

# Transcript of Proceedings

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THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

MR PHILLIP CUMMINS, Deputy Commissioner

MR P CALLAGHAN SC, Counsel Assisting

MS E WILSON, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2011

QUEENSLAND FLOODS COMMISSION OF INQUIRY

BRISBANE

..DATE 28/09/2011

..DAY 38

THE COMMISSION RESUMED AT 10.01 A.M.

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COMMISSIONER: Mr Ure, you're appearing for?

MR URE: Local Government Association of Queensland on behalf of the Central Highlands Regional Council.

COMMISSIONER: Thanks, Mr Ure. Yes, Miss Wilson.

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MS WILSON: Thank you, Madam Commissioner. I call David McCullagh.

DAVID CHARLES McCULLAGH, SWORN AND EXAMINED:

COMMISSIONER: You can take a seat, thanks, very much, Mr McCullagh.

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MS WILSON: Is your full name David Charles McCullagh?-- It is.

And you provided a statement to the Queensland Floods Commission of Inquiry?-- I did.

Can you have a look at this document, please? That's your statement?-- It is.

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Madam Commissioner, I tender that statement, with its exhibits.

COMMISSIONER: Six-hundred and 65.

ADMITTED AND MARKED "EXHIBIT 665"

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MS WILSON: Now, Mr McCullagh, that statement is your evidence?-- Mmm-hmm

And if I could just ask you about some additional matters that you raise in your statement. You presently live in Ormiston?-- Mmm-hmm.

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And you've lived there for the last 10 or so years?-- Ten years, yes.

Now, you previously did live in Emerald?-- Yes.

And when did you move to Emerald?-- '73.

And you lived there for approximately about 30 years?--  
Thirty years, yeah.

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You still have properties in Emerald?-- I do.

And are they properties that are in the Town of Emerald or  
outside Emerald?-- Portion 131 - 39, that we won in 1973, and  
"Gunwarra West" on the Nogoia River where the town water  
empties.

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And have you got any properties in the town itself?-- No,  
I've sold them all down.

Okay. Now, the properties that you have, they were flooded in  
both 2008 and 2011?-- No, the 139 wasn't flooded.

Okay. And 139 is the one that is on the Nogoia River?-- No,  
139's the one right beside town.

Sorry?-- It's right beside town.

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Okay?-- LM1.

Okay. Now, you grew cotton on your property?-- I've grown  
cotton.

Okay. And you believe that cotton with the configuration of  
Emerald is probably the worse thing that could grow. Can you  
explain that for us?-- Oh, you're sort of taking words a bit  
there. We've grown the best crops of cotton in Australia at  
the time. We grew what we could make the most money out of,  
we had no say in it, but cotton - cotton is a crop that's  
planted in September. When it's in full flight growing it  
takes about a hundred mils of water a week of irrigation. So  
the whole cotton area which drains into LM1 - not the whole  
cotton but the area of cotton that drains into LM1 can have a  
full profile of moisture and get a six inch storm, so there's  
lot of water goes into the drains that are the problem in  
these floods.

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Okay. I'm now going to show you a map of Emerald and it's  
been - there's some notations made on that map, and that will  
also come up on the screen as well. Now, you can see that -  
that's a map of Emerald which shows the floodwaters?--  
Mmm-hmm.

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And there's been some features that have been marked on that  
map. One of those features that I'd like to take your  
attention to is LN1?-- Yes.

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And you just referred to LN1 in your evidence before?--  
Mmm-hmm.

You can see LN1 on that map?-- Yes.

Now, you refer to LN1 in your statement?-- Mmm-hmm.

And if I can take you to your statement at paragraph 14 where you say IWS designed the drains?-- Mmm-hmm.

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I was just wanting to make that clear. Is that LN1 that you're referring to or other drains?-- The whole of the irrigation area was designed by an engineer by the name of Don Beattie-----

Oh, yes?-- -----and the dam was built by the IWS, and, look, the whole scheme was designed by the IWS. Every part of it was designed by the IWS. Irrigation Water Supply Commission.

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Okay. Now, that LN1, if we can go back to that aerial photograph with the floodwaters, runs - it comes through properties before it hits Emerald, is that the case?-- No.

Well, where does it come from before it hits Emerald? We see that LN1 on that left-hand side, where does that extend to?-- Well, it comes down the western highway and drains properties - drains irrigation properties. It comes across - you haven't got it on this map. But it comes across and drains about six or seven properties out on Selma Road.

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Um-----?-- But it's only a drain, it's only a drain to drain the irrigation properties. It was built for the irrigation area. It was only built for the irrigation area. Its capacity is only for the irrigation area.

And that is one of the major factors that you raise in your statement that you say contributes to the flooding in Emerald, is the issue with the drains?-- Well, it's as simple as the way the irrigation drains are drained no other water can go into them.

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And one of the issues that you raise is that many residential and industrial developments discharge stormwater into that drain in Emerald itself?-- Well, my friend over there said that Sunwater - well, it wouldn't have been Sunwater when they signed an agreement with the council to let the council do developments and let the water into LM1 and LM1/2, it was a 20 year agreement, and it's a pretty silly agreement because the water can't go into those drains unless there's no water in them.

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At times of heavy rain-----?-- Mmm-hmm.

-----you believe that LN1 causes water to push back across and flood houses such as Kidd Street?-- Of course it does-----

Now-----?-- -----because it's got openings on - it's got openings on both sides of it.

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Now, Kidd Street is not marked on that - that feature is not marked on that map?-- I know where it is.

Well, that would be helpful if you could show us where it is. Now, there's marker - there's a - to your right, Mr McCullagh, there is a pointer that you could use?-- Oh, righto.

And you could show us on that map up there?-- Where's the pointer?

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To your right?-- Oh, this one.

Now, can you - be able to show us on that map up - on that photograph up there to your left, Mr McCullagh?-- What have I got to press?

Just press the - Mr Hinchliffe will help you. Or perhaps it might be easier, Mr McCullagh - Madam Commissioner, could Mr McCullagh go and point to-----

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COMMISSIONER: Mr McCullagh, would you mind doing that, just going up there and pointing it out to us?-- See this road here, that curved road, that's the whole of Kidd Street.

MS WILSON: Okay?-- 65 blocks.

COMMISSIONER: Thank you

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MS WILSON: And that is - you did some developments - if you could return to your seat. You've done some development work at that Kidd Street area?-- I did it all

Did it all. When you did that was that on the outskirts of town or where was town's development up to at that point in time?-- Oh, yes, Gordonstone Mine which was ARCO, BHP, BHP were building houses so the BHP houses and the ARCO houses were right up against us, so the development was all going on there, and we bought that piece of land.

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And when you did that development what impact did you think that the LN drain would have on that - such a development?-- I didn't really - I was a bit silly, I suppose, but I didn't think it would have the effect that it's had because I've got 65 unhappy people.

And have you got any solutions that - for the flooding that you say occurs from the LN1 drain?-- It's all in my submission.

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Is there anything else that you wish to add?-- Just on that development, I've got a - I've got to put in there that the council was going to do that development. They were going to make a hundred blocks there.

Yes?-- So if I thought - if I - I thought if the council was going to put a hundred houses there, if I put 65 there I wasn't going to be doing anything too bad. I didn't make a lot of friends when I managed to box them out when they - when the land was sold, but the council had a plan to do a hundred blocks on that piece of land and they got cold feet and I bought the land and I did 65 blocks. Had to have Court cases. The council was happy to put a hundred blocks on it themselves but they didn't want me to put 65 on it. Just bad sports, I thought.

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Thank you, Mr McCullagh. I have no further questions. Just hang on a moment, some other people may have some questions.

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MR MacSPORRAN: I have nothing, thank you, Commissioner.

COMMISSIONER: Mr Porter?

MR PORTER: No questions, Commissioner.

MR FLANAGAN: No questions, Commissioner.

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COMMISSIONER: Mr Ure?

MR URE: We only received Mr McCullagh's statement at about 5 o'clock last night. There's a couple of matters we wish to respond to. We're taking instructions, we'll be able to respond tomorrow in Emerald.

COMMISSIONER: All right. You've got no questions for Mr McCullagh?

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MR URE: No, I haven't.

MS McLEOD: There's no questions, thank you.

MS WILSON: May Mr McCullagh be excused?

COMMISSIONER: Yes, thanks very much for your time, Mr McCullagh, you're excused.

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WITNESS EXCUSED

MS WILSON: I call Glen Brumby.

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GLEN THOMAS BRUMBY, ON AFFIRMATION, EXAMINED:

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MS WILSON: Thank you, Madam Commissioner. Is your full name Glen Thomas Brumby?-- Yes, it is.

And you are the Executive Director of Building Codes Queensland, the - Growth Management Queensland, which is a division of the Department of Local Government and Planning?-- Yes, I am.

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And you provided a statement, with annexures, to the Queensland Floods Commission of Inquiry?-- I did.

Can you have a look at this document, please? Have you brought your own statement along?-- I have.

Madam Commissioner, I tender that statement. I understand that it's - there's an electronic copy that's on the electronic service.

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COMMISSIONER: All right. It will be Exhibit 666 but I do want hard copies-----

MS WILSON: Yes, Madam Commissioner, we will-----

COMMISSIONER: -----in due course.

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ADMITTED AND MARKED "EXHIBIT 666"

MS WILSON: At paragraph - if I can take you to some matters in your statement. At paragraph 5 you tell us what the Building Codes Queensland administers?-- Yes

And that includes the Queensland Development Code?-- That's correct.

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Building work in Queensland is governed by the Building Act 1975?-- That's correct.

And it calls into play for assessment of building work both the Building Code of Australia and the Queensland Development Code?-- That's correct.

And the Building Code of Australia is a document which applies Australia-wide?-- That's correct.

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With some local variations. And the Queensland Development Code is obviously just of application in Queensland?-- That's correct.

So is it the case the process for getting amendments to the Building Code of Australia is more difficult than getting amendments to the Queensland Development Code?-- Well, it's something that's done through the Australian Building Codes Board-----

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COURT REPORTER: I'm sorry, Mr Brumby, I'm having difficulty hearing you.

WITNESS: It's something that's done through the Australian Building Codes Board, the National Building Code of Australia which is now called the National Construction Code, and that's called up from time to time through building acts across Australia. The Queensland Development Code is something that Queensland has the ability to call up through its own regulation at any time.

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MS WILSON: Okay. Now, the Australian Building Codes Board, you provide a background to that in your statement from paragraph 11 onwards, and if I can take you to the first issue that you particularly address in your statement, which is the steps taken by the Building Codes Queensland since 2009 to implement changes to building standards in Queensland. Now, you've addressed those matters in paragraphs 15 to 27. Sets out the steps that there have been - that have been taken to further this implementation of any change?-- That's correct. The Building Codes Board did have a project on its work program in the 2000 and, I think, six/seven year, as mentioned in paragraph 16 of my statement, and that project has, you know, changed over time into what we have today is the Building in Flood Prone Areas project.

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There has been some delay in moving this forward?-- That's correct. The Building Codes Board oversees a code that has a number of - a large number of very topical social policy issues in it and it affects a great deal of Australia's employment and GEP, so it's - changes to the building code are usually hotly contested and governments of all persuasion tend to seek to implement policy through building standards and the Building Codes Board has always got a very full agenda.

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In terms of Queensland's input, "it is required the Minister at the time, the Honourable Stirling Hinchliffe, the former Minister for Infrastructure and Planning to become involved on occasions"?-- That's correct. Minister Hinchliffe was very supportive of us getting the flood project elevated to a higher priority on the work program.

If I can take you to paragraph 27, which is at page 6 of your statement. Does that set out where this project is at the moment or has it progressed since then?-- The Australian Building Codes Board is currently preparing a regulatory impact statement and I understand that will be published, subject to the Office of Best Practice Regulation approval before the end of this year, and I'm not sure about how long that will take but I anticipate it may well stretch out into early next year before that process is completed, but the project has come a long way and we now have a draft standard

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and an accompanying handbook that would be suitable for adoption by regulation with some minor amendments, minor tweaking, subject to the consultation that we have already received in building codes.

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Your statement sets out the response to the 2010/2011 Queensland floods and if I can take you to some of those matters. Paragraph 33, if I can take you there, refers to installing a reflux valve at the boundary connection to prevent sewerage surcharge from the sewer mains, and it was - was it - it was - "BCQ was recommending for low-lying areas that a reflux valve be installed to both the sewer and stormwater drain within the property"?-- That's correct.

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Now, was this being considered to be elevated to legislative change?-- Yes. Particularly for the sewer connections. I think there may be a need for some more work on the stormwater connection issue because I'm not certain that a routinely-fitting backflow reflux valve on stormwater connections will be helpful in all cases but certainly for the sewer connections that would be a high priority to prevent the backflow of sewer - of sewage in a flood event.

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And where would this be required, in all areas or just low-lying flood areas?-- I don't see that it would be cost-effective to install them everywhere, I think it should be confined and targeted to keep costs low, probably to areas where there's a risk of flooding or areas very close thereto, because I know that some properties that weren't flooded did have some backflow of sewage in the recent flood event.

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The present status of these amendments are that there is no present plans to amend legislation to mandate these installations?-- Well, I think the context of that is important. At the time, and I was away from work at that time for family reasons, the person in my position was aware of work being done by local councils and we were very keen, I think, to get that information before we went forward with any regulatory change, but our current intention is to put that forward as a package with the draft code if the government decides to accept it.

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In paragraph 34 - 35 you refer to, the PIC "agreed with this recommendation on the basis that the local governments where flooding had occurred were conducting an investigation of how best to deal" with this issue?-- That's right. The - we have in Building Codes two consultative groups that consist of PIC bodies that provide us with advice about building and plumbing standards. They typically like to get, you know, a full range of feedback and information before we go forward for regulation and I think that's a sensible approach. Rather than everyone going off prematurely to make standards that need to be revised they'd rather get it right in the first instance.

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Another proposal that the "BCQ is currently preparing is for the introduction, subject to government approval, of the new QDC part for buildings in a designated flood hazard management

area". If you can go to paragraph 40 of your statement. I'm interested in the classification of a "designated flood hazard management area". Where do you see that that can be defined?-- We would see that as being a local government responsibility and we - what we would prefer would be that it be clearly designated in their planning schemes so that everyone's very clear on where the code is to apply and how it's to apply.

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And the effect of this is if it is passed is it making - making this code a mandatory requirement in Queensland?-- That's correct.

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"The new QDC will also set a minimum freeboard of 300 mil that will apply unless otherwise set by a local government". Minimum - I'm interested of where this minimum freeboard is set, from which level? What are you looking at? The Q100 level-----?-- Well, on the level that's set in the - by the local government all through the planning system the code that we would be bringing in should be explained in terms of where it fits in. Obviously you have a flood hazard and - sorry, a flood hazard, then you've got the level of exposure. Both of those elements of the problem are outside of building standards control. Building standards come in where you help with the level of resilience for the community. So we're talking about local governments designating those - those levels in the planning scheme and the code will probably try and deal with the question of level in the most cost-effective way. Now, with the defined flood event that can be done in two ways under the code. One is through defining a flood event. For example, probably to an exceedence of a hundred - one in a hundred or through the experience in the local area. So it may be, you know, the maximum experienced flood in a certain area. So the code really just complements whichever way the local government provides the information.

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For this proposed code to work does it require local governments, all local governments to have flood mapping to be able to set those levels?-- Well, it doesn't - the code really complements planning and it doesn't really - it won't be useful unless we have some idea of the location of the likely flood. Now, I understand - we're working very closely with the Queensland Reconstruction Authority who have been preparing some mapping to identify where floods will occur and I understand the intention is for local - that to be made available to local governments and our code would complement whatever decision's made in that area.

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At paragraph 44 you refer to how you have been working with the Queensland Reconstruction Authority on the "guideline entitled 'Planning for stronger more resilient floodplains'". Are you aware that the QRA, the Queensland Reconstruction Authority, has produced a series of flood maps?-- Yes, I speak regularly with Brendan Nelson and we're very supportive of that because it will complement - the planning system will be delivering a good - a good outcome from the planning through to the building spectrum.

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Have you had a look at these maps to see whether they set flood levels?-- Yes, our team has. I haven't personally looked at the maps but I understand that the flood level is - isn't routinely set, but I do understand that local governments do have a lot of intelligence and knowledge that's built up over many years and that - I envisage that they would be able to provide some guidance to proponents for a building about the likely level. It would be better if they could because that will help keep costs down for a new building because the cost of getting reports from a specialist hydrologist may be - you may overcome the need for those reports.

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If the mapping does not provide flood levels then that will cause difficulties, won't it, for the application of the code?-- Well, I think it will - it will certainly add cost. The code does allow - we're planning to have a number of pathways to get to building and one of them would be to rely on a competent person to set - to do a - get some information on the likely flood event. It would be best if the local councils used the module they've got to provide guidance at a site level or at least at street level so that - to keep cost down for building, but it's routine for people who build to get expert reports. It would be better if they didn't have to get one because it saves money.

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When you say "adds cost", who are you envisaging will incur that cost?-- Well, at a site level for a building application, it would be the proponent, the person - the owner probably building the building would need to get a report to ascertain the appropriate defined flood level and add the - add the freeboard.

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Now, the draft standard is attached to your statement of attachment 18, and now may be a convenient time, Madam Commissioner, to tender the hard copy of that document.

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COMMISSIONER: The standard or the statement or-----

MS WILSON: The whole statement, your Honour. I tender the statement with its exhibits.

COMMISSIONER: It's already got an exhibit number, which is 666, and I think it may have been handed up, I'm not sure. So it's all right. You say the standard is an attachment?

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MS WILSON: Yes, it is, and it's attachment 18. I will take you to that perhaps in a moment. Now, what is included in attachment 18 is envisaged to become mandatory provisions; is that the case?-- That's correct. We're consulting on it at the moment and we have received quite a lot of feedback and obviously we will incorporate any sensible feedback as we usually do.

And who have you been consulting with?-- Widely with the building industry. We have a routine consultation process, because we - you know, building codes are iterative and they change often and we tend to be very closely involved with peak bodies, HIA, Master Builders, Property Council, UDIA, there's a suite of them.

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Have you also been involved in any consultation with local government?-- Certainly, yeah, local governments are - Local Government Association and particularly a lot of governments with an interest are also closely consulted.

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And what is the feedback that you are receiving in general terms from local governments?-- In general terms, I think local government are supportive. I have read a letter today from Ipswich that I hadn't read before, but local governments tend to accept now the need to have detailed building - building standards under the Building Act rather than the planning schemes. So, I think most of them are coming around to that point of view.

Is that your own view or is that the view that you have been receiving from local governments?-- It's actually difficult because local - there are a lot of local governments and I haven't had a chance to read all the - all the feedback, but LJQ tries to represent them with a uniform view, but that's quite difficult sometimes because there's 70-odd local governments and they often have differing views, but my understanding of local government response is some will prefer to have everything in their planning scheme, other local

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councils are - accept the need for the consolidation of building standards, but it does vary. Ipswich are - seemed to be - aren't that supportive at this stage.

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When is it proposed that this standard would become a mandatory requirement in Queensland?-- Well, we were planning on putting the matter to government before the end of this year and we were hoping to get feedback from the Commission if that was possible.

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Attachment 18 to your statement, as I have referred to, talks about these are going to be the mandatory provisions. In your statement you also refer to additional nonmandatory provisions, and if I can take you to paragraph 50 of your statement where, "It is proposed that additional nonmandatory provisions which are currently outside the scope of the draft standard will also be included in the QDC." What is the status, then, of these nonmandatory provisions? Will they become, in effect, mandatory then?-- Well, at the moment we - we are targeting buildings with habitable spaces with our flood response, but local governments have indicated that they would like to have or at least think about having standards for other classes of buildings. So, we are proposing to have some standards of commercial buildings so that local governments can pick them up rather than having to draft their own standards. My view is that it may be best to leave that to the market because of the difficult functionalities of commercial buildings and the need to keep in mind that - you know, they're probably better informed about their risk and the need for their business to operative during - during a flood event or other events, so it may be best - I mean, our view is - well, my particular view is that it may be best to leave that to the market. Having said that, leaving that area completely free from any State Government standards means that there could be 70-odd different standards in interested planning schemes which is probably not a great outcome for the building industry. I think there's a great efficiency where standards are consolidated and they're written by the Building Codes' experts to make them easier to use and cost effective. So, the idea is to have them available if local governments did want to pick them up. If they did pick them up in their planning scheming then that would, in effect, become a mandatory part of Queensland's building law.

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The building requirements under the draft code as well as the national standard will only apply to areas designated by local government as a flood hazard area. Now, if there's no flood hazard area, they will not otherwise be triggered?-- That's correct.

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So, it comes back to that issue that we were previously discussing about the designation of a flood hazard area, and at paragraphs 55 to 57 you refer to the areas designated by a local government as a flood hazard area. Is it the case that you are placing importance on the Queensland Reconstruction area's work that they're doing in developing flood hazard mapping?-- Certainly. We would like to help local governments in any way we can, but we also understand that

local governments have built up quite a specific - a significant amount of knowledge in the area, so from our point of view we really just want to complement the planning systems' response and we would like the planning system to have standards to improve community resilience once they have made that designation. 1

I'm interested in paragraph 57 where it is expected to involve regulatory amendments to enable local governments to use the mapping that the QRA has developed as a basis for designated a flood hazard area for the purposes of building matters, including the proposed QDC under section 13 of the Building Regulations. So, it really is intermeshing the work the QRA is doing with their flood mapping with the work that you're doing?-- Yes, that's right. Under the Building Regulation at the moment we refer specifically to the SPP and I think the idea is to make that clear that we can refer to relevant documents in whatever form they are that specify where the flood is and how high the flood will be. 10

If the maps do not contain levels of flooding and just can give you a one dimensional view of potential flooding, that does not really assist the implementation of this code, though, does it?-- Well, I don't necessarily agree with that. I think it does assist, but it could go further. Our - our draft unit code will be very much aware of the most practical way to get the right flood level if an area is designated, because obviously what we want is to make - do two things. One is to make sure that the level is the right level, but, secondly, we want to make sure it's as practicable as possible because we're talking about here the application of the code to homes where affordability needs to be kept in mind. So, we want to make sure it's easy to get the right level, not too expensive. 20

So, can I just be clear about this? A local government can set the level and they can get that from their flood mapping, or previous experience; is that the case?-- That's right. 30

And if they do not do that, then the default position is that the QRA maps come into play?-- That's right. If there's no level in the QRA mapping, then if the land is designated as being in a flood area and it's also able to have a house on it, then it would need some advice from a hydrologist at the site level to work out what the DFL would be. 40

And the hydrologist at the site level, that would be a cost that would be incurred by?-- The home owner.

The home owner?-- And that's what we'd try - like to try and avoid because, as I say, housing affordability is something we always need to keep in mind. 50

Can I take you to attachment 19 of your statement and attachment 19 is, in effect, a briefing note to - a departmental briefing note. Was that to the Minister, was it?-- That's correct.

Now, within attachment 19 is an attachment 6 and if I could take you to that, thanks?-- Sorry, I am just having trouble finding that. I will be one minute. Yeah, I have got it now.

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Thank you. Now, it's a policy analysis, it's titled, "A Policy Analysis"?-- That's right.

And there's policy questions posed in the far right-hand column. Who is working on the answers to these policy questions?-- This document was created by members of our team to try and keep - keep in mind the areas that could possibly be covered by the code as we were bringing it in, and they were basically posed for us to sharpen our thinking as we were developing the new code. So, it's an ongoing process and we will be considering these through the adoption of the code. Not all of the questions in that column are ones for building codes, they're of wider import. That was just to help the team manage the process of getting to - you know, the right answers for the code.

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For example, the first question on that document is a fairly high level and widespread question?-- That's correct.

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"Is the SPP 1/03 appropriate for designing flood - for designated flood prone areas?"?-- That's right.

And does your Department and your - do work on that question?-- We need to keep it in mind. Bear in mind that this document, the briefing note, was something that we were looking at building codes for us to sharpen our mind on how we would be adopting the code in line with the questions you are asking, and so, you know, our regulation does actually refer to the SPP and there's always going to be a question for us is - is there a better way for us to refer to flood hazard areas, is there a better way for us to get information about flood levels, is there a cheaper way for houses to be designed correctly, so - you know, there may be other questions that throw - are thrown up by that, for example, should we just get the QRA to do that work or is other governments able to do it, you know, there's a whole of lots that are outside Building Codes' policy area that aren't appropriate for me to comment on.

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Are you working with other government agencies in relation to these high level questions?-- Indirectly, yes. I mean, ultimately our work will be confined to the application of the code and how it's called up, but we are always actively involved in the development of policy that affects building.

Well, perhaps there are some more discrete questions that are more in line with your work that you are doing and if I can take you to page 2 where the inundation of habitable rooms is set out, and one of the policy questions - well, there's two policy questions, "Are local governments declaring heights of habitable flood levels in the flood prone areas?" Has any work been done on this and can you assist whether this is occurring?-- I am aware it is occurring. I don't have any - any statistical information for the Commission, I'm sorry, and

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I know that there are some variations in the freeboard level, so we are proposing in the code to keep that situation the same. If councils want to set - local governments want to set a higher freeboard that's acceptable to us. We just try and get as much consistency as we can. Currently we are recommending a freeboard of at least 300 millimetres. That's to deal with the wave actions and other variations, minor variations, and that's consistent with the Building Codes Board Draft Code.

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If I can take you to the next page where this policy document refers to the inundation of utilities, electrical, air-conditioning and HVAC mechanical, et cetera, and the question posed is, "Is the standard the most appropriate place for these provisions or should relevant Australian Standards be amended to require electrical utilities to be located in designated areas?"-- Yeah, that's - we have a view on the - on the operation of Australian Standards. Typically building codes call up quite a range of standards and we have a close relationship with Standards Australia and we are working - the Building Codes Board is working closely with the Australian Standards to keep policy matters out of standards. Standards really should be a recipe for how to do something and the appropriate place for the policy should be in the regulations or in the building code which is controlled by governments, so I think - our view on that one would be to have policy questions that impose costs in the building codes rather than in the standards.

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There's been some evidence heard that it was believed that buildings flooded during the 2011 floods because water flowed through electrical conduits, there was not enough sealing. That was one view that's been put forward. The Brisbane City Council's indicated it does not have jurisdiction to regulate such matters if that occurred. Would requiring conduits to be waterproofed or placed in waterproof enclosures as proposed by the draft standard prevent flood waters flowing from conduits into buildings?-- I don't think that the - the standard as - our current code draft standard, it doesn't cover that. I think the things that were talked about in that context about the electrical conduit would be the larger ones, the commercial buildings, and I don't think we would be covering that in our draft standard. That, in my view, would be more likely something left to the market or in those voluntary codes to be called up by local governments, but, again, I mean, I think we need to keep in mind the scale of the issues. I don't know whether that will be an issue of such importance or scale it would need a regulatory response. But certainly it's also worthwhile keeping in mind for our standard that we are proposing at the moment in that it's a wet standard, it is a wet standard, so basically it assumes water will flow into the building and then flow out again, and whenever water flows in somewhere, as you know probably it will try and find its level through whatever opening it has, so I think the standard assumes that there will be inundation to a certain height. So, in that case, I don't think it will be helpful to overspecify conduits. It does cover things like utilities being located above DFL or above the flood hazard

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Thank you. I have no further questions.

COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: Mr Brumby is one of mine, Commissioner.

COMMISSIONER: Mr Dunning?

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MR DUNNING: No questions, thank you, Commissioner.

MR FLANAGAN: Thank you, your Honour. Mr Brumby, may I take you to paragraph 19 of your statement? Here you refer to discussions at a meeting held in or about July 2009 of the Australian Building Codes Board; is that correct?-- Actually I was - I recall there was a number of meetings in series, not - I think that statement there is about - prior to the one in - in July.

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All right. And that might explain why in your annexure 9 of your statement there are, in fact, no board minutes for the July meeting referred to in paragraph 19 of your statement; is that correct?-- That's correct. I identified all the relevant ones that I could find, but I couldn't find one in - for the one in July.

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All right. But you refer in paragraph 19 to the flood standards project being discussed at this meeting; is that right?-- I think actually - I'm talking generally there actually about when - when it was brought up. I tended to raise it a few times and we discussed it briefly but I don't recall - I don't think that statement there is just about the July meeting.

Well, how are we to understand paragraph 19 then?-- Well, I was basically saying that I recall a number of meetings before July where the flood standard was on the work program and I asked the chair for an update on the progress and from time to time members had a view about - you know, the standard. It was fairly informal and it was in the context of a great deal of work that was being done by the Building Codes Board that was of interest to Queensland apart from the flood standard.

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Yes, but, in any event, do you agree that at meetings held with the Australian Building Codes Board prior to July 2009 the flood standard project was discussed generally at these meetings?-- Yes, we did discuss it briefly at most meetings.

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Did you attend these meetings yourself?-- Yes, I did.

Based on information that you received from these meetings, would you agree, at least according to paragraph 19 of your statement, that one of the key matters that was discussed related to the role of planning in preventing flood damage to

buildings and whether a regulatory approach was appropriate?--  
 Certainly, that's correct. Members did have a view we had to  
 work very closely with the planning officials group and  
 planning generally on the topic and I know that some  
 jurisdictions had a view that building didn't have a role in  
 providing any resilience for communities for floods, even  
 though it does for - even though the code does for bushfires  
 and cyclones.

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At these meetings that you attended, was there any discussion  
 as to whether flood related building standards should be  
 specified through building code provisions such as, for  
 example, the Queensland Development Code or through planning  
 schemes?-- The board usually has a view - well, the strongest  
 view I could put on that one is the board's view that it's not  
 appropriate to put building standards in planning schemes, so  
 I think the discussion was more along the lines of the  
 permission to build rather than the standards, so the board  
 has a number of projects dealing with local government  
 interventions into building and the costs that that does  
 impose, particularly given that there is a lot of variation in  
 how they do that and the way that interacts in the building  
 approval process. So, the board generally will prefer  
 building standards to be in the building code, because that's  
 part of the intergovernment agreement. So, the conversation  
 was more about the - about the role of permission and once we  
 got past that point, it was also a question of whether a  
 voluntary or a regulatory approach was suitable. For example,  
 I think some - all members preferred the idea of a handbook  
 that people could use that provided more general but not  
 regulatory guidance, whereas other - others thought that the -  
 there would be a need to have - you know, discrete regulatory  
 guidance, given the nature of the hazard.

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Just so we understand your evidence, what's your personal  
 preference?-- My personal preference is that we have cost  
 effective codes that provide explicit guidance for industry  
 wherever there's a hazard that could endanger life or cause  
 significant destruction in the community, and that's part of  
 the resilience response of building codes, and I think that's  
 the right one.

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So, would it be correct to say that two matters identified by  
 you, according to your own opinion, as to why a regulatory  
 scheme is appropriate rather than a planning scheme is because  
 of cost effectiveness?-- Certainly.

Well, I will just finish the question?-- Sorry.

Do you agree with that part of the proposition, cost  
 effectiveness is-----?-- Certainly, yes, absolutely.

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And uniformity is the second consideration that you refer to  
 in your answer?-- That's correct.

Is there anything else why the regulatory approach is  
 preferable to the planning approach?-- Well, I think the  
 planning approach and the building approach need to work - in

- to complement each other, and there's a couple of dimensions that people aren't usually thinking about. One of them is the approval process and who gets to approve a plan or a building at a certain point. So, I think the expertise and the process for approval needs to be considered. We - we like to make sure that we keep the standards discrete, because that's where you accumulate the expertise to look at the plan with all the other considerations that impinge on a building. Having a fragmented approval approach where you have a plan approved in a planning sense with, you know, a few standards thrown in is usually unhelpful and I think it adds to risk and delay. It also adds to cost because things tend to be duplicated, you know, considerations are duplicated for the same - the same regulatory outcome.

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All right. So, from your answer then could we list then the four things that you see as advantageous to a regulation approach rather than a planning approach, and that is cost effectiveness, uniformity, lessening risk and lessening delay; is that correct?-- That's right.

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All right. Thank you. Can we turn it around? At these meetings that you attended, were there contrary views put that a planning scheme approach is actually far more flexible and, therefore, doesn't have the risk of unfortunate results because of the application of the uniform regulation or uniform building standard? Were those views expressed at meetings?-- No, never.

No, never?-- No. They - I think from the point of view of the - I mean, you need to understand that in the context of discussion we are talking about only a resilience response from building codes, so it's not going to help with the hazard, it's not going to help with the exposure, so obviously the exposure is the key issue that - for planning, and the degree of exposure, how risky it is, whether you can deal with the - that risk, so once the decision - I mean, that's the - that's the area where building complements planning, you know, and building can't and it shouldn't take over that question.

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What do you see as the benefits of having flood related building standard as part of a planning scheme rather than imposing those standard by regulation?-- I'm sorry, I missed the first part of that question.

What do you see as the benefits of having flood related building standards as part of a planning scheme rather than imposing those standards by regulation? You have told us why you prefer regulation but you must have considered some of the benefits of having planning standards imposed by planning schemes surely?-- Well, I think the way I'm using regulation - I would include planning. Planning schemes - planning schemes effectively become law.

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Can we use regulation in the sense of the draft standard-----?-- Yes.

-----that is proposed for the Queensland Development Code?

So, when I say "regulation" I'm actually referring to that draft standard. Can we have that as a common ground?-- Yes, yes. All right.

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In that sense what, in your opinion, are the benefits of having flood related building standards as part of a planning scheme as opposed to part of a regularised-----?-- My personal view is that there are no benefits in having building standards covered in a planning scheme and the Sustainable Planning Act now includes section 86 to make that explicitly clear so that where there's any - any conflict between a planning scheme in the sense of a building standard and the building code, whether it be the QDC or Building Code Australia, the Building Code of Australia or the QDC override the planning scheme, and that's because I think there's - it's absolutely certain there should be no doubt about how building standards work and how they apply.

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So, you see no role of planning schemes in the sense of containing building standards?-- No except for the fact that there are sometimes pressing issues for local governments to deal with and they bring forward temporary planning instruments which may from time to time include a building matter, but that should be transferred to the building standards as soon as possible.

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Is that an opinion that constitutes your own opinion?-- That's my own opinion.

All right. Do you know whether it is, in fact, the opinion of Mr White, the State Planner? Does he hold or share with you that same opinion, that planning schemes have no role to play in relation to building standards?-- Mr White has probably a more permissive view than mine. I'm probably more of a view that - well, obviously I represent the building side of the department, so my view is probably more - I'm more concerned about that issue. Gary White is probably more concerned about the overall outcome.

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My question was actually a little bit more specific. To your knowledge does Mr White share the same opinion that you have expressed, that planning schemes have no role to play in building standards?-- Oh, in that case I'd say that broadly speaking, yes, he would have the view that it would be appropriate from time to time if there was a need and building couldn't deal with it.

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That's not the opinion you express, though, is it? You said it has no role. I am asking you does Mr White share that same opinion? He is your-----?-- Yeah - no.

He is your superior?-- I do apologise, yes. In that case, as I have to say, strictly speaking he and I may differ to some degree on that point.

And you are answerable to Mr White, aren't you?-- That's correct.

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Right. Thank you. May I take you then to paragraph 23 of your statement. This is where you refer to the Handbook for building in flood-prone areas; is that correct?-- Handbook, yes.

Alright. Now, the term "flood-prone areas" as far as I can tell is not a defined term in annexure 18 to your statement, which is the draft standard for construction of buildings in flood hazard areas; is it?-- No. That's correct.

20

Is it otherwise a defined term, and if so where would I find - or would one find that definition of "flood-prone area"?-- That isn't a definition that is specified anywhere to my knowledge. That statement is really more about the ABCB project at the time, which was couched in those terms, I recall. I am not quite sure exactly - the exact name, I am sorry.

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Right. Just so we can understand the title of the Handbook and what it refers to, what do you mean by the term "flood-prone area"?-- I think I am using that in the same way that we would term a flood hazard area.

Alright. So it is interchangeable with flood hazard area, is it?-- Yeah. I wasn't trying to make a separate point about there about a different project. It is all part of the same project.

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Right. Now, in relation to the Handbook for building we appreciate from paragraph 26 of your statement that by 13 November 2009 it had been agreed, and this was at the Building Ministers Forum, that no further work would be done on the Handbook and that the development of a standard would be further considered; is that correct?-- That's right. I think the outcome of the meeting was that the Australian Building Codes Board would report back on how to go about to get the standard and whether it was, you know, doable.

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Does the Handbook - is it still being written or is it still going to play a role?-- There is a Handbook that accompanies the standard and I think some of the material that was in the original Handbook may have migrated to the current version.

Right?-- I'm - There is a current Handbook that is in my statement that attaches to the Code.

On a slightly irrelevant matter, did the original Handbook or the present Handbook include consideration of potential adverse flooding effects of major earthworks on a surrounding development?-- I am sorry, I don't recall.

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You don't recall? Now, if we return to paragraph 23 of your statement you use another term there, which is a term "a performance-based format"; do you see that?-- Yes.

Do you agree in ordinary language it means that if you have a particular objective that you want to achieve, a performance-based format will allow a number of ways to meet that particular objective?-- Yes, that's correct.

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Right. Do you agree that a performance-based format may be better achieved through a planning scheme than through the imposition by regulation of building standards?-- No.

Can you explain why?-- Well, with - if we are talking about building standards, we typically go through quite a lot of specific development of acceptable solutions that accompany the performance statement, and they are the things that are most often used by the building industry. The performance side of the equation is used more rarely, although it is more often in commercial - in the commercial sector. For housing what we call the deem to satisfy or acceptable solutions are typically the most valuable part of the Code, and they are used routinely by builders to deal with routine problems. If they don't - if the standard doesn't have very clear criteria in that acceptable solution format, then that does add to costs.

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All right. In paragraph 23 you also use this term "for use by jurisdictions". What jurisdictions are you referring to here?-- In that context I was referring to the States and Territories that were members of the Australian Buildings Code Board.

States and Territories. Not to local authorities?-- No.

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May I take you to paragraph 36 then. Here you state that a proposed national standard for construction of buildings in flood hazard areas, which you refer to as the draft standard, is expected to undergo a National Regulatory Impact Statement in late 2011; is that correct?-- Yes, that's correct. I don't have the dates exactly. I understand the Australian Building Codes Board is currently working on that RAS.

Right. Could you tell the Commission what is the purpose of a National Regulatory Impact Statement?-- It is part of the process that we go through to test how well the standard - and how practical, I guess, for application in the real world. It seeks feedback on the specific proposals and then it measures the costs and benefits of various aspects of the proposal for government then to decide whether it go ahead with the proposal.

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All right. What entities are consulted in relation to this

impact statement?-- It is a public process and I think the process involves quite a lot of targeted consultation. Obviously the Building Codes Board goes through specific industry consultation on a continual basis and the building industry is thoroughly involved in every step of the way as proposals are developed. Then the Regulatory Impact Statement puts that out to the public to make sure we get as many people to be aware of it as possible.

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Would you agree that one of the roles of the National Regulatory Impact Statement is to ensure that the imposition of a building standard across the board is at least costed in some way?-- That's right. The Office of Best Practice Regulation asks that the proposal that is the lowest cost is used.

Right. Now, you state the draft standard is to be finalised. This is the national standard, isn't it, is to be finalised in early 2012; is that correct?-- Well, that is what we're anticipating. I haven't got a firm handle on the dates, but I understand that is the case, yes.

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It is anticipated that the draft standard will be included in the 1st of May 2013 version of the Building Code of Australia; is that correct?-- Well, that is subject to again the finalisation of that reached in that statement and the Board decision. So that anticipates that the Board would approve it, and it may not.

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All right. Now, we understand that the draft standard is annexure 18 to your statement?-- That's correct.

Alright. As I understand your statement the State government is presently intent on the early adoption of the draft standard as a new part to the Queensland Development Code prior to its inclusion in the Building Code of Australia; is that correct?-- Well, it's - the government is considering it, but it is subject to further decision.

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All right. But you in your role are pushing to ensure that there is an early adoption of this draft standard in Queensland prior to the process that is envisaged in relation to it becoming part of the Building Code of Australia?-- Well, I will put that a different way, if I could. I am a public servant and my role is to make it available for government to consider, so I wouldn't say pushing. This has been on the Building Codes Board agenda since 2007 - 2006 and seven, and so we have been talking about this standard for a long time. What I am hopeful of is that the government has the ability to make a decision in a timely way.

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My question is simpler. It is the intent of the State government to ensure - it is the present intent of the State government that this particular standard will find its way into the Queensland Development Code prior to 2013. That is, prior to the Building Code of Australia?-- Well, actually I'd just make a slight distinction if I could. Is it-----

Could you answer the question then make the slight distinction; it might be more helpful?-- Well, I would have to say then the answer is the government needs to decide once our consultation is finished and we brief the government. It is subject to decision. That is the answer. I mean, I am only a public servant and if the government decides to go ahead or not go ahead or wait for the Commission, that is up to the government.

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COMMISSIONER: What's the distinction?-- I beg your pardon?

You wanted to make a slight distinction?-- I am just saying that I don't speak for the government in terms of making the decision. We can make a-----

It is a really major distinction if it's between you and the government?-- Well, yeah. I mean, obviously the Minister makes the decision about the - adopting the regulation if he agrees, but he hasn't made that decision at this stage.

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MR FLANAGHAN: May I take you then to annexure 19 to your statement, and part of annexure 19 if it comes up on the screen, is in fact - you were shown this in chief - is a memorandum to the then Deputy-Premier dated 12 July 2011. It comes from Growth Management Queensland. Is that part of your Department?-- That's correct.

Did you write this memo?-- I helped write it, yes.

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You helped write it? Alright. Would you just look at option 1 which appears at page 4 of that memo, and read that?-- "I adopt this standard as a new mandatory part to the QDC subject to Executive Council approval as soon as possible proposed for July or August 2011 and include additional provisions outside the scope of the standard, e.g. requirements of commercial buildings that can be adopted by local government on a voluntary basis."

Alright. That is dated 12 July 2011; is it not?-- That's correct.

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Option 1, you are recommending that the standard which is annexure 18 to your statement be adopted as part of the Queensland Development Code as soon as possible; do you not?-- Yes.

All right. That is the recommendation that you helped author; is that correct?-- That's correct, yes.

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And we find if you look at the last page of that, that the Deputy-Premier has in fact approved that option; is that correct?-- If you just go back to the top of the brief I will just explain to you what I meant. Just go down a little bit. Sorry.

COMMISSIONER: What you asked him to do was approve the development of the preferred option 1 to prepare an Executive



Council minute and so on?-- That's correct.

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Presumably that is what he is approving?-- Yes. So I suppose he has approved us going up to consultation. Obviously the Minister still needs to approve the Executive Council minute that goes forward, so that decision has not been made yet. That's what I am saying. So you are right. I agree with you the Minister has made a very strong commitment to go out with the standard, to test it.

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MR FLANAGHAN: My simple question is this: From these documents it is the State government's and then Deputy-Premier's intention that this standard which is annexure 18 to your statement, becomes law in Queensland under the Queensland Development Code prior to it becoming law according - in the Commonwealth or the Building Code of Australia?-- Yes - no. I accept that, yes.

Right. Thank you. You will see that the Deputy-Premier in approving it said "Please ensure consultation prior to adoption."; do you see that?-- That's correct, yes.

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Right. We will come back to that if we may. Now, the reason why this draft standard that is annexure 18 to your statement won't find its way into the Building Code of Australia prior to, according to you May 2013, is because there is a process to be undertaken isn't there? Namely a National Regulatory Impact Statement to find out how much the imposition of these standards will cost the community and local authorities?-- That's correct.

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Now, it is the case, isn't it, that that process has not been undertaken in Queensland?-- We are consulting but we haven't undertaken a similar process, no.

Right. So when you referred to cost effectiveness of these building standards being imposed pursuant to the Queensland Development Code, as opposed to a planning scheme, those costs that you are referring to or the cost effectiveness has not in fact been costed by the State government, has it?-- No.

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Nor by your Department?-- Not yet.

Alright. Now, have you any idea how much the imposition of these standards across the board to all local authorities will cost?-- Well, there was some work done by the Building Codes Board. I don't recall the figures and it depends on a case-by-case basis on the level of a flood and what is required to meet the standard. The highest cost would be where there's hydrodynamic action rather than still water.

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Right. Is there any intention priority to this standard becoming part of the Queensland Development Code for the costings to be done?-- We don't have the ability to do that at the moment, no.

Now, we have noted in annexure 19 to your statement that there

was a recommendation by the then Deputy-Premier that the Department undergo a process of consultation; is that

correct?-- That's correct.

All right. And the Department acted on that recommendation from the Deputy-Premier; is that correct?-- Yes.

Right. Now, the consultation as I understand it took the form a building newsflash issued by Building Codes Queensland on 26 July 2011; is that correct?-- That's correct.

All right. And this building newsflash is number 474 and if we turn to annexure 14 you will find it is part of annexure 14 of your statement. Could you go to that, please? It is the third last document of annexure 14?-- I have it.

Thank you. It is 474, please. Thank you. Now, if we look at the heading "Background" - we can see the purpose of the document, it speaks for itself - but in relation to "Background" there is a reference there to flood and hydrology experts; do you see that?-- Yes.

Just to be clear, the reference in "Background" to flood and hydrology experts is not a reference, is it, to any actual flood studies conducted which were specific to Queensland flood-affected areas?-- That I am not sure of. I know there were Queensland representatives on the consultative group, but I am not sure of that myself.

Can I suggest to you that this standard is actually being put forward and being put out to the public in circumstances where there are no - it is not informed by actual flood studies or regional flood studies of the flood-affected areas of Queensland?-- Again, I am sorry, I don't know the full extent of the information that the Australian Building Codes Board used in their groups. I know that there were experts from the Gold Coast and Brisbane, but I am not sure, I am sorry.

Alright. Now, to your recollection the reference in "Background" to representatives from State and local governments, what local governments were represented in relation to the draft standard?-- Certainly Brisbane and Gold Coast.

Can you think of any others?-- No.

Now, the newsflash states that "In the interim Queensland is considering early adoption of the draft standard for new buildings, including new additions"; do you see that?-- Sorry? I missed that.

It is actually the fourth paragraph, "In the interim"?-- Yes.

Can you explain to the Commission exactly what is meant by "new additions"? For example, does it include renovations to an existing residence?-- At the moment the proposal is not to include renovations, but to include possibly additions to the

building, subject to the possibility of an exemption from local government where it is impractical to add a higher level, say, to a bedroom or an addition.

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Alright. So is it to be new additions in relation to habitable and non-habitable areas?-- It would be subject to the application of the Code in the classes of building, so the addition would have to be caught by the classes of building.

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Right. If you could go to the heading you will see the Draft Standard and Information Handbook, and it states that, "The draft standard provides specific performance requirements and deemed to satisfy provisions for the design and construction of new buildings in designated flood hazard areas"; do you see that?-- Yes.

It then further states that "In Queensland flood hazard areas are designated by local governments"; is that correct?-- That's correct.

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What is the effect if a local government does not designate a flood hazard area?-- The building regulation doesn't specify any standards in that case.

Now, in what document do you expect a local authority to designate a flood hazard area?-- In their local planning scheme.

So do you envisage that a planning scheme or a local planning scheme will have both a definition of a flood hazard area and a definition of a flood event, or a defined flood event?-- That would be optimal, yes.

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Alright. Do you think that this could possibly lead to some confusion?-- Not in my experience. I think the way it is crafted in the Code is it is always intended to be complementary to the way local governments specify, and we spend quite a bit of time with local governments to make sure that we get those connections right.

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Alright. May I take you then to the draft standard and the definition of flood hazard area. If you turn to annexure 18, page 12, please. Now, these are definitions that will apply across the board. That is, at least where local authorities have identified a flood hazard area; is that correct?-- That's right.

Now, the term "flood hazard area" is a defined term to mean "The area, whether or not mapped, under the flood hazard level which has been determined by the authority", and the authority being the local authority; correct?-- That's correct, yes.

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"Having jurisdiction as a flood hazard area. The area relates to that part of the allotment on which a building stands or is to be erected." Now, that is a definition that if the standard is to be applied across the board, will have to find its way into planning schemes?-- That - I mean - you are

right. The alignment of the definitions is very helpful. 1

Anyway, that definition itself has a reference to flood hazard level, does it not?-- Yes, it does.

And that is itself a defined term?-- In the Code, it is.

Yes. And it is defined to mean, if you look there, you have it straight underneath there, it means "The flood level used to determine the height of floors in a building and represents the defined flood level, DFL", which is of course a planning scheme definition, is it not?-- That's right. 10

"Plus the freeboard"; do you see that?-- Yes.

And then the building standard gives the definition of freeboard, which we can all read for ourselves, but it seems to have a number of elements that include the DFL and the DFE; do you see that?-- Yes. 20

Now, is it for the local authority to determine what is a flood hazard area?-- The local authorities are best placed, I think.

My question is simpler than that. It is for the local government to determine the flood hazard area; isn't it?-- Well, I suppose if you are looking at - if you are asking the question from the point of view of policy, the policy at the moment is that the local governments set them. 30

Well, it is in the definition itself. If you look at the definition itself, the flood hazard area is actually determined by the local authority, isn't it?-- That's what we are saying at the moment, yes.

Yes. So the answer to my question is "yes", is it not?-- I wasn't trying to be unhelpful. I just thought that in the context of this policy, this draft standard, we have a degree of flexibility and the intention at the moment is to allow local governments to set their flood hazard areas. 40

Well, it hasn't got much to do with flexibility. It has actually got a lot to do with responsibility. The responsibility for determining the flood hazard area falls to the local government under this standard, doesn't it?-- Yes, it does.

What also falls to the local government in terms of responsibility is for the local authority to determine the defined flood level plus the free board, yes?-- I think the standard allows the Code to be used when the defined flood level hasn't been set - the defined flood level hasn't been set, because they allow - the standard allows proponents to use maximum flood - known flood events as well. 50

It is for a local authority under this standard to determine the defined flood level, isn't it?-- Sorry, flood level, yes.

I thought you said the event.

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No. Because that flows from the definition itself, does it not?-- That's correct, yes.

Plus the freeboard, because the freeboard is determined by reference to the defined flood level, isn't it?-- That's right. It is in addition to it.

Do you agree that this requires an investigation by the local authority as to factors such as wave action and localised hydraulic behaviour?-- That I can't answer. I am not really a hydrologist. I understand that the - my understanding is that the defined flood level doesn't include wave action, but I could be wrong about that.

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But if you look at the definition yourself of "freeboard" you will see that to determine freeboard one needs to compensate for such effects such as wave action and localised hydraulic behaviour; do you see that?-- Yes, that's right. My understanding is that the freeboard goes on top of the defined flood level.

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Yes, quite, but you still have to determine freeboard and the way you determine freeboard is by determining wave action and by determining localised hydraulic behaviour, according to this definition, isn't it?--- Yes. Yes.

And my question is-----

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COMMISSIONER: I am not sure it is even that simple, Mr Flanagan, because it is typically used, and I don't know who is typical.

MR FLANAGHAN: Well, I think the point is this, is that to arrive at that point it requires investigation by hydrologists.

COMMISSIONER: I don't know if it does. I genuinely do not know quite what that definition contemplates because it says "typically used to provide the factor of safety and to compensate for effects such as wave action". Is there something typical already out there?

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MR FLANAGHAN: What we are coming to is actually a standard in terms of velocity that is imposed by the standard. It is of 1.5 metres in terms of velocity, which we understand, and I was going to ask the witness this: Is this an American standard that is going to be imposed through this standard.

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COMMISSIONER: Yes. Okay. I just think this definition - once you start talking about what is typical in a definition you are in trouble.

MR FLANAGHAN: Yes. The definition of "freeboard" also uses the term "depending on the circumstances of the individual event". Mr Brumby, does this do no more than identify that the individual event can vary from flood event to flood

event?-- Yes. I think that is there to explain what the freeboard will do, more than anything, and just to explain the limitations on the freeboard. It can't be the panacea for all ills.

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May I take you then back to building newsflash number 474 which is annexure 14. Commissioner, do you wish to adjourn at 11.30, or now?

COMMISSIONER: If it is convenient. If you prefer to press on I am happy to do that but if you are happy to take the break-----

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MR FLANAGHAN: I will just finish this question and then it is convenient to finish there. If you look at annexure 14 and number 474, you will see that it identifies some aspects of the draft standard and states in the first dot point that "the DTS provisions", that is the deemed to satisfy provisions are limited to cases of likely flooding with a maximum average flow of 1.5 metres per second around 5.5 kilometres per hour; do you see that?-- Yes.

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According to this standard who will be responsible for measuring the likely flooding with such a maximum average flow rate of 1.5 metres per second?-- Well, ideally it would be good if we had in the local government's provided information about the likelihood of there being high velocity water, and the standard does say that it would be very useful if the local governments can identify areas of inactive flow or - I forget the term, inactive flow or backwater areas, because the idea then would be that the homes would could be built inside the engineered principles in the deemed to satisfy----

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Yes?-- -----rather than to need an additional engineering analysis of the building, with extra costs imposed.

Thank you?-- So-----

COMMISSIONER: Keep going?-- I am sorry, the 1.5 metres per second is really the limit on how the assumptions apply for the deemed to satisfy provisions.

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MR FLANAGHAN: To your knowledge is that a standard that has been adopted from America?-- Yes, it is. It has been adopted from America.

Is that a convenient time?

COMMISSIONER: Yes. Thanks Mr Flanagan. Quarter to.

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THE COMMISSION ADJOURNED AT 11.29 A.M.

THE COMMISSION RESUMED AT 11.45 A.M.

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GLEN THOMAS BRUMBY, CONTINUING:

COMMISSIONER: Yes, Mr Flanagan.

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MR FLANAGAN: If we go back to Newsflash 474 you'll see at the very end of that document that the Newsflash called for a response from interested parties by the 25th of August 2011, didn't it?-- That's correct

Right. And you're aware that the Ipswich City Council sent a letter to the department dated the 24th of August 2011?-- Yes, I am.

All right. I've asked the Commission to download this document. May we bring it up? It's a letter from the City of Ipswich to the Department of Local Government and Planning dated the 24th of August 2011. Now, I understand, Mr Brumby, you've only been able to read this letter prior to giving evidence this morning?-- That's right, yeah.

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All right. Now, you see that it's a response in relation to Building Newsflash Number 474 and the Building Codes Queensland proposal of early adoption of the draft standard?-- Yes.

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Thank you. I tender that letter, Commissioner.

COMMISSIONER: Exhibit 667.

ADMITTED AND MARKED "EXHIBIT 667"

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MR FLANAGAN: Now, if you go to paragraph 2 of that letter you will see that the position of the Ipswich City Council, expressed in paragraph two, is that "the early adoption of the draft standard in Queensland is not supported and should be reconsidered"; is that correct?-- That's what it says.

All right. Prior to reading that letter were you personally aware of the position of the Ipswich City Council?-- No. I had spoken to some of the officers from the council and they were aware, I think, of what we were proposing but I wasn't aware that they were going to not support it.

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All right. In relation to this draft standard can you tell the Commission what's being considered now? Is it actually being reconsidered in terms of its early implementation?-- Well, as I said, you know, I've always taken a fairly cautious view about whether any - anything is approved for regulation

until, you know, it goes forward to the executive council, but at the moment we're following the procedure we've outlined in that briefing note which is to assemble the responses from consultation and make sure the standard is in a suitable format for government to decide on to adopt, so we're not changing our view at this stage.

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Right. Mr Brumby, I appreciate you can't speak for the government but in your own role do you agree that there is some substance in the request of the Ipswich City Council that the parties have an opportunity to afford the - to be afforded the review and comment on draft standard through the national regulatory impact statement process?-- Well, I'd welcome any feedback that the council has through the Australian Building Codes Board process and, as I've mentioned earlier, we've got an iterative approach to building codes in that we keep correcting them and improving them over time, but this project's been on the table since, as I said, 2006/7 and I don't see - I don't see any reason to stop now, stop the project now, or hold it off.

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But-----

COMMISSIONER: Sorry, Mr Flanagan. Can I just ask, in relation to the Federal review, why is it taking till 2013? What's involved in it? Is it just a matter of assessing costs and so on or is there more to it?-- Your Honour, it's - if - it's a very complex matter to get building regulations changed at the national level because, first of all, there's a lot of States and Territories with differing interests and differing priorities, and the building industry itself has a keen interest in any changes to the regulation and they insist on very rigorous processes that are highly consultative, and then there's the ABCB processes and then there's the Office of-----

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COMMISSIONER: There's the what?

COURT REPORTER: Sorry?

WITNESS: Office of Best Practice Regulation processes, and then on top of that you've got other priorities placed on the Building Codes Board from things like COAG, Ministerial Councils, COAG decisions that-----

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COURT REPORTER: Sorry, could you slow down?

WITNESS: Terribly sorry. From COAG decisions and COAG Ministerial Councils-----

COMMISSIONER: And that's just C-O-A-G?-- Yeah, COAG, C-O-A-G, Council of Australian Governments. For example, energy efficiency standards, disability access, bushfire response. There's an enormous array of social policy that gets enunciated by governments through the building code, and so at the national level, while the Building Codes Board does have reasonable resources, it also has a very, very high workload and continuing pressure on its priorities. So for Queensland to get the flood standard pushed to a high priority

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was difficult because of the other priorities. For example, energy efficiency in the context of climate change policy.

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All right. It just seems there are a lot of competing pressures, cost, the need to protect, the time that it's going to take through the Federal system-----

MR FLANAGAN: Yes, but the point we're getting at is that no costings are being been done for the imposition of this draft standard in Queensland.

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COMMISSIONER: Oh, I understand that-----

MR FLANAGAN: Yeah.

COMMISSIONER: -----I just think there are a lot of problems all-round.

MR FLANAGAN: Yes, quite, quite. But this letter, probably conveniently, we would have thought, for the Commission, highlights some of the concerns of local governments in relation to the simple imposition of a draft standard.

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In relation to this paragraph that I've referred you to, is it the intention of the State Government to itself undergo a Regulatory Impact Statement pursuant to the Statutory Instruments Act 1992?-- At this stage no. We are mindful of the fact that local councils, particularly Brisbane and Ipswich, are already attempting to regulate definitively for flood standards, so that itself needs to be considered given that planning schemes and planning amendments don't go through any regulatory impact at all.

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You'll see in the third paragraph that a reference is made to the State Planning Policy 1/03, Mitigating the adverse impacts of bushfire" - "flood, bushfire and landslide," do you see that?-- Yes.

All right. And what the Ipswich City Council was submitting is that prior to the implementation of the draft standard in the Queensland Development Code that the review of SPP 1/03 should be completed. What do you say to that proposition?-- I'm not certain that that would make a large difference to the implementation of the code. I think having the code available where local councils are sufficiently confident to identify a flood hazard area would make the availability of the code a benefit rather than the opposite.

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But if we just go to annexure 19 to your statement, and you were shown by counsel assisting annexure six to attachment 19, which is an internal document, as I understand it; is that correct?-- That's correct.

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And if you look at the very first page that you were shown for attachment six, if you read down the policy questions for each of those matters you'll see that it engages a review of SPP 1/03, doesn't it?-- Yes, it does ask those questions. As I said, it's probably, from a responsibility point of view,

not appropriate for me to comment too widely on that policy because building standards do complement, you know, other policy areas.

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But these building standards are ultimately dependent on local authorities conducting appropriate flood studies for the purposes of determining defined flood events, flood hazard areas and so forth; correct?-- Yes, and my understanding is that work is well advanced by local governments and that the Queensland Reconstruction Authority is doing some excellent work to assist as well.

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When you say it's "well advanced", would you accept this proposition, that on a Statewide basis very little has been done in relation to regional flood studies on - by using a uniform standard for those flood studies?-- Well, in my view, the code - or the draft standard, as we've agreed to call it, complements what can be done and what is being done, so I think having the code available where local governments are in a position of being confident enough to designate an area is a benefit.

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Would you agree that before any mandatory or even non-mandatory building standards are to be applied in the present circumstances the starting point has to be local authorities obtaining through regional flood studies the primary material for determining a flood line?-- Well, the - as I said, the building standards complement planning system - the planning system and the code can't apply where local governments don't have enough confidence to designate an area, if they do it can, so I think that's really all I can say on that planning issue. Obviously that's the essential part, as I've mentioned earlier in my evidence, that there is adequate planning done, adequate studies of the flood areas.

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See, when you say "adequate studies", you're talking about the task undertaken by the Queensland Recovery Authority; is that correct?-- Well that and any work done by local governments.

All right?-- I think any - as far as the building standards are concerned, as I said, we complement with our standards work done by local governments and anyone else who can help to set those flood hazard areas.

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Can I suggest this, that the early adoption of the building standard by Queensland is, in effect, putting the cart before the horse? This is because the standard is premised on local authorities identifying and selecting a defined flood event and identifying flood hazard areas, floor hazard levels and the freeboard component?-- Well, where they do have confidence to set those areas the code has an application, so I suppose I'm not really in a position to agree with you on that point the way you put it.

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All right. Can I take you to the draft standard itself at page 9, and what I'm suggesting is that the standard itself identifies some of these difficulties that I've just outlined to you. Really starting at the fourth paragraph with the

words, "It is important to understand"?-- Did you say page 9?

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Page 9 of the draft standard, and it's the fifth - fourth paragraph, sorry, "It is important to understand"?-- Yes. I've got it.

All right. What's being identified there is that a lot of local authorities or some local authorities have no flood studies, some have inadequate flood studies, some have old flood studies that are probably by the - past their use-by date, but the conclusion is that this means that the information available is not uniform, and what I'm suggesting is that what is needed is a uniform approach to regional flood studies for the purpose of local authorities ultimately determining the defined flood event?-- Well, my response to that is that we prefer to provide local governments with a number of choices where that's appropriate and that's always been the position that's been supported strongly by Local Government Association of Queensland in our consultation with them on the way we do building standards. So typically where we've got uneven or variable approaches by local government we help local governments by tailoring our codes to be as practical as possible to make sure that we can help them to deliver the policy outcomes that they're trying to solve.

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But what's the-----

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COMMISSIONER: Is it - sorry, Mr Flanagan, I have got another question. Is it a risk that local governments actively avoid being able to identify flood hazard areas so as to avoid having the standard apply to them?-- Well, it's true that there is an uneven sort of response from local governments, but I am not sure they would deliberately but I'm - I suggest that they - there's a lot of pressures on local governments in the things they cover, they cover a lot of different sort of regulations and different sorts of interests, so there's always pressure on the resources. I'm not sure of the reasons why they haven't done the work, but that probably is a risk, your Honour. I'd say that - you know, I have a contrary view to council in that's it's probably better to have something available and to start pressing the issue because in my view having no standards for a situation where you could have three-quarters of a - homes in a city - or a large number of homes in a city damaged or out of action is an issue of community resilience. So, having a good stand is probably pretty essential. The next question is making it as practical as possible and as cost effective as possible.

Is there much point in having it mandatory when you have got the opt out effect of not just having the flood mapping to make it applicable?-- Well, I suppose, we do need to rely on the - I suppose the goodwill of local government to make rules for their - the good of their area, and at this stage - I mean, I'm fairly confident that any area that there was a flood recently will - anywhere there was a flood the local government would be trying their best to have a - you know, a defined flood area, I'm certain that's the case in Brisbane, and I would expect the same of Ipswich. So, in the key areas, I am sure that the local governments would be doing everything they can to do the right thing by their community and I don't think they would be trying to avoid the matter.

Thanks, Mr Flanagan.

MR FLANAGAN: Thank you. But these standards are actually also envisaging that local authorities undertake flood studies that go beyond merely identifying flood - defined flood events, but also measuring velocity of flood events at specific locations for planning purposes, don't they?-- Well, the standard doesn't require them to, but it would be better if they identified areas of inactive flow or backwater, because that would then reduce the costs of construction. Where the council doesn't have the ability to set the - to provide any guidance on the velocities, that will be a matter for a person who wants to build a building to get the expert advice, and that could be expensive.

Yes, and that's my next point, Mr Brumby. If you go to page 10 of the standards, in the fourth paragraph you will see that that is one of the solutions that's offered, is that every time someone makes a development application or a building approval application, they would need to provide to the local authority such flood studies including velocity for the purpose of getting building approval or complying with the standard, wouldn't they?-- Yes. Where the standard applied,

it would be very important to make sure that we were clear about the water characteristics in the area and that's why it would be best for the local governments to provide information where they could. 1

You have acknowledged that would be expensive for the relevant applicant, wouldn't it?-- Well, I say that just from my experience, I don't have any particular numbers, I just imagine that any expert report, you know, be - an added cost, I don't know how much. 10

But with the scope of the standard that's proposed, even a person who wants to add, for example, a bathroom on to their house as a separate room would need to or could conceivably need to engage an expert hydrologist?-- No. That's not right, because if - the definition of the standard only applies to the habitable spaces and the bathrooms aren't defined within that definition for domestic purposes. We were - we did get some feedback that - from one proponent, one stakeholder, that we should ensure that at least one bathroom is up with the habitable spaces, but, no, you wouldn't need to get a report for an addition of a bathroom. 20

All right. Change my example to a bedroom then?-- Well, then, again adding a bedroom, we are suggesting that the additions be subject to local government discretion, because it may be impracticable or overly costly for people to have to raise the bedroom and comply with the standard for additions in every case, and that's why - I think we have actually made that point in the newsflash, I can't remember exactly, but the intention is to allow people who want to build a home to seek local government exemption for additions, because, as I say, it could be impractical and we think that's entirely reasonable. 30

Can I take you back to the letter of the 24th of August 2011? Can I invite you to read the very final paragraph on page 1? My question is quite simple: you'd agree that those are legitimate concerns raised in this instance by the Ipswich City Council but the sort of legitimate concerns that could be raised by any local authority in relation to the imposition of a standardised building code?-- Well, we are very pleased to consult with all the councils on the code. One thing I would say is that the code is intended to complement land use planning and I don't agree with the statement in that - in the second sentence about the associated design elements, et cetera, because I think the integration of the planning concerns and the building concerns are of - a very important concerns for building codes, because the actual standard for the building belong in the code, and the code doesn't give permission, land use planning is about permission, so the permissions and some of the policy requirements - policy interests of local councils are certainly the prospect - the province of planning in the pure sense, but when it comes to the construction elements and the recipes of how to do that, that's certainly, in our view, a matter for building codes and for the building process where you bring the experts altogether at the one time, rather than having delays of 40 50

approval. So, I don't agree with all the statement. I certainly agree that most of the things mentioned there are planning issues, and our code won't impact on most of those issues.

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But they could impact in this sense: if you have, for example, a heritage house or a heritage - street of heritage houses and the building code has to apply in such a way that floors need to be lifted or rooms need to be added by - to obtain a certain height by being added in - by going up rather than sideways, they would have - the imposition of the building standard could have dysfunctional effects on heritage and streetscape issues, couldn't they?-- Well, I don't see that. I thought that the way the planning system worked that - to provide the permission and the envelope - building envelope is done in the planning system. So, our code only - would only come into bearing after that building - that land has - subject to the permission to build a house within a defined envelope, which is already part of the planning system. So, in my view, the two systems can work well together, but the first question is the land use permission and that's going to deal with the things like the envelope and the streetscape.

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Surely you can envisage where the imposition of a uniform building standard will have dysfunctional effects in relation to heritage and streetscape issues?-- Certainly I agree that's possible, but the point I'm making is that the way we would intend it to work would be to give the local - the local council's got the first - the first role in that they specify the land use, the envelope, and the streetscape requirements, and that can be done in a range of ways through their planning schemes, and then the person who builds the building needs to comply with all the prior planning approvals. So, in our view that's the way those two systems work together to deliver a harmonised outcome, and it is possible, you're right, to have them conflict, but it's not the way we would typically try and design them, and where people, for example, build outside of the allowable envelope, typically there's a referral to local government as a concurrence agency to refuse the application of housing.

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May I take you to paragraph 47 of your statement? May I suggest that the approach adopted in this paragraph would be ultimately impractical in this sense, it would mean that any applicant who wished to make an addition to the house of habitable area would need to satisfy a building certifier that the flow rates either do not exceed the design level of 1.5 metres per second or the structure was otherwise safe?-- So, you - you are talking about additions in particular?

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Yes. Well, no, just generally, but what I'm suggesting is that such a requirement in a building standard is impractical?-- Well, I don't really agree with that.

It's impractical in this sense: if there's not a local government authority that has a relevant flood study which not only identifies the defined flood event but also identifies

velocity of the flood event in that particular allotment, then the applicant for the addition or whatever will need to obtain, to satisfy the building certifier, an expert hydraulic report?-- I see - yeah, I - I think that the objective of us - of our codes, et cetera, and whether the rules are applied in planning or building should be always to make the easiest solution available without reports if that's your point. It's always better. However, for a building code, you always need to set design assumptions because of the way engineering and design process works so that you can be sure that - the design would work, you can't just leave it to chance, you need to set a limit on what your deemed as satisfied will do.

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But again this paragraph and the approach suggested in this paragraph relies on a local authority identifying a defined flood event, doesn't it?-- Well, if they don't, then the certifier will need to be confident of the velocity of the water and I think that's entirely appropriate.

But even the velocity of the water is still determined, is it not, by first identifying a defined flood event?-- That's right.

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All right. See, my suggestion is this, is that rather than impose this building standard now, it will be better to wait or conduct at least - sorry, I will start again. Rather than impose these building standard now, it is better to allow the review of SPP 1/03 to be conducted and finished. What do you say to that proposition?-- I hadn't really been thinking about waiting for the SPP review to finish. I - you know, as - this project's been on the - on the project plan for such a long time and, you know, I see a need for this standard, so I don't - I can't really envisage things that will change in the SPP that will make this standard unviable, I just don't see it.

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Can I suggest a number of things will change in the SPP to make this viable and some of those things are actually noted in your own internal document, but one would be a standard approach or methodology to be used in flood studies on a regional basis for determining what is the true flood event surely?-- Well, there is some flexibility for the defining of flood events, but, as I said before, that's probably - I mean, I appreciate your question, it's probably outside my policy role and my expertise, so - you know, I don't have a strong view either way. However, I agree that standardising those things is always better. On the other hand, I know that the building industry and local governments do benefit from tailored - and having some choices that are reasonable and practicable. Ultimately giving local councils a number of choices and then giving proponents who want to build buildings a number of choices is a benefit.

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But without these regional flood studies you are simply going to have lots of councils opting out of this building standard, aren't you? This simply will not identify the flood hazard area, and as soon as they don't identify in their planning scheming a flood hazard area, I understand from your statement

that the standard will not apply to that local authority?-- Well, that's the current shape of the policy proposal, but the - there's no need for the policy to be constrained in that way. The local - the State Government has the power to set the rules as it chooses. It could - it could, for example, say, "Where it's designated by local government or where the QRA mapping applies", so it wouldn't necessarily have to be the local government that does all the work, if they can't do it, it doesn't have to be that policy is not constrained in that way. As I say, this is a policy proposal, and the government does have some flexibility on how it implements it.

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Who is going to do the mapping then? Who is going to do the flood studies?-- As said, that's not really my area of expertise. I am aware of quite a degree of work that's been done by the Queensland Reconstruction Authority in identifying hazard mapping. Whether that's the appropriate policy setting or not isn't really in my policy area. My role is to ensure that we have got appropriate standards to deliver a degree of resilience at the right cost effective level.

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Can I put, finally, three propositions to you, and you can either agree or disagree, but I would like your view on them. You appreciate that the Ipswich City Council has a temporary planning instrument in place; yes?-- Yes.

And in relation to the flood line or what is called - now called the flood regulation line for each allotment, it constitutes the highest of either the 1974 flood line, the 2011 flood line, or the methodology adopted for the one in 100 flood line, whichever is the highest. You are aware of that?-- Not - not - I don't have a lot of knowledge about it.

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Right. And within the context of that temporary instrument the planning instrument has imposed various building standards or requirements such as the placement of electrical works, the type of materials to be used and such like; you are aware of that?-- Yes.

Right. Now, that's a temporary instrument to be in place for 12 months which in one sense deals on an urgent basis with certain building standards prior to imposition of this State-wide standard under the Queensland Development Code. Would you agree that before this State-wide standard is imposed under the Queensland Development Code there is a need for further costings to be conducted in relation to the cost implications of the imposition of the standard?-- No.

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Why is that?-- Because I think having a State based building standard that's more specific is of a greater benefit than having it remain in the planning schemes.

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Because, in your opinion, planning schemes aren't an adequate or appropriate vehicle for the imposition of building standards?-- Yes.

And that's your opinion?-- Yes.



And that's not necessarily the opinion shared by your superior, Mr White?-- I think in general Mr White's opinion is, as I said before, more permissive than mine, but generally in my discussions with Mr White he agreed with a need to ensure building standards remained in the building code.

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Right. My second proposition is this: apart from newsflash 474, do you agree that before this standard is imposed State-wide that there is a need for further consultation with local authorities?-- I agree that we will continue - we will continue to consult with local governments on the introduction of the standard, and that's just standard practice, so the answer is yes.

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And you agree that before the standards are imposed, the State should complete its re view of SPP 1/03 in consultation with local authorities?-- No, I don't agree with that statement.

You agree that prior to the imposition of this standard, it would be in all parties' interests for the State to assist local authorities through appropriate regional flood studies to determine flood lines for planning and other purposes?-- Well, that's a personal preference. I - I prefer in every way when the State Government can help local government.

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Yes. Thank you, Commissioner.

COMMISSIONER: Mr Ure?

MR URE: I have nothing, thank you, your Honour.

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COMMISSIONER: Ms McLeod?

MS McLEOD: Thank you, Mr Brumby. My name is McLeod. I appear for the Commonwealth. Mr Brumby, can I take you back to paragraph 12 to 14 of your statement where you describe the role of operation of the ABCB? The Commission - just by way of background, the board was established by an intergovernmental agreement back in 1994 and it currently operates under the remit of the 2006 intergovernmental agreement that you have annexed to your statement?-- That's correct.

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It is subject to the operation of the COAG principles that you have also attached your statement?-- That's correct.

And in terms of the agenda for the board and the work that it undertakes, it is subject to the IGA and also matters that may be referred from time to time by the Building Ministers Forum or the Council of Australian Governments?-- That's correct.

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So, in a sense the board is constrained by that and can't set its own agenda as to work outside those guiding documents?-- Well, that's true, exactly.

Yes. Would you agree with this, that the mission of the ABCB

is to address issues relating to health, amenity and sustainability in design and performance of buildings through the national construction code series?-- Yeah, I think it's health, safety concerns, safety as well.

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Yes, health, amenity and sustainability?-- Yes, safety, health, amenity and sustainability.

And the development of effective regulatory systems and in some cases nonregulatory solutions to achieve that?-- That's right.

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Now, the building code has been referred to. The national code is of course a composition of the Building Code of Australia and the Plumbing Code of Australia as well?-- That's right.

Now, it appears as volume 3. In fact, one of the major projects that you have identified as having been undertaken by the board in the past few years has been the consolidation of those two codes?-- That's right, very important work.

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Okay. Now, in terms of current measures within the Building Code of Australia to address flood action specifically in the building code we see in volume 1 and volume 2 various provisions that require a structure to withstand certain loads or actions?-- That's right, general - general statements about structure stability.

Okay. Those actions include but are not limited to, for example, the action of liquids, groundwater, rainwater, water ponding, things of that nature?-- That's right.

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And those are things that could be generated during a flood?-- Yes.

The building code does make some provisions to protect property but those provisions are secondary to the overriding objective of the code of life saving - life safety; do you agree with that?-- Not strictly. The code's genesis is in protecting life and I think that's the highest priority, but it has all of the objectives as stated and I don't think that - there's a need to read any of them down.

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So, I'm not sure if you agree with me that the overriding objective is life safety, and there are other objectives as well-----?-- Well-----

-----including the protection of property which-----?-- Well, I - life safety is the highest priority.

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Yes. So you agree with me, I take it, that property protection is a secondary consideration or a second beneath the overriding objective?-- Property protection usually doesn't figure. I think the term that I would prefer is community resilience, so really it's not so much for the individual property, it's more the fact that this could be a problem for a large number of buildings rather than the

individual property.

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Can I just explore that with you a little? When you - you mentioned that when there are changes proposed to the building code often these were hotly contested, I think were your words?-- That's right.

Yes. And sometimes the contest is around getting the right balance between life safety, as an object, and increasing the stringency of performance requirements to make a building more able to withstand certain shock or action; would that be fair?-- That's right. An example would be the sprinkler standard where it might be giving you an operation time of four hours, whereas the occupants can leave the building within an hour, and then the extra three hours of safety are related to property protection. The Building Codes Board wants to test those extra requirements very closely.

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Okay. Now, I will come back to the sprinklers or I will come back at least to the building and fire zones in a moment, but typically the reason there is an issue about where to strike the right balance in imposing mandatory regulations for performance requirements and building standards is this issue of where should the risk lie, should the risk lie in terms of the cost of construction and the insurance - mitigating the insurance cost to the community or should it lie, as you mentioned, with the community resilience and reducing the cost of housing overall?-- That's right.

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And there's not always agreement about how to find that right balance, is there?-- Well, there's usually well worn positions from various stakeholders, but generally - and generally codes do move in a progressive direction, and the coverage of various topics is always, as I said, hotly contested for the very reasons you are talking about.

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The building code does not contain currently detailed construction practice or prescribed deemed satisfied provisions for building in flood hazard or flood prone areas, does it?-- No, it doesn't.

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And what you're hoping with the introduction of the standard - in fact, what is generally hoped - is that there will be some introduction of these performance standards for building in those areas?-- That's right. Buildings - building is being carried out in areas where - you know, floods occur and having standards available is usually a benefit.

And where building is occurring in those areas, particularly residential buildings, that is seen currently as an issue for local authorities to regulate?-- When you say "regulate", the current situation is that we regulate the height of habitable rooms, and that's really the limit of what we regulate.

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In the building code?-- In - well, yeah, for building standard. We have now two - a few temporary local planning instruments that do specify standards for homes.

But as we have already mentioned, there are also the provisions about the design of the building or structures to resist actions-----?-- Yes. 1

-----which include flood actions?-- Yeah, that's - well, which includes liquid actions. At - the current situation of the building code is that I don't think many buildings would be designed with hydrodynamic and hydrostatic actions in mind. You know, I don't think many buildings would have had that sort of engineering analysis done at the time they were constructed. I think that would be extremely rare. 10

Now, if there's to be a shift from the current provisions of the code in terms of how buildings are to be designed and built to withstand natural disasters, currently the situation is the building code addresses the need to withstand cyclones, earthquakes and fires; is that correct?-- Well, among other things, there's termites, there's lots of - lots of things, yep. 20

Sure, but let's take natural disasters as the focus. In terms of life safety, the aim is to have the structure of the building withstand the short term impact of, say, winds or movement or the fire front, passage of the fire front, so that an occupant can shelter or reach safety?-- That's true.

So, we're talking about structural integrity there for a period of time?-- Yes.

If you are to introduce measures that require greater use of materials or certain design requirements to withstand structural collapse, that is something above and beyond the need to protect life safety during the event itself, is it not?-- Well, I think I can envisage - you can envisage situations where there's hydrodynamic action where you would have concerns about life safety and also egress. However, the faster the water, the more likely there should be a planning prohibition. 30

We will come back to that then. In terms of the IGA principles and what's currently understood, the intergovernmental agreement requires that the board conduct regulatory impact statements to assess whether government intervention is necessary or desirable for any change, any significant change, don't they?-- That's right. 40

And to quantify the impact of government action, and the COAG principles that you have attached set out various guidance for undertaking that regulatory impact assessment and they include - this might answer the Commissioner's problem - question as to why it takes a while - risk analysis, cost benefit analysis, assessment of compliant costs - compliance costs, assessment of competition effects, and consultation?-- I'd say that's true what you're saying, although when it comes to the timing typically the delays that we have experienced through the national processes are more to do with 50

prioritisation rather than the regulatory back process. I think the Australian Building Codes Board has become well practised at delivering high quality regulatory back statements and I think that we probably do more than any other area of government.

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Alright. You mention in your statement that work has been undertaken for some years on looking at performance measures to address flood action?-- Yes, in various guises. I think the project did change and morph along the way.

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Right. And at each stage the project changed or morphed, there needed to be direction or approval from the Building Ministers Forum that it was an appropriate direction to go?-- Well, I don't really agree with that. The Board doesn't necessarily report to the Building Ministers Forum on all projects. The Building Ministers Forum oversees the work programme and the yearly work plan, but it is typically not very closely scrutinised and the Board does have quite a degree of latitude in deriving its work programme, so-----

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So there would be an iterative process, as you used that term, between the Board and between the Forum in exchange of ideas about priorities, progress, how to best deal with current issues?-- And that is right, and I think that is entirely appropriate because the Building Codes Board does confront issues like the bushfires in Victoria and the need to construct new standards - create new standards in a very short timeframe, and other, you know, pressures - not pressures, other government priorities. So it is appropriate that it remains flexible to some degree.

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Has it been your view or the view of those you represent that there should be a shift in terms of flood protection towards property protection measures?-- Well, my personal view is that an event that could affect a large number of people falls into the category of an appropriate building code response for community resilience. Just like - where, for example, there is debate about cyclone standards and whether it should be covering - whether cyclone standards should be covering more than just this - the integrity of the envelope, or whether we should be stopping water from coming in the building. That is - if it is a lot of homes, then you know I think it is quite appropriate that the building codes do stray away from its most important thing, which is life safety to, you know, other community resilience matters, because they are of such widespread importance to the community.

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That view has not been universally accepted by other members of the Board, has it?-- Well, I suppose there is a degree there. I mean, suppose I am in the middle on that one. I think some people are more interested in doing more with the Code. You know, I have certainly been convinced over the years by my involvement on the Board to test matters and be as measured and practical and targeted as you possibly can with your building standards because of the imposition of costs, and, you know, I do also agree with the industry sometimes about doing the best we can to take nonregulatory measures because I think it is important to recognise that the industry does the right thing by itself sometimes.

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So is it fair to say there has been not necessarily an agreement, there has been a difference of views about the direction in terms of protection of property and also the best

way to achieve that protection?-- Certainly, and I think a healthy one. So I think that, you know, we could have gone faster on the flood standard, but in the context of all the other work that was being pressed on the Board it was - it is always a very full work programme.

Right. You mentioned the other projects and the work programme of the Board and some of those projects have included energy efficiency, disability access, the creation of the national code, disability access, I have already mentioned, things of that manner, and of course the fire standard itself. They have all been major projects of the Board in the last couple of years, haven't they - the last few years?-- That's right. That's right and it is important to recall that - remember that in delivering each of those projects there is a lot of detail that does attract a lot of interest, and sometimes in drafting a building code it's a lot more complex than it looks.

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Is it fair to say that what you describe as a delay in the creating of the standard is also an issue of creating consensus about the best way to proceed?-- Certainly. And, you know, I make no apology for the fact that my role is to stand up for Queensland's interests. It is in our interests to have standards available for use on the matters that are of policy interest to us.

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And you'd recognise that if that is not a view universally held by the Board members then that would necessarily affect the work agenda and priorities?-- Certainly, and that is just part of normal business and I think that is the case for all projects. Different jurisdictions have got different views about which ones are important and which ones aren't, and there is always a bit of healthy debate about the priorities, and as it should be, because it is using government resources.

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Now, the agreement on the direction in terms of the prioritisation of the standard from the Building Ministers Forum came in about the middle of last year?-- Yes.

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And then a reference group was established to assist with the development of the standard and the Handbook to follow?-- Yes.

Mr O'Brien was your representative on that reference group?-- Ms O'Brien.

Minister O'Brien?-- Ms.

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Ms O'Brien, I am sorry. I missed what you said. And they met in April and June of this year?-- Yes, and there has been a lot of contact in between the meetings.

With the standard being produced by the end of June of this year?-- That's my understanding, yes.

So in effect from the time that the agreement was reached on -

the Building Ministers Forum was ticked off on, there was

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effectively an eight month turn around for the draft standard?-- I am not sure about what was in place before, but that sounds roughly correct.

Okay. And now in terms of the ABCB process there will be the exposure to the regulatory impact statement, and if all goes according to expectations, although there is of course consideration of issues such as have been raised by Mr Flanagan and the Ipswich City Council, there will be an adoption of a standard into the Code in May 2013?-- Yes, subject to Board approval.

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Okay. Now, I think I said to Mr White 2014. I don't know where that came from, but it is definitely 2013?-- That is my understanding.

Thank you. Just a couple of questions about the interaction between this new standard and effective planning measures. The aim of the standard is to produce more specific performance requirements and deem to satisfy provisions for the design and construction of new buildings or extensions to buildings in flood hazard areas?-- That's exactly right.

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And as you have discussed with Mr Flanagan, the flood hazard areas are designated by various planning schemes or local government pronouncements?-- Yes.

And in that sense there is an interaction with planning as there is with the bushfire standards, for example?-- That's right. It is the same model.

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The key characteristics of the new standard include, and this has been touched on, that the design to withstand floods with a maximum of one metre inundation, and 1.5 metres per second flow velocity?-- Well, to explain that a little, the inundation of one metre is for the area below the defined flood level, if there is a non-habitable space below that level, and it is only if there is an enclosed space, because there is added loads where you have got enclosures. If it is open, that one metre enclosure rule doesn't apply. So it is all about setting the limit states or the design limits that are applicable to the acceptable solutions.

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Right. Now, 1.5 metres per second on my maths is roughly just about five kilometres an hour?-- 5.4 in my understanding.

Which is around a decent walking pace. So we are talking about a standard that is designed to - construction design that is meant to resist a slowish moving flood?-- For the acceptable solutions, and the standard then has other elements that apply. That is just one aspect of the standard, and the standard has other aspects that apply like services being elevated etc, and if your design parameters are outside the 1.5 metres a second then you simply need to get a hydrologist to tell you roughly what the speed will be and then design the building accordingly. So it is not about stopping. This is

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not about lack of permission. Once you have permission to build then the standard specifies how you go about doing that.

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So the deemed to satisfy solutions only relate to expected flood levels and velocities that we have just been talking about?-- Yes, that's right. We need to have some limits around them that are the basic assumptions below which we are certain the standard will work.

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Yes. Those are consistent with the objective that a person should be protected in terms of their life by being able to shelter within a building or reach safety, are they not?-- That's right. So if you build inside the design parameters for the acceptable solutions, then the building will be robust. It allows for egress from a balcony or door above the flood level. It means the services will work after the flood.

And are you suggesting that the standard allows a ratcheting up to deal with high velocity floods like flash floods, or are they not contemplated?-- There are some restrictions in the standard. It is not meant to apply in areas where there is, like, mud slides and one or two other exceptions, but I think the higher the velocity of the water the more likely the planning permission should be denied. Because the application of engineering pictures becomes more uncertain. It is harder to design for the higher velocity waters and higher levels.

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Just so we are clear, they are not to be deemed to satisfy provisions in those higher risk areas. Is that what you are saying?-- That's right. So, if you look at the photos of the flood you'll see lots of homes that were, you know, quite effective in protecting the residence. They were elevated above the flood. The waters weren't moving very quickly and then people went on with their lives quite soon after the flood because the only spaces that were inundated were the non-habitable spaces that didn't have any damage and didn't have any storage in them.

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So for those high velocity floods the controls remain essentially within the planning realm; is that fair?-- Well, mainly, but for velocities above 1.5 metres per second the standard still allows you to build, provided that you have got engineering to support that.

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Yes?-- And a combination of loads.

Right. And you would agree that for floods of a greater velocity such as occur in flash floods, we resort to the planning requirements, we don't look to the building code and any standard?-- Well, the matter is one of permission and the question should be asked why would we permit a building to be in the path of high velocity water.

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Which is a planning-----?-- Planning-----

-----issue?-- Absolutely, yes.

Just can I touch on that. You have mentioned the community resilience aspect. This new draft standard is designed to deal, as we have said, with new buildings and extensions or additions to residential buildings, is it not?-- Yes.

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Yes. And what roughly percentage of buildings that currently stand would be covered by the new standard?-- That - we haven't done any statistical analysis of that. I anticipate that will be the subject of the RAS. There is some information in one of the - I think the Handbook about the number of lots that are already approved for residential construction that are subject to flood events, and I think it was in the order of a few hundred thousand in Australia.

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So that would be less than one per cent?-- Look, I don't have a clear number of buildings. I think it is around about 1.6 million dwellings in Queensland, but - so I don't have a handle on the numbers, I am sorry.

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Okay. It doesn't cover commercial or other buildings?-- No.

And it remains essential therefore that there are effective planning controls, but also that there is a community awareness and emergency response to natural disasters?-- That's right. I would like to correct my last answer, though. Obviously it does apply to class 3 buildings or hotels. They are obviously-----

Habitable or residential?-- Commercial -----considered a commercial - commercial purposes.

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Yes. The classes that are covered are essentially buildings in which people sleep?-- Yes. One, 2, 3, 4, 9 and 9C, yes.

Thank you, Mr Brumby.

COMMISSIONER: Mr MacSporran?

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MR MACSPORRAN: Thank you. Just one matter. Mr Brumby, you told Mr Flanagan that one of the goals of the regulatory approach was to achieve consistency and uniformity across the State. Can you tell us how in your view the planning approach fails to achieve that goal?-- Well, in a number of ways. The planning approach is done independently by local governments each on their own. The State government has worked to create consistency, but nevertheless having local governments create their own rules for buildings creates uncertainty about the application of the building standards, because then when the certifiers and engineers are looking at the building standards we quarantine them, which means that they must look at the building standards that are proposed to apply. If there is a separate planning scheme requirement that just creates confusion about whether it applies, and whether they should ignore it or not, so that that does create some uncertainty for professionals. But also when you have got two layers of

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approval dealing with the same thing, inevitably you have got confusion creeping in and I would suggest that for the planning permission, that really needs to concentrate on the areas of expertise of planning permission, not delving into

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the standards that are typically dealt with by building professionals. I think it is best to quarantine them so that they can all be considered together at the building approval time by the one assessment manager, which is usually the building certifier. That is not in any way to say that the planning issue should be ignored. They need to be complied with, but they are separate sorts of thinking and I think that keeping them separate is quite important.

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Now, you mentioned the question of recommendations that may come out of this Inquiry. If, for instance, the regulatory approach goes ahead and is adopted, the draft code is adopted in that way, that wouldn't prevent I take it the recommendations from this Inquiry being taken on board?-- No. No. Most certainly not. We tend to, as I say, revise codes on a continual basis because they cover so much, and keeping them up-to-date and making sure that they work practically is our core business and so we always make sure we keep on track of issues to make sure that the codes are adapting to the needs of the building industry, and indeed taking into account policies that government wants to adopt.

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Thank you.

COMMISSIONER: Thanks, Mr MacSporran. Ms Wilson?

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MS WILSON: I have no further questions. May Mr Brumby be excused?

COMMISSIONER: Yes. Thanks, Mr Brumby. You are excused.

WITNESS EXCUSED.

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MS WILSON: Madam Commissioner, I call Paul Pitman.

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PAUL CHRISTOPHER PITMAN, SWORN AND EXAMINED:

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COMMISSIONER: You can take a seat thanks, Mr Pitman.

MS WILSON: Is your full name Paul Christopher Pitman?-- It is, yes.

You provided a statement with some exhibits to that statement to the Queensland Floods Commission of Inquiry?-- Correct.

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Can you have a look at this document, please. This is your statement with attachments?-- That's correct, yes.

Commissioner, I tender that statement.

COMMISSIONER: Exhibit 668.

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ADMITTED AND MARKED "EXHIBIT 668"

MS WILSON: Mr Pitman, you are a property developer and the owner director of a hotel - a motel in Emerald?-- That's correct.

And the name of that hotel is Route 66 Motor Inn?-- Correct.

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From your statement it appears that in March 2007 you submitted a development application, but you didn't purchase the property until August 2008?-- That's correct.

And was the purpose of submitting a development application before purchasing it to find out what you could actually do on that site?-- I had to go through the DA process to get a DA, so I just - it was an application for DA, yes.

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And you did that before you purchased the site?-- That's correct, yes. It was subject to DA.

Emerald flooded in 2008?-- Sorry?

Emerald flooded in 2008?-- Yes.

Were you aware whether that site was flooded in 2008?-- It did not get over the site in 2008.

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And at the time-----?-- Correction. It did go over the site but after we placed our fill it would not have gone over the site.

So it went over the site as the site was then?-- Yes. Yes.

But you placed some fill and the levels of the 2010/2011 flood it wouldn't have gone over the site as per the fill that was

there now? It was an appalling question. In 2008 it didn't have any fill?-- That's correct.

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Flood waters went over the site?-- Yes.

In 2010 it had fill?-- Yes.

And if the levels had reached the 2008 flood heights the water, you won't have expected that water to go over that site?-- It would not have penetrated the site, for sure. It would have been 300 mil below the 2008 level.

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You do not recall being advised at the time of conveyance that the site flooded?-- I can't recall that.

But it was common knowledge - you state that it was common knowledge. What do you mean by that?-- Well, it was a low area of town. We knew that it was a flood area. That is why we - we knew we had to put fill on there and we just adhered to the DA and we did that and we went in fact 300 mil higher than the recommendation.

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And due to your knowledge of previous flooding you trusted the council was fully aware of the flood history and would advise you of the appropriate fill heights to avoid future flooding?-- Yes. In fact the fill height I think was - from recollection may have been revised at some point because of that 2008 level.

You were told the fill height from the council and you decided to go 150 mil higher than that set height?-- I think we ended up going 300 mil. I think that is incorrect what I said in that statement.

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Okay. So 300 mil above the set height?-- Yes. Just to clarify, the flood in fact that we experienced in 2010 was 800 mil above the previous level in our particular spot and because the council asked you to go up 300 mil over the 2008 level plus the 300 that I went over, I was still 200 mil - I ended up getting 200 mil of floodwater through my motel.

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Okay. And you have got some photographs that you have attached to your statement?-- Yes.

Perhaps if I can have a look at these photographs now. That is a photograph of your hotel with floodwaters around it. Is that at the peak of the flood?-- No. The peak of the flood would have been probably - if you look at the sign there, if you can see the sign.

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The Motor Inn sign?-- The Motor Inn sign, it would have been about 500 mil up on that sign there.

Okay. Can we see the next photograph, please. You provided us with some - many photos. I am just going to take you to some. This is the floodwaters and we can see some sand-bagging?-- Yeah. We had a wall right around the site and unfortunately - and also we had the stormwater blocked off

with valves. We had valves on the stormwaters, but a bit of polystyrene got into the valve and that didn't work. It would have been better to have caps to put on the outlets of the stormwater. So in actual fact we would have withstood that flood if it wasn't for the stormwater entry.

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If we can go to the next photograph. That is showing the waters within the site of the hotel?-- Yes.

And can we see the stormwater drain there?-- Yes. They made some effort to close it off, but it was just impossible.

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Is the stormwater drain, are we seeing that - is that with the sort of black plastic in the middle of that photograph?-- Yes. That is one of the waste pipes that backs up from the flood outside.

Can we keep on going to the next photograph, please. That is the water inside the hotel?-- Yes. That's in the restaurant. You can see the receded line there. I think it only got to 100 mil in that particular room, for some reason.

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And at this point in time the water is going down?-- Yes.

The next photograph, please. Now, this photograph shows floodwaters next to the railway line?-- Yes, that is on the northern side of the motel, I think. That is on the - we are on the other side of the railway line there.

Can you tell us any effect, if any, that the railway line had on the floodwaters?-- Well, yeah, there's a railway line that encompasses our site and probably 500 metres or more to the river and there is only one small culvert which allows the water to flow through, which is only about 900 which is very small to take that amount of water, and I think that would have caused a backup on our side of the railway line.

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Did you observe any type of damming effect caused by the railway line?-- Well, look, I was in Bangkok at the time and I was on the end of a phone of course at that stage. I actually didn't see the flood.

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Can we have a look at the next photograph. If we can just go back one photograph, actually. That shows that sign that you have referred to previously?-- Yes. I think it would have been probably up to the bottom of the "66" shield there, probably, somewhere up around there.

The next photograph, please. Do we see an electricity substation there?-- Yes.

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And is that with that blue type of sign on it in front of the - it is in the front?-- I don't know what that is.

Okay. Where is the electricity substation?-- That is the electricity substation. I am not sure what those signs are.

Okay. Did the electricity substation get flooded?-- Yeah, well, they turned off the power before it got to the substation.

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Can we have a look at the next photograph, please. That was the end of the photographs. Can I also show you this map, Mr Pitman, which will be on the screen as well, and this is an aerial photograph of Emerald which depicts the floodwaters and some features of Emerald have also been identified. Your hotel is identified by "Pitman"; do you see that?-- Yes. Correct, yes.

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Is that where your hotel is?-- That's correct, yes.

We can see the railway line above that?-- Correct, yes.

Okay. Madam Commissioner, I will tender that aerial photograph.

COMMISSIONER: 669.

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ADMITTED AND MARKED "EXHIBIT 669."

MS WILSON: If I can take you to paragraph 9 of your statement, Mr Pitman, where you raise the main issue with regards to flooding was the approval of your development application based on floor heights that did not take into account a previous flooding in Emerald. You made enquiries with the council concerning what records they have used to base these heights on and you were told by a council representative that the historical records in relation to flood levels had been destroyed. When did you make these enquiries?-- It was subsequent, of course, to the flood.

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Yes. Who did you speak to, if you can recall?-- It was more anecdotal conversations with people. I actually didn't - they didn't actually - I don't think I actually heard that from the Shire that they'd destroyed their records. That's what I heard, though. I mean, I also heard that, you know, some of the old people said that the water had got up to the stairs of the railway line there, you know, right at the - where the pedestrians walk into the railway station. If that's the case, you know - if that really is the case then this was not a major flood compared to what could have been.

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Finally, you were insured with Latitude Insurance Co?-- Correct.

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And you have rated their performance as excellent?-- Yes.

There still is a question mark over whether you can get insurance in the future?-- Yes. I think that I won't be able to.

Why is that? Has anything been explained?-- Just the policy.

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I checked with them before I came in here and there still has not been approval. We are only going for two hundred thousand this time, but I don't think we will get it.

Thank you, Mr Pitman. They are the only questions I have for you.

COMMISSIONER: Mr MacSporran?

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MR MACSPORRAN: No questions, Commissioner.

MR FLANAGHAN: No questions, Commissioner.

COMMISSIONER: Mr Ure?

MR URE: Thank you. Stuart Ure is my name. I am appearing on behalf of the Council, Mr Pitman. Just a couple of matters I want to ask you about in your statement, correct a couple of typographical errors. Paragraph 2 you say, "At the time of purchase I was aware that the area had been flooded in 2007 and previously on many other occasions". That should be "2008", correct? I think you just told the Commission a little while ago it was 2008, the flood?-- Yes, well that's - oka

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And in paragraph three, in the second last line, I think you corrected 150 mils and said that that should be 300 mils; correct?-- Yeah, well, the - the DA said that the flood got to 177.4. The recommendation was to go 300 mil above that, and I believe I went 300 mil above that level.

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All right, but the 150 mils is a typographical error, it should be 300, based on what you've just told us?-- It should be 300, yes.

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All right. Now, a couple of small matters. Paragraph 10, you say that you don't think the council has done enough to prevent flooding, especially since flooding has been an historically-regular occurrence. Then you go on to talk about the Fairbairn Dam. Are you aware that the Fairbairn Dam is not under the control and is not the responsibility of the local council?-- Well, I don't know whose responsibility it is, but, you know, something should be done about it and-----

All right?-- -----you know, I'm sure if the council is not the controller well they can't do much about it but the State Government maybe should.

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Paragraph 11, one of the issues you identify is the damming effect of the Central Line Railway. Similarly, are you aware that the railway is not under the control of and is not the responsibility of the local council?-- Oh, absolutely, yeah.

All right. In paragraph three you tell us that the DA set the minimum finished surface level, and I think that's another error too, isn't it? That should mean the development approval set the minimum finished surface level at 177.4 metres AHD? You made the application and the approval came back with the nominated site finished levels and floor levels, didn't it?-- Yeah, I - I probably should have gone straight and said it was - 177.7 was the recommended height the council recommended.

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All right-----?-- Which gave them a freeboard of 300 mil when-----

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And you put a freeboard of a further 300?-- That's right, yeah.

All right. Now, if we come then to paragraph nine, which is your main complaint, you say the main issue was "the approval of my development application based on floor heights that did not take into account previous flooding in Emerald". Could Mr Pitman be shown, please, the statement of Luke Anthony Lankowski, who's the manager of Development Services of the Council?

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COMMISSIONER: I take it you've warned the Commission staff you want it?

MR URE: Yes.

COMMISSIONER: Right.

MR URE: And look, please, at paragraph 3.2. We can all see there that Mr Lankowski tells us that since 2006 the council has utilised a map titled "Emerald Interim Flood Levels Map to Determine Floor Level", and he goes on to tell us that this is based on, "historical flood information (river flows, et cetera) aerial photos, spot heights and contour information," and there's also some stormwater impacts from known stormwater events factored in. May we see, please, attachment three to Mr Lankowski's statement? This should come up on your screen, Mr Pitman. If the scale can be brought up a little, thanks. All right. That's probably sufficient for our purposes. You've shown us the aerial photo or described the location of your property on the aerial photograph, which became Exhibit 669. If we just get to it on this map, attachment three. If we start - do you see the flood level legend running vertically on the right-hand side of the page?-- Yeah.

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See the gap between 176.2 and 176.1, down towards the bottom? The gap between 176.2 and 176.1? See those two boxes?-- Yeah.

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Coming from under the legend are two parallel lines. That's the Capricorn Highway, isn't it, running to the left?-- Yeah.

If we go along the Capricorn Highway we can see when we get level with the blue blocks on the right, that's Opal Street crossing the Capricorn, isn't it?-- Yep.

And if we turn left and we travel down the pinched road reserve of Opal Street heading south we cross the railway land, that you've described, and the next block we come to on the left as you're driving south but on the right as we're looking at this is your motel?-- Correct.

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And we can see that that's in the floor - sorry, flood level legend designation of 177.4?-- Yes.

If we go back then - sorry, before we leave that. Can you scroll up, please, to the bottom of the legend, or scroll down to the bottom of legend, and there's a notation there that floor level is 300 mils above the flood level unless otherwise noted; correct? You see the paragraph-----?-- Yeah, which is exactly what they did in their DA.

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Exactly. We started off, or the council started off with a floor - a flood level of 177.4 AHD, as you tell us in paragraph three of your statement?-- Yeah.

Added 300 mils freeboard and then arrives at a finished floor level of 177.7?-- Yep.

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It's obvious, Mr Pitman, isn't it, that those levels were derived from this 2006 map, as Mr Lankowski says?-- Yeah, I'd agree, yeah.

All right. Well, I suggest to you, going back to your paragraph nine, that not only is it not correct to say that

the approval of your development was based on floor heights that didn't take into account previous flooding in Emerald, it was in fact based on the most recent flooding history and information that the council had?-- Yeah, but that doesn't take into account previous floods at all.

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Well, did you take note of the paragraph that I referred you to in Mr Lankowski's statement where he said how this map was derived?-- Could you enlighten me again on that, please?

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Well, he - there's no need to go back to it but he said "the flood level captured within this mapping was prepared by the former Emerald Shire Council with reference to historical flood information (eg river flows, et cetera) aerial photos, spot heights and contour information. This information was then cross-referenced with information approximating stormwater impacts based on known storm events." I suggest to you, Mr Pitman, that the development approval that you received nominating the 177.7 metres AHD as the finished floor level was based on the best information that the council had at the time?-- Well, this is one of the main issues. Now, Mr Lankowski has only been there for two years, I think, or maybe three years. One of the major problems is there's so much recycling of people there that the historical information that's - you know, that's handed down by - you know, by verbatim is - you know, is lost and, you know, there's no-one there that's experienced the bigger floods, and this is - you know, this is a - you know, an issue and I don't think that - they didn't have the experience to listen to the older people in the town that knew that there was bigger floods.

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The flood event with which the Commission's concerned was the highest flood in Emerald in recorded European history, wasn't it?-- I don't believe that.

All right. I've got nothing further.

COMMISSIONER: Ms McLeod?

MS McLEOD: I have no questions, thank you.

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COMMISSIONER: Ms Wilson.

MS WILSON: May that statement of Mr Lankowski be tendered?

COMMISSIONER: Exhibit 670.

ADMITTED AND MARKED "EXHIBIT 670"

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MS WILSON: And I have no further questions for Mr Pitman. May he be excused?

COMMISSIONER: Yes. Thanks, Mr Pitman, you're excused.

WITNESS EXCUSED

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MS WILSON: Madam Commissioner, may we adjourn for Emerald?

COMMISSIONER: We will adjourn until 10 o'clock in Emerald.

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THE COMMISSION ADJOURNED AT 1.09 P.M. TILL 10.00 A.M. THE  
FOLLOWING DAY IN EMERALD

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