influenced by my membership of the Community Chef Board.

Chair – thank you for your patience. This is all that I wanted to say by way of opening. Council fully cooperated with the Victorian Ombudsman's inquiry into this matter and was pleased to be cleared of any wrongdoing. We are similarly happy to work with the Committee through its inquiry process. I am happy to answer any questions, as are my colleagues. [REDACTED] can also answer any questions that the Committee has concerning Council's current participation in Community Chef.