

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 22/09/2011

..DAY 35

THE COMMISSION RESUMED AT 10.00 A.M.

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MR CALLAGHAN: I call Thomas Fischer.

THOMAS PAUL FISCHER, SWORN AND EXAMINED:

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MR CALLAGHAN: Could you tell the Commission your full name and occupation, please?-- Thomas Paul Fischer, and I'm a travel agent.

Mr Fischer, you've prepared a statement for the Commission; is that correct?-- That's correct.

And that statement refers to a number of other documents which are attached to this copy of it that I'm about to show you; is that correct?-- That's correct. Yes.

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Yes, I tender that.

COMMISSIONER: Exhibit 592.

ADMITTED AND MARKED "EXHIBIT 592"

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MR CALLAGHAN: And it's the case, Mr Fischer, isn't it, that you had an insurance policy with QBE?-- Correct

Madam Commissioner, the Commission is in receipt of a statement from a Mr Shaun Standfield on behalf of QBE. He's provided a statement with a number of attachments. It would be helpful to tender that before we hear more from Mr Fischer.

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COMMISSIONER: Exhibit 593.

ADMITTED AND MARKED "EXHIBIT 593"

MR CALLAGHAN: Mr Fischer, you have a copy of your statement there in front of you now, do you?-- I do.

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All right. Can I take you in that - can we move straight to paragraph 18, and we've all had your statement so we know what's contained in the leadup to that point, but the fact is, you lodged a claim for insurance with QBE on the 13th of January this year?-- Yes.

Is that right?-- Mmm-hmm.

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And we learn in paragraph 19 that on the 19th of January an assessor carried out an inspection; is that correct?-- That's right.

Now, it's not referred to in your statement but I can tell you, in attachment 2 to Mr Standfield's statement there's reference to a telephone call to you from Crawford & Co on the 24th of January to update you as to progress. You don't refer to that in your statement. Do you have a recollection of any such call?-- I don't have a recollection of that call, no.

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All right. May it have happened and you just don't recall it?-- It's possible.

All right. We can move then to paragraph 20 of your statement. You refer to a letter that you received from QBE on the 8th of February?-- Yes.

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And in that letter you were told that an assessor had attended and it seemed probable from the preliminary information that the damage was due to flood which was excluded under your policy; is that right?-- That's right.

Okay. Now, just to interpolate for the purposes of chronology, we know, by reference to paragraph 7.5 of Mr Standfield's material, that the Insurance Council of Australia Hydrology Report was received on the 10th of March. That doesn't concern you directly?-- No.

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But perhaps we can move back to your statement in paragraphs 21 to 22 where you record that a Mr Peter Andrew, the Improvement Manager for QBE, called you and explained the heavy workload that QBE was experiencing?-- That's right, yep.

Now, in your statement, in paragraph 21, you say that occurred between the 8th of February and the 18th of April. Could I suggest that, according to the QBE material, they say that call occurred on the 18th of March?-- Okay.

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Which is consistent with the range-----?-- Sure.

-----of dates you gave-----?-- Yep.

-----and you'd accept that as accurate?-- Yeah.

Okay. And as a result Water Technology were appointed to complete a site-specific hydrology report; is that correct?-- Yes.

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Is that your understanding? It would appear - if we move to paragraph 23 - that such inspection occurred on the 18th of April?-- Yes.

And looking in paragraph 24, you received a letter on the 27th of April advising you that a hydrologist had been appointed to

provide a site-specific report; is that right?-- Yeah.

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I take it you already knew that?-- Well, I assumed, and I can't remember, but that David Cox - this is my recollection, that he would have contacted us before the 18th of April to say they'd been appointed or that they wanted to come out and we arranged that - that visit from him.

All right-----?-- But the advice came from QBE after that date that they'd been appointed.

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Yes. I might take you to the letter of 27 April 2011, I think that might be available. It's in attachment 7 of Mr Standfield's material, perhaps in other places as well. We can see in that letter, if we just scroll down a little-----?-- Yeah.

-----even then as at 27 April QBE apologised for the period of uncertainty but undertook you to - undertook to advise you as to the results as soon as possible; is that right?-- Yep.

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Okay. And in that regard it would seem that they did convey the results to you fairly quickly. We understand from the QBE material, paragraph 7.5 of Mr Standfield, that the Water Technology report was received on the 6th of June and, indeed, you received a letter from QBE on that date advising you that the claim had been denied because the damage had been caused by flood?-- Yeah. The letter was dated 6th of June. We would have received it a day or so later.

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Certainly?-- Yep.

Thereafter. Okay. Now, QBE say that - accompanying that, and I think you agree that a copy of the hydrology report accompanied that letter?-- Yes.

It's also said, by reference to paragraph 7.4 in Mr Standfield, there was some other material which accompanied it as well. The loss adjustor's report, the Queensland Reconstruction Authority Interactive Flood Map. Other material as well. Do you recall any other material?-- There was about 30 pages of material all together. A lot of it were graphs, figures-----

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Yes?-- -----things not specific to our property.

Okay. Well, if we move then to paragraph 26 of your statement. You telephoned a Mr Andrew, the Business Improvement Manager, on the 14th of June in order to determine who you should contact for the purposes of an internal review; is that right?-- That's correct. Up until that point of time I had no - no names to contact within the insurance company at all other than Peter Andrew, who had called, as you said, on the 18th of march, to sort of go through where they were at, and all of the other letters came unsigned, they - sorry, they were signed but with no name with any contact-----

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Right?-- -----so - I'd made no phone calls because that was only going to hold things up further for us and for other people as well, so I was relying on them to contact me until that point where we got the refusal letter and at that point, you know, I wanted to take it to the dispute process but had no idea who to contact.

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Right. I think did Mr Andrew advise you - I think this is an e-mail exchange, we don't need to go to it - did he provide you with some contact details?-- He did.

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Of a Christina Eller?-- That's correct.

And he also told you, I think, that the complaint or dispute resolution process for the Queensland floods were being handled in Sydney; is that correct?-- Yes, he did, yes.

All right. Okay. Well, following on from that, if we look at paragraph 27 of your statement, you sent an e-mail to the said Christina Eller requesting a review of the decision?-- Yes.

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And in that there were - or in that - at that time there was a bit of information exchanged but you also referred to a report done for a neighbouring block of units which found the cause of inundation to them to be stormwater runoff; is that right?-- That's correct.

Can you just tell us about that?-- The property is probably 250 metres or so further along the golf course to us and it's just my understanding that as a result of the report that they - they received, their insurer accepted that the damage - I think the insurer of the body corporate accepted that the damage was caused by stormwater runoff and that they settled a claim with that body corporate.

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Now, you provided, at some stage, QBE with a copy of that report; is that correct?-- That's correct.

And do you recall whether it was at this time? It might have been a bit later, was it?-- It was given to Water Technology at the time that they visited our place-----

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All right?-- -----on the - wherever it was that-----

We'll come to that?-- Yeah.

Look, there were some other e-mail exchanges in June but I might move forward to paragraph 28 and the 15th of July?-- Mmm-hmm.

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You sent an e-mail to Ms Eller, and copied in others, because no response had been received; is that right?-- That's right. I was told and I probably read the insurance PDS that the dispute process should take 15 business days-----

Yes?-- -----and the 15 business days was up and I hadn't heard so I contacted them, yes.

All right. Now, there is an e-mail at this time that I'd like to show to you. It's referred to in attachment 7 of Mr Standfield's material but I think we can just get a copy. It's an e-mail of the 15th of July-----?-- Yes.

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-----from a Mr Colin Ahern at 3.23 p.m. Thank you. And again, back there in July, in that e-mail, there is an apology-----?-- Yep.

-----that there hasn't been a response within the required time frame and to your expectation; is that correct?-- That's correct. My understanding is that Peter Andrew, after I had the conversation with him, contacted Colin Ahern, who was in the claims department and he responded in that way, yes.

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All right. Now, again, there are e-mail exchanges at and around this time. In paragraph 29 you refer to other e-mails, and I might take you to another one from-----?-- The one on the 18th of July-----

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Yes?-- -----was in response to the one on the 15th and it came from Christina Eller saying that the file had been transferred to a Juliette Eden and she would be in touch.

That's right. I was going to show you-----?-- Sorry.

-----another one from the 18th of July at 2.59 p.m. Yes, that's the one, I think, it's on the screen. If we go to the last paragraph of that one. Again, there's an apology for the lengthy delay, "however the sheer volume of claims and disputes has us absolutely stretched," and so on?-- Mmm-hmm.

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You received that one?-- Yes.

Yep. Okay. I think the relevant references there for Mr Standfield would be paragraphs 10.1 to 10.3, 13.1 to 13.2 and e-mails are discoverable in attachments 2 and 8. Now, I have to ask you about something else that's contained in the material we've obtained from QBE and that relates to a - what they describe as a teleconference between yourself and Ms Eden on the 18th of July. There's no reference to that in your statement. Do you have any recollection of such a conversation?-- I recall the conversation. I don't - wasn't aware that anyone else other than Juliette Eden and myself were involved in the telephone conversation.

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There may not have been, that's just the way they've described it, I think?-- Okay, yeah.

And it's suggested in their records that it was agreed that QBE would only contact you about substantive developments. Does that ring a bell at all?-- Yeah, the offer was that they would call me every Monday morning to update me on the progress of the claim, or the dispute, rather, at that stage. Again, because that was just going to tie up time and resources I said, "Well, there's no point. Unless, you know, something that has happened that you need to let me know there's no point ringing me every Monday morning." So, yes,

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that's - that's correct, yeah.

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All right. I'll take you to paragraph 30 of your statement. It's indicated that you responded to Ms Eden's e-mail on the 19th of July providing information as requested; is that right?-- That's correct, yes.

And that was in response to a series of questions which had been posed to you?-- Yes.

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Paragraph 31 - sorry. You'd indicated there where you'd received the map from the hydrology report into the neighbouring units; is that right?-- Sorry, what was that?

You told - in that e-mail you identified the source of the hydrology report that you had in relation to the neighbouring units?-- I'm not sure about that but they already had - Water Technology already had that, yeah.

All right. In paragraph 31 you refer to an e-mail received from Ms Eden on the 25th of July, and again we might look at that one?-- Yes.

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That's the 25th of July at 12.02 p.m. In essence, advising you that a site-specific hydrology report was required and a hydrologist would be in contact; is that right?-- Yep. Yes.

And then - or, there things lay until we learn in paragraph 32, on the 19th of August you sent Ms Eden an e-mail; is that right?-- My statement here says the 18th of August but-----

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Okay?-- -----if it was - yeah, the 18th of August, yes.

You might be right. We probably don't need to resolve that. I think QBE records indicate the 19th, but, in any case, the e-mail will speak for itself. Now, what it says is - or what you said to them then was that you'd been understanding in the initial stages of the claims progress as to the enormity of the staff - enormity of the task that the staff had-----?-- Yes.

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-----but now there was no longer an excuse for not addressing things in a timely manner; is that correct?-- Yes.

And was that essentially what you were feeling at that time?-- Yeah. I mean, moving forward, at the end of the day they again moved the dispute process to a third person, this was the second person at this stage, something that was supposed to take 15 days at that stage had taken two months at least, and as far I was concerned it wasn't acceptable, yeah.

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Well, you talk about another person becoming involved-----?-- Yeah.

-----and if we look at paragraph 33-----?-- Yes.

-----there's an e-mail that you received from Mr Richard Feld on the 22nd of August; is that right?-- That's correct.

And you responded to that e-mail at 12.39 p.m., and again we might be able to get that one up. I might just read - you've got a copy of it in front of you but I can-----?-- Sorry, what was the date of that one?

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That's the 12.39 p.m. on the 22nd of August?-- Yep.

And the point being that you asked Mr Feld why did it take a contact from you in order to obtain information. There we have it there. Those first two paragraphs speak for themselves. Why did it take you contacting them in order for information to be obtained, and you identify there that no reason for the inaction was given, nor was there any reason given for why Mr Feld had taken over the resolution of your claim, and you express your discontent there; is that correct?-- Well, that's right. I think going back one, the 25th of July, Juliette Eden said that another site-specific report would have to be prepared by the hydrologist. There had been no contact from the insurance company or the hydrologist and, you know, we were another, I guess, nearly a month down the track.

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And really, can I ask you this, in relation to those concerns that you express there, as to whether there was a reason for the inaction over those weeks or as to why there'd been the change of staff or anything like that, have you ever actually had a response to those-----?-- No.

-----queries?-- No.

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All right. Well, moving on, just to complete the story. Paragraph 34, Mr Cox from Water Technology called to arrange an appointment, and it would seem that that occurred that day, is that correct, by reference-----?-- Yes.

-----to paragraph 36?-- Yes.

And there was some conversation there in which they indicated they didn't agree with the other hydrology report you'd obtained?-- Sorry, when they attended?

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Yes?-- Yes.

Yes?-- They - they basically said that they disagreed with the other report. They came in, they just sat down - we invited them to sit down in the lounge room at the dining table and they really had no intention to do any other inspection or anything, they had pretty much made up their mind that this was caused by flooding. One comment at one stage during the visit was that, "We've done hundreds of these and they've all been flooding." I felt that our situation was perhaps a little bit different being in a golf course and all the stormwater that comes into the place, but they were really just there to justify their initial report.

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And this conversation went for some time?-- Yeah. Yeah, well, yeah. Only probably because of our initiation rather than really that they felt they needed to or wanted to be

there.

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Perhaps could you-----?-- This is my own personal - at one stage my wife, who's been pretty much traumatised by this, she was quite upset with their attitude.

Right?-- Yeah.

Okay. Well, just to complete the picture. At paragraph 40 you say that you received an e-mail on the 25th of August advising that QBE would take another 15 business days to make a decision; is that correct?-- That's correct.

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And - look, there are other communications in your statement and in the accompanying exhibits between you and QBE. I'd suggest to you that the ones that we've covered are, in terms of what we're talking about, some of the more important ones; would you agree with that?-- Yes.

Were there any others in particular that stick out in your mind that we haven't covered?-- No.

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Well, we know these hearings of this Commission began on Monday. Did you do anything on Monday?-- Did I which?

Did you do anything in relation to your claim on Monday?-- Oh, yes, I did. I e-mailed Richard Feld again, because the last period of 15 business days had again expired, and basically asked him where we were at, and within 24 hours I had an e-mail with a letter attached and the supplementary report from the hydrologist, which is again another 30 pages, pretty much justifying what they originally - they originally found, and the letter from QBE again denies our claim.

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I just missed the last thing you said?-- The QBE letter again denied our claim as being caused by flooding in their - their terminology.

So it was on Tuesday that you were finally advised of the outcome of the review which was requested on the 15th of June?-- Yes.

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That's three months after the request for the review?-- Yes.

Eight months after the claim was lodged?-- Yes.

Mr Fischer, QBE has, as I've indicated, supplied a statement to the Commission and I have to put it to you that they say that they believe that in the circumstances it generally handled the claim in an appropriate and timely manner. That's what they say. I invite your comment?-- Well, as I said, in the initial stages, it's an exceptional event, normally you wouldn't accept that sort of time frame but we were quite willing to accept what was going on. As I said, we made no phone calls, no contact to try and make our claim go through any quicker than anyone else's, but when we got to the dispute stage and they weren't complying with their own 15 business day time frames, I don't think that's really acceptable. I

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don't think putting the claim to three different officers is conducive to making a decision, and I don't think anyone really at any stage has taken ownership of it, of the claim. We've had letters from various people and e-mails but, you know, I think no-one really wants to take responsibility. That's just my understanding anyway.

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Is that the extent of the comment you'd make in response to the QBE-----?-- Yeah.

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-----suggestion? Thank you, Mr Fischer?-- Thank you.

COMMISSIONER: Are there any questions from anyone?

MR HOLYOAK: No, your Honour.

MS McLEOD: No questions.

MR CALLAGHAN: May Mr Fischer be excused?

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COMMISSIONER: Yes. Thanks very much for your time, Mr Fischer-----?-- Thank you.

-----you're excused.

WITNESS EXCUSED

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MS WILSON: Thank you, Madam Commissioner. I call Bill Henningham.

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WILLIAM JOHN HENNINGHAM, SWORN AND EXAMINED.

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MS WILSON: Thank you, Madam Commissioner. Is your full name William John Henningham?-- Yes, it is

And you reside at Golf Links Road, Rocklea?-- I do.

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

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Can you have a look at this document, please? Is this the statement that you that provided?-- Yes, it is.

Madam Commissioner, I tender that statement.

COMMISSIONER: Exhibit 594.

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ADMITTED AND MARKED "EXHIBIT 594"

MS WILSON: Now, in relation to your property at Golf Links Road you purchased this in March 2010?-- That's correct, yes

And prior to purchasing this property did you know anything about the risks of flood?-- Yeah, I was fully aware of it.

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And how did you know that?-- Variety of reasons. I've lived in the area for nearly all of my life. Just a lot of stories that everyone always spoke about. Additionally, at the time I worked at Brisbane City Council and I was aware of the FloodWise Reports that they'd put out before.

And did you look at the FloodWise Reports before purchasing your property?-- Yes, I did.

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And what did they indicate to you?-- It indicated - I'm not a hundred per cent sure, I haven't seen it for a while, but it was close to the property only flooding from the - when the river floods and/or a nearby creek, which was the Oxley Creek, as well as flooding likely I think it was once in 60 or a once in a hundred year event for it to flood.

Now, this morning before Court have you been shown a PD on-line photograph of the - of the area and your property?-- Yes, I have.

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Can you have a look at this document, please. Now do you see on that photograph there's a yellow cross?-- Yes.

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Does that indicate your property?-- Yes, that's my place, yes.

Now to the left of your property, is that the Brisbane markets?-- It's part of the markets, yes.

Which part of the markets is that?-- I think it's the southwest gate, or just the south gate, it's called. It's a very large warehouse where - I don't know what they store but I assume it's market related things.

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And in your statement you describe a drainage channel between your house and the markets?-- Yes, that's correct. I'd say it goes for 200 metres to the end of our street and beyond and a small part of it is paved.

Now Mr Henningham, there is a pointer there, a laser pointer to your right and perhaps if you could indicate to us all, when you talk about this drainage channel, what are you referring to?-- Is the pointer red?

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The pointer is red?-- I am colour blind for red.

Okay. Well then perhaps we can talk our way through it.

COMMISSIONER: Mr Henningham could always just walk up and show you, couldn't he?

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MS WILSON: Yes.

COMMISSIONER: Are you happy to do that, Mr Henningham?-- I'm happy to do that, yes.

Just go and point at the thing. While you're doing that, can you tell me what the major road to the north of your property is, assuming that's north/south?-- To the north of my property, that's Sherwood Road that runs down there with Golf Links Road, and the drainage channel goes from there all the way down. It's paved to about here at the end of the big shed, and then I just went for a walk down there recently and I believe it goes into this dam, or this lake or pond, whatever it is. The bulk of that is all down the back of people's houses there.

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Thanks very much.

MS WILSON: While you are there, in your statement you also talk about wetlands, what are you referring to there?-- There's two. There's - I can't remember the name of it but it's, I think it's the Rocklea or - drainage wetlands. There's Oxley Common, which is more or less all of this and it goes down towards Oxley Creek. But then there's also a wetlands which can't be seen on the photo here which is on the other side of the markets on the north side up about here and behind that there are some market storage sheds well.

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Madam Commissioner, I tender that photograph.

COMMISSIONER: Right. That will be exhibit 595.

ADMITTED AND MARKED "EXHIBIT 595"

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COMMISSIONER: Can Mr Henningham sit down again now?

MS WILSON: Yes. I will keep that photograph up for the moment. The drainage channel that you pointed out to us is usually drive except in times of rainfall?-- Yeah, and I'd have to say it's fairly extreme rainfall as well. There was a really big rain event in October last year and I went had a good look over the back and I'd say it was only five centimetres off the drain at best in that time, and even a few times when there was big storms in February there was not much water in there as well.

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How did that drain cope in the December and January rain?-- It was okay during December. And then it was January when the water rose so much in the river and the creek which pushed back into another creek and then the drain just wasn't able to keep any more with the stormwater that was in there.

Perhaps if we can actually now focus on the 11th of January, how was the drain performing then?-- Was that the Tuesday?

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Yes?-- I didn't check it before I went to work that morning so I can't say for sure, but I did come home that day at about 11 o'clock and I've never seen that much water in the drain that was there on the Tuesday and it was raining fairly heavily at the time, but you could just see the water starting to come up more towards our property.

And when you say you'd never seen so much water, was it overflowing, the drain, or was it still contained in the drain?-- Not where my house is, at the end, towards the end of the street, but looking in some of the neighbour's properties further down when I was asking them what was happening, I could see water was in their backyards already.

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And when we're talking about this drainage channel, how big is it?-- When I went and stood at the bottom of the drainage channel I'd say it would be three feet from the bottom of the drainage channel to the back of my property, and then I would say it'd be - from standing at the bottom, the base level of my house is over my head by probably at least a metre, I think.

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So I'm trying to get a sense of how deep this drain is?-- Probably a metre deep at my place, and then further down it gets - it's deeper down the street.

And how wide?-- Probably about four/five metres wide.

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And did you see the water over the top of that drain at any stage?-- Yeah. When we were evacuating our house we did, the water did start to come into our backyard.

Your house was inundated during the flood event?-- Yes.

And when did that occur?-- I don't know because - I don't know exactly but I believe it was at some point on the Wednesday, which was the 12th, between the Wednesday and the early hours of Thursday morning.

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Why do you say you believe?-- Well, as we evacuated the place we were cut off on the Tuesday afternoon because water started overflowing on Sherwood Road.

And do you have any idea where the water was coming from?-- Well, I could still drive over the creek and I think it was coming from - I'm not a hydrologist but I think it was coming from-----

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Just from your observation where-----?-- Well, those wetlands, I mean, they were full, and the fact that the water was overflowing onto Sherwood Road from the wetlands before it was from the creek, I thought that's where it was coming from at first, and then later on when the river pushed back up into the creek further, then I think it was river and creek water that was coming in.

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Well, let's talk about the wetlands. How did the - the wetlands started to fill up during the January rain event?-- Yeah, they did. It was about a week before when driving down Sherwood Road there was a lot of water in the wetlands which is - you can't see them on that map, they're the ones I pointed out on the northern side of Sherwood Road and I had never seen that much water in there before and I hadn't - I haven't driven down it a lot since, since the - because we don't live there and that since March and so I wasn't as regular driving down Sherwood Road as I previously had been, but even in the really large rain events when there's a real big storm, the water does drain out of there very quickly and it is never more than a foot or so off the ground in those wetlands. And then I think in the first week of January there was a lot in there but it still had drained out by the end of that, I'd say by the end of that day.

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End of the day?-- Yeah.

Which day are you talking about?-- I can't remember exactly, it was about a week before the events.

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And did you see how the wetlands coped from that week towards the 11th and 12th of January?-- I couldn't say with any certainty, no.

Now you, as I understand it, you are referring to the wetlands that we actually can't see on this picture?-- Those ones that

you can't see, they're on both sides of Sherwood Road. Just on the same side of Sherwood Road that I am there is a big farmland which I believe is owned by the Queensland government and there's a big stormwater run off there and there was water in there bit that's nothing unusual, there's water in there after a storm.

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And you also, when you pointed matters out in that photograph, you described that there's some wetlands that we can see on this photograph, how did those wetlands cope?-- That's where, I believe, the water was really coming from, so I don't think - there's a big - there's a lake in there, I can't remember what it's called, there's lots of ducks and things and you can walk through, that's where the water came from. You can see in that photo, I think it's a dry dam, I dare say that fill up fairly quickly.

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When you say we can see in that photo a dry dam, where is that?-- Do you mind if I go and point it out again?

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No, that would be very good, thank you?-- I think that's - I think that's the dam there, and there's a bit of water there. I don't know when that photo was taken but that to me is-----

So when you refer to a dry dam, that's what you are referring to?-- Yeah.

And that's what you are saying filled up quite quickly, that area there?-- Yeah, I believe it would have, yeah.

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Now you also took some photographs of the damage to your house?-- Yes, we did.

And if I can just show you three of those photographs, they are coming up on the screen. Now this photograph was taken after the water had subsided?-- Yes, that was taken on - when we first could get back to the place to have a look at it, which was on the Friday.

Right?-- The afternoon of the Friday.

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Okay. And if we can have a look at the next photograph, please. That's of your backyard which we have seen in the other map, the image, that fronts on to the Brisbane markets?-- Yes, that's correct.

And so that shed or structure, that large structure that we're seeing, is that the Brisbane markets?-- That's the part of, yeah, which I think's the south gate.

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And you've talked about the drainage channel and is that drain channel beyond the fence that we can see in that photo of your property and the Brisbane markets there?-- It's just beyond the fence. You can see the back of my place and then if you can see the brown fence at the back.

Yes?-- That's the other side of the drainage channel.

Right?-- The water is up to about the second rung down on that brown fence.

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The water got to the second rung down on that brown fence?-- I can't quite make out the rungs on it, but it was - on that fence, it was about a metre beneath that fence.

Okay. I'm actually going to give you some of these photographs and if you can just mark on that where you believe the water got to. And when you're talking about where the water got to, when are you saying that occurred, what day?-- Some time on the Wednesday and the Thursday.

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Okay?-- We-----

Sorry, is that where you saw the water, or is that where you believe the water-----?-- Well, there is a - there still is now, in fact, there's a marker that shows where the water got to, just the mud stain, I assume.

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So could you mark that for us. Madam Commissioner, if I could just have that pointer, I'll mark it for everyone else, where that got to.

COMMISSIONER: It might be as well if, when you're ready, you tender the hard copy and I will just make it part of exhibit 595.

MS WILSON: Yes, I was intending to do that.

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So the water got to just under that, the top of that brown fence as indicated on this photograph. And there's one other photograph that I wish to show you, which is the next photograph, and that's inside your house?-- Unfortunately, yes.

As when you returned to it?-- Yes.

And that was on the Wednesday, Thursday?-- That photo was taken on the Friday afternoon.

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Friday afternoon?-- But, yeah, the water would have been there for most of Wednesday and Thursday, I would imagine.

Madam Commissioner, I tender that, the hard copy of the photographs.

COMMISSIONER: All right, they will just be added as part of exhibit 595.

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MS WILSON: At paragraph 27 of your statement - you don't believe that any of the recent developments, the Brisbane markets or any actions of the council had any real impact on the extent of the flooding?-- I don't think so, no.

Why do you say that?-- Probably - I think when it's something of that magnitude I don't know if raising a small area of a couple of factories any higher would make a huge difference to

Sherwood Road, and also anecdotal evidence I had just from people I would speak to that lived in the street for certainly a lot longer than I had, that before that large market development, the big shed that was in the photos, before that happened there was frequently a lot more water in that stormwater drain than there was during the flood event - sorry, during any rain event there was a lot more water in there.

1

Now post the flood events you've considered raising your house?-- Yeah, we have considered raising the house.

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But ultimately you deemed that's too expensive?-- Yeah, it's much too expensive, unfortunately. We had some preliminary soil tests done through a builder and the soil is, the soil is not best around there and that means that the cost of raising it would have just been far more than we had or would hope to have.

In your statement you provide some recommendations, some suggestions, and if I can take you to those now?-- Yes, certainly.

20

In paragraph 30, areas that are repeatedly flooded are unsuitable for continued housing and as example in 2011 the same Rocklea streets and houses were totally or partly inundated as were affected in 1974?-- Yes, that's correct.

So you go on and say that residential areas in Rocklea should be something that should be considered in the future as being unsuitable?-- I think in the longer term, yes. I mean, I don't suggest it needs to happen right away, but I think it's something that maybe could be considered working towards because where we are, it's such a small pocket of residential area in amongst a number of factories and market parks, and so I just wonder if it fits in with the whole theme of Rocklea where we are.

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You also refer to the storage of chemicals in the Rocklea area?-- That's correct. I'd imagine Rocklea being such an industrial area, not so much near us because it is markets, but the other side of Ipswich Motorway and the other side of the wetlands which weren't on the map there are a lot of - if you just drive past, as you know, it's a very heavy industrial area and so I'd imagine industry normally means chemicals and so I would hope that - they may be doing it already but I would certainly hope any dangerous chemicals are stored above the flood line.

40

Levy banks are raised and you provide a view about levy banks in the Rocklea area, can you tell us about that?-- It was called for a lot in the news after the event and certainly the markets, I think their PR team was behind getting levy banks put in because the markets is such a vital area, and I'm supportive of that, but as long as our house was on the right side of the levy bank. My concern is with the levy bank, if it is put up, then the people on the other side still can suffer and so I'd hope that were a levy bank to be considered,

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I would imagine it would be along Oxley Creek to isolate the Rocklea markets plus the rest of the Rocklea area, that our house would be included.

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And, finally, you raise the issue of installing covers or flaps over existing stormwater outlets?-- That's correct. That certainly wouldn't have affected our house because - when the water was overflowing from the wetlands, but certain other places that I was helping evacuate the next day, when water was coming out of stormwater drains that were an awful long way from the creek where the flood water never even linked up with the flood water from the creek, I just feel if flaps were on there, then that would prevent heartache for those people.

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Thank you, Mr Henningham, I have no further questions.

COMMISSIONER: Ms Brasch.

MS BRASCH: No questions, thank you, Commissioner.

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COMMISSIONER: Mr Dunning.

MR DUNNING: We have no questions, thank you, Commissioner.

MS McLEOD: No questions, thank you.

COMMISSIONER: Thanks very much, Mr Henningham, you are excused.

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WITNESS EXCUSED

MS WILSON: Madam Commissioner, I call Paul Cassels.

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PAUL CASSELS, SWORN AND EXAMINED:

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MS WILSON: Is your full name Paul Cassels?-- Paul Cassels, that's correct.

And you are a resident and owner of a unit at River Park Central?-- That's correct, 120 Mary Street.

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

Can I ask you to have a look at this document, please?-- Yes.

And that's the statement that you provided?-- That's correct.

Madam Commissioner, I tender that document.

COMMISSIONER: Exhibit 596.

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ADMITTED AND MARKED "EXHIBIT 596"

MS WILSON: Now you've lived at River Park Central in Mary Street since 2004?-- That's correct.

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And prior to purchasing your unit at that location you made some inquiries about the flood heights in 1974?-- Yes, I did familiarise myself with the flood levels. There's a disc on the polo club which shows the level that the flood got to and I just assumed that there could be some water in and around the area of 120 Mary Street when we purchased that.

And how did you - what did you assume any flooding - how did you assume any flooding would affect the property at River Park Central?-- When you look down the hill from where the disc is, it was just my natural assumption that River Park Central was in a lower point of Mary Street than where the disc was.

40

COMMISSIONER: Mr Cassels, can I get you to speak up a little and perhaps move forward a little too?-- Yeah.

Just a bit would help?-- Yep. The disc is at the polo club, if you look down Mary Street the road drops away dramatically and I just assumed that it would be lower than the disc.

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MS WILSON: When you're talking about a disc, what are you referring to?-- It is a flood level disc on the polo club in Mary Street.

It's on the building?-- Physically on the building.

So you went down there, had a look-----?-- Yes.

-----to see where the flood level was there, and then you tried to relate that back to-----?-- That's correct.

-----your property at Mary Street?-- Yes, that's correct.

COMMISSIONER: I'm sorry, I'm not really still understanding. What is this disc, is it just a marker?-- Yeah, it's a marker disc for flood levels, the 1974 flood.

10

Thank you.

MS WILSON: Did you, after looking at that disc/mark at the polo club, did you have any concerns about the basement and ground floor of River Park Central?-- No, I didn't at the time. We just assumed that there would be - when I purchased the property we checked that there was some pumps in the basement and that they were serviced regularly and running well, and I assumed that they would be more than capable of pumping out any water that did come into that area.

20

The building at Mary Street has one basement level?-- That's correct.

An electrical substation below the basement level?-- That's correct.

A pump station room on the basement level?-- Yes. There's a fire fighting pump including our portable water pumps which pump the water up to the building, they were all located in the basement.

30

And you also refer in your statement to a sump, can you tell us about that?-- The sump is actually built into the floor of the basement and has submersible pumps into it that pump into the stormwater drains and that is actually lower than the electrical transformer room. I've never actually been inside to investigate in the electrical transformer room because normally people aren't allowed in there, it's a substation room and only EnergX people go into it.

40

And when you are referring to the electrical transformer room, are you referring to the electrical substation?-- That's correct.

And that is located at the lowest point of the building?-- The bottom of the sump would be lower than that, but the - but the electrical substation room is lower than the basement level.

50

Now on the 10th of January this year you heard reports of flooding?-- Yes, that's correct.

And then began making preparations by removing equipment from the storage area?-- Yes. We have storage areas located on the ground level and in the basement and we moved most of our goods up to our apartment and put everything on the balcony and inside the apartment that we could at the time.

Just going back to actually what also is at the basement level, I left out one other piece of infrastructure, so to speak, there's a stormwater drain?-- That's correct. There's a stormwater drain running along the back between Mary and Charlotte Street that services a number of buildings in that street and it enters into our building and then exits our building into the neighbouring block which is 110 Mary Street.

And you refer to that as an exposed stormwater drain?-- Yes. It is not encased in any way, it is just a normal drain. It was made of plastic in a square form and it's been replaced since by the insurer by a round pipe.

10

That's the round pipe that's coming into your property, is that the case?-- That's correct.

What about outside your property, can you see the stormwater drain there?-- No, you can't. It's in the basement itself, it runs into the basement, runs along the basement and then exits our building. We don't know where it comes from or where it goes.

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Now on the 12th of January your power was cut?-- That's correct.

And the power remained off for three weeks?-- Yes. There was transformers installed on the Sunday night but the power was not turned on to the building for 21 days.

30

On the 12th of January you witnessed the water flowing into the sump area?-- That's correct.

Where was that water coming from?-- In the sump - there is a number of drainage points in the basement that run into the sump and the sump pump then pumps the water out that flows into it. There was one pipe that flows over, into the direction of the substation power room and that was flowing more water into it than any other of the drain points.

40

And the stormwater drain on the 12th, can you tell us about that?-- The stormwater drain was - if you could imagine a, when you blow a bag up it expands. The contours of the drain were expanding. There was a lot of water pressure into it and the joints were starting to leak under the pressure.

Is the stormwater drain what sometimes referred to as agpipe?-- No, no. This is an actual - it would be nearly 300 millimetre round. It's a round drain now. It was a square drain.

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Exposed at the time?-- Yes, that's correct.

But as you said now that it's been-----?-- Well, it's been replaced, the square boxing gutter, or the square boxing pipe has been replaced by a round pipe, but it's still exposed.

At the peak of the flood what height did the water reach in

the basement?-- It reached the level of 2.3 metres, about 300 ml below the ceiling height, within 100 millimetres of most of the lights. We did have some light damage and fire detector damage in the basement but we believe we got off very lucky. There is a number of fire doors. All the ventilation fans were damaged and everything below that flood level was covered with water.

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And when do you believe that you experienced the peak of the flood?-- It was on the Thursday morning at the high tide level, it was around 3.30. I've got pictures of the water level as it moved up Mary Street from Albert Street and I put little piles of sand and it just tracked up to those piles of sand, so we kept an eye on it. We had sand bagged in preparation for flooding from the front of the building.

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On the Sunday morning, which is - is that the 16th?-- 17th, I think.

17th?-- Yeah, 12 and 5 - 17, yes.

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On the Sunday morning-----?-- On the Sunday morning we'd had our basement pumped out, gurneyed and washed and had people in there working, trying to get, restore the services to our building, fire fighting pumps, water pumps, ventilation fans and stairwell pressurisation fans.

And water - EnergX opened the substation room so water could be pumped?-- Yes. I think it was a 75 ml submersible electric pump was dropped into that room and it continued to pump all day on the Sunday. The room just kept filling up with water.

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And when did that, or was all of that water pumped out of there?-- It would have been over the next day or so because EnergX were just supervising that, they supervised that pumping. I sort of spent a fair bit of time during the flood helping but on Sunday morning when other people arrived I sort of ensured that I'd done my bit and other people took over.

40

You looked in this room and took some photographs?-- Yes, I did.

You ascertained that as the water was filling in from the substation floor and into the basement subarea it might have entered via the electric cable conduits and the-----?-- That's what I assumed. As I said, I haven't seen any evidence to counter that.

And do you qualify that statement by saying that you cannot say for sure?-- No, because we were not allowed to enter and investigate it, but I would like to see something from EnergX proving that that room is sealed.

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And you've provided some photographs and perhaps now can I show you some of those photographs?-- Yes.

Now the first photograph is the sand bagging occurring outside

the building?-- That's correct.

1

And when was this photograph taken?-- It would have been taken before 10 o'clock on the Wednesday evening.

The next photograph, now that has a mark across the street of 1974, do you know what that mark represents?-- That building was in construction, it's the Rio Tinto building on the corner of Albert and Charlotte Street and I just - I don't know whether or not that's factual, where that level would be, but it was interesting just to take a picture of it to see the water level across the street and that we still had a lot more water to go to reach the 1974 level.

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Perhaps if you can see the next photograph?-- Yes.

Now when was this photograph taken?-- That would have been on the Wednesday, which was the 12th.

And the water rose - the water had not yet peaked?-- No, that's correct.

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If you could have a look at the next photograph, please? Now, this photograph shows almost - well, it is a waterfall?-- It was a huge waterfall from the water entering Margaret Street into the Vision site at - between Vision and Mary and Margaret Streets that side is, it's still full of water today, but I actually believe that saved a lot of the City highrises.

1

And why is that?-- Because of the amount of water, that's - it's over eight storeys deep and it consumed a hell of a lot of water over the whole time of the flood. I think the - it went from a number of water spouts to a huge wall of water on the Wednesday night when the flood peak arrived, it was a roar.

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And perhaps if we can have a look at the next photograph?-- Yes.

Now, what is that a photograph of-----that's looking from the ground level down into the transformer substation room.

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So, we're looking down through that grille?-- That's correct.

And-----?-- They're the cables coming out of the tops of the transformers, I assume.

And is that - those cables, are those the cables that you may have some concerns about?-- No, it's the ones where the cables enter the building.

Right. And if we can have a look at the next photograph?-- That's a photograph of our exit on the left-hand side of the building next to the commercial - there's a commercial optometrist on our building on the lower floor and there's a fire escape on the left of that. That's the level that the water got to when pumping started.

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Did you take any photographs of the electrical cables that you had some - that you may have some concerns with?-- I couldn't because I couldn't get into the room to do that.

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Madam Commissioner, I tender those photographs.

COMMISSIONER: Those photographs will be Exhibit 597.

ADMITTED AND MARKED "EXHIBIT 597"

MS WILSON: Thank you, your Honour. I have no further questions. Just wait one moment.

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COMMISSIONER: Somebody might have, I am not sure that they will. Ms Brasch?

MS BRASCH: No questions, thank you.

COMMISSIONER: Mr Dunning, do you have any? Or Mr Porter?

1

MR PORTER: No.

COMMISSIONER: Ms McLeod?

MS McLEOD: No questions, thank you.

COMMISSIONER: Thanks, very much, Mr Cassels, you are excused.

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WITNESS EXCUSED

MS WILSON: Commissioner, I call Ann Clarke.

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ANN HILARY CLARKE, SWORN AND EXAMINED:

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MS WILSON: Is your full name Ann Hilary Clarke?-- Yes.

And I am afraid, Ms Clarke, you have got to speak up quite loudly so we can all hear you?-- Yes, and I might have trouble hearing you too.

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Okay. Well, I will speak up as well?-- Thank you.

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

Can you have a look at this document, please? Is that your statement?-- Yes.

Commissioner, I tender that statement.

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COMMISSIONER: Exhibit 598.

ADMITTED AND MARKED "EXHIBIT 598"

MS WILSON: Now, you are the president of the Oxley Creek Catchment Association-----?-- Yes.

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-----incorporated. And this association was set up in - originally set up in 1995 as an Integrated Catchment Management Organisation?-- Yes.

And can you tell me what an Integrated Catchment Management Organisation is and does?-- Well, in theory, the Queensland Government at that stage was still toying with the idea that we could have ICM in Queensland, but they weren't prepared to put any money into it, and it's supposed to be an organisation where community, government and industry come together to solve problems.

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The association works with the community and is that the community around the Oxley Creek?-- The whole catchment, 260 kilometres square.

And can you give me some idea what that boundary is?-- Right. Well, if you start at Graceville, Tennyson.

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Yes?-- And you go 70 kilometres southwest, you end up on a mountain just north - on the northeast side of Flinders Peak, so that's a 70 kilometre long and it sort of comes down through - used to be Beaudesert, Logan City, and then all the suburbs around Forest Lake across to Algeester, so it's got quite a few tributaries.

And you work with your community to monitor catchment issues

and you run regular information sessions?-- Yes, and we work with government and industry as well.

1

As a result of the January floods, the association was involved in the clean up of Oxley Creek?-- Yes.

Now, the association has some concerns relating to land planning and - land planning use management?-- Yes.

One of the those concerns is the way that industry protects or does not protect hazardous material from being flooded out of the premises?-- Yes, certainly.

10

Can you tell us about that?-- Well, I suppose not all industries, but some are very lazy about their practices, very poor housekeeping, they leave all sorts of things piled along the creek banks and I suppose in this particular flood they were quite unused to the water coming from a different direction.

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Can I just stop you there?-- Sorry.

Because you talk about in your statement about that industry is aware of restricting water from leaving their premises, but do not pay enough attention from water coming into their premises?-- That was an example I used from Dulux, because I know I have been if there in '98 they had bunding because they were required to under law, and - but obviously they had no idea that the creek could come in from the other side and think I it came in twice from anecdotal evidence.

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And one of the concerns of the association is when the water tops the bunding, the waters get mixed and then it flows back out?-- Yes, and it picks up all that material and takes it out.

And so does the association have a view about how this could be mitigated and/or resolved?-- Yes. Well, a couple of ideas we have had is if they have environmentally relevant licences, they should have a contingency plan built into their licence that they are prepared to, I suppose, put in their mitigating processes if an event is signalled, and we did have such an industry, which did do such a thing which I have mentioned in the statement.

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In your statement you use examples looking at the petrol stations and you mentioned the Dulux factory?-- Yes.

And those concerns that you raise there is just what we spoke about now?-- Yes, the fact that they don't have - yes.

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At paragraph 14 of your statement, you describe that one of the association's ongoing initiatives is to put together a brochure for local businesses about approval procedures, reporting, and penalties for the storage of hazardous materials?-- Yes, because it's very complicated. So, we work a lot up in the Coopers Plains area with a group and we call this the Creek Watch Project and we as well as our industry

partners wanted to have a clear understanding of who to ring in the result of a spillage and so we started drafting this booklet so it could explain to us, the rest of the community, and our industry partners exactly what happens when A, B and C might occur.

1

And one other matter that you refer to in your statement is locating sewerage treatment plants on a flood plain. Can you tell us about that?-- Well, I suppose gravity demands that you place a sewerage treatment plant on a flood plain, but we were really most upset that Oxley sewerage treatment plant suffered so badly, we knew it had gone under in '74, we assumed that with the - 170 million was spent 2006/2007 - that some - some measures would have been taken, but, of course, they weren't and with the result that Oxley sewerage treatment plant was sort of knocked out of operation. So, we have talked with them about it. They're obviously going to have to go back and do some very simple things to make sure they're not knocked out of operation again.

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Can I stop you there?-- Yeah.

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What are the association's view of the simple things that could be done?-- Oh, well, put your power points up high - I think they might have put their power points up high but they left their junction boxes down low. There must be - you know, a myriad of simple things.

And you are just looking at some flood mitigation matters that could allow for that not to occur?-- Yes, please, yes.

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Thank you. I have no further questions?-- Thank you.

COMMISSIONER: Ms Brasch?

MS BRASCH: No questions, thank you.

COMMISSIONER: Mr Dunning?

MR DUNNING: No questions, thank you, Commissioner.

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MS McLEOD: No questions, thank you.

COMMISSIONER: Thanks very much, Ms Clarke, you are excused.

WITNESS EXCUSED

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MS WILSON: Madam Commissioner, Ms Kefford will take the next witness, Mr Bolland.

MS KEFFORD: Morning, Commissioner. I call Stephen James Bolland.

STEPHEN JAMES BOLLAND, ON AFFIRMATION, EXAMINED:

COMMISSIONER: Take a seat thanks, Mr Bolland.

MS KEFFORD: Is your full name Stephen James Bolland?--
Correct.

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And you provided a statement to the Queensland Floods
Commission of Inquiry. Can I ask you to look at this
document, please? Is that a copy of your statement?-- Yes,
it is.

Commissioner, I tender that statement.

COMMISSIONER: Exhibit 599.

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ADMITTED AND MARKED "EXHIBIT 599"

MS KEFFORD: Ms Bolland, you live in a Queenslander-style
dwelling in Torwood Street at Auchenflower; is that correct?--
Correct, number 24.

You purchased your property in December 2008?-- Yes.

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At the time that you were looking to purchase the property,
did you engage solicitors to conduct a number of searches on
your behalf?-- Yeah, we engaged a conveyancing surveying
company.

COMMISSIONER: Mr Bolland, can I get you to talk up a bit?--
Sorry. Yep, we engaged a surveying company Cartner & Cartner
I think was the name of it.

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MS KEFFORD: And as part of the information that you requested
them to obtain, I understand that you requested they obtain
information about the potential of flood for the particular
property?-- Yeah, my wife has a history in insurance so she
asked the questions of the company, yes.

And at attachment 1 to your report - to your statement, I
should say, is a Floodwise Property Report. I will just bring
a copy of that up on the screen. Do you recognise this as the
report that you received from-----?-- Yes.

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Yes. And in terms of that report, the receipt of that report
heavily influenced your decision to purchase the property; is
that correct?-- Yes, yep.

And you indicate at paragraph 2 of your statement that the
report indicated your premises was in a low risk flood zone;
was that your understanding of the report?-- Yeah, that was

my understanding, yes.

1

If we could just - sorry, go back to the Floodwise Property Report, and can I ask you to explain to us how - what information you took out of this Floodwise Property Report that gave you that level of comfort with respect to the flood risk of your property?-- Yeah, from reading the report, from reading - from 1.1 through it didn't alert me or tell me that there was any great likelihood of flood. 1.1 talks about, "The information supplied does not represent the highest probable flood level."

10

If we could just stop there? So, what do you understand that to mean?-- I was just about to say, not understanding a whole lot about flood in Queensland, it didn't say to me, "Your risk is high."

So, the absence of a statement that there was a high risk led you to believe that there was a low risk; is that-----?-- It led me to believe from my assessment it was acceptable to me, that it didn't say high risk and I should be concerned.

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Did you look at the second page of the Floodwise Property Report, do you recall?-- Probably at the time, probably meant as much to me then as it does now.

And what is that?-- Not - it's not in a form or a language that I particularly understand.

Do you understand - we see at the top there's a reference to "defined flood level 5.4 metres AHD". What do you understand that to mean or do you have any understanding as to what that means?-- I have no idea what AHD means, but it didn't make much - didn't make much understanding to me. We had a look at the area, we had a look at - we went up and had look at the river. We were moving from the - moving from the north end of the Gold Coast. It didn't seem to make much sense to us. We looked at Coronation Drive and looked at the report and made a decision that we thought it was not a flood area.

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If we turn over the next page, we see that terms such as the AHD are defined. Do you recall whether you looked at those defined terms at all?-- No.

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If I were to tell you that - if we go back a page to where there's the reference to the defined flood level, if I were to tell you that the information indicates that the defined flood level of 5.4 metres AHD read together with the maximum ground level of 3.2 metres AHD indicates that the level that water may get to in a defined flood event will be 2.2 metres higher than the highest point on your land, does that surprise you to learn that this is what the information conveys?-- Yeah. If - yeah, if that's what they meant. If that's what minimum and maximum ground level mean, yes. I didn't understand that.

50

If you understood that information at the time that you purchased your property, what action would you have taken?-- If I'd understood that time when we were looking, I would have

probably continued on with two or three other properties that we were looking at in the area.

1

Now, go back to paragraph 3 of your report. You say that, "Soon after purchasing the property we decided to - that you decided to raise the house so that the ground floor was three metres high."; is that correct?-- Yes.

Was there any particular reason that the decision was made to make it three metres high?-- There were two reasons. We were lifting the house to create off-street parking because we had a new baby and we wanted to increase the area because it was a small - a small cottage, so we increased our shaded area downstairs and for storage, and initially the house got lifted a little higher than that, and we looked at it and it looked a bit out of skew, so we dropped it back down so we're still within building requirements if we want to build in downstairs, and that's the reason it got to that level. We also got advised at that time by our builder who was doing an inspection through the house that he could - he came and said to us he could see where water had come to in the house in the '74 floods. So, not having moved to Queensland - moved to Australia 14 years ago, we had sort of no background knowledge of that '74 event specifically to that area. We knew it had occurred.

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If we can move now to January 2011 at the time of the floods, on the 11th of January were you concerned about the news report bulletins that suggested Wivenhoe Dam was at 110 per cent full?-- I was in the sense that I'd - had read some content around the Wivenhoe Dam which was irrelevant to flooding, but I had seen something that had mentioned it was an operating level at around about 70 per cent or had been recommended to operate there, and I think we were just doing some review on that totally unrelated to floods quite some time before, and it had been - kept going up and someone had work had mentioned it was very high, so.

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COMMISSIONER: Don't forget to keep your voice up?-- Sorry?

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Don't forget to keep your voice up?-- Sorry.

You were doing really well, but you have dropped a little?-- Move a bit closer. And it had been mentioned by people at my work who obviously - who - not obviously but are local Queenslanders and family here, that that was very high.

MS KEFFORD: And I understand that on the 11th of January you cancelled a trip to Sydney that you had planned?-- In the morning, yes, they started talking about street surface flooding, et cetera, and our street tends to get wet on king tides, the water comes up through the drains, and I chose not to travel because they were still talking about flooding on TV and a few days of flooding and hadn't really declared it to be as large as it was going to be, so I just cancelled my trip instead of leaving my wife and son stranded in the house.

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You started at that point in time to clean out your garage?--

Yes, prior experience with The Gap Creek storm we'd had sort of shin height water through downstairs with extreme amounts of overland water coming down from Paddington and we decided just to clear up the garage and there'd been some people walking down the street from - I'm not sure whether it was the council or SES but they were saying that they were looking to get people out because they knew the street was going to go under, bit of a repeat offender, so we just started clearing the floor and by the time we'd sort of got through that exercise someone from work had called me and said you should probably clear up - you know, clear a couple of feet, so we did.

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Did you first observe water in your street on the Tuesday, the 11th of January around 9 a.m.; is that correct?-- Yes, started coming up to the drain levels - sorry, sitting around in the drain levels. We were standing out there in the morning.

When you say it started coming up and sitting around the drain levels, what are you talking about?-- There was a drain outside our next door neighbours' to the right, which is 26, and across the road about 25, and you could see the water coming up.

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Bubbling up through the drain?-- Yes.

And is that when you first noticed the street starting to flood?-- Yes, yes, that's - it's a minor event, we get it on king tide, so.

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In your statement you make reference to the fact that you were evacuated in a boat by the police and SES?-- No, we were asked to leave.

Oh, you were asked to leave?-- We didn't get evacuated, we were - they came around to ask us to leave and I sent my wife and son out earlier while I continued to pack up downstairs.

And you didn't leave the area until around 2 p.m.?-- After lunch, yeah, 1, 2, and it was getting deep by then.

40

Where was the water up to at the time that you left the area?-- I waded out in the street, so I think it was - from memory, sort of wading.

So, you are indicating your waist, about waist-----?-- Yeah, sort of.

Thigh high or waist-----?-- It's getting - I moved - moved the car around the corner and done a few loads and-----

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And at the time that you left, were you concerned about your house?-- No. I honestly at that stage, that height into our garage, it was - there's another metre and a bit from the street to the slab there downstairs, and we'd at that point cleared out most things and taken them upstairs - I actually thought I was getting a bit overly paranoid - and left a few

things tied up into the ceiling and locked the doors and drove out, and headed down to my sister's, we were going to spend a few days there, so.

1

When did you first go back to the area after having left on Tuesday, the 11th?-- On Wednesday after the news on Tuesday night, it started escalating, you know, every time we heard the news it got worse and worse and then people started talking about '74 and we knew that - we knew now what that was and we thought, "Well", you know, "it can't it won't be that - it won't be as bad as '74, we have got the dam to protect us, we're probably good, we have got three metres.", and what we had downstairs we have got quite prepared to lose without going back to move, and then the news just got worse and worse. On Tuesday night, Wednesday morning it was even worse so we decided to grab our boat from my brother's next door neighbour and sort of four of us went back to the house probably - we probably got there about 1 o'clock, I think, took a couple of hours to get there.

10

Where was the water at that stage when you went back?-- It was three physical steps from the floorboards of the second floor.

20

Three steps below it?-- Below it, yes.

And is that about 2.7 metres off the ground, would you say?-- It would be close, they're just standard size steps, yeah.

What did you do at that stage?-- I stood and looked for a while. It was pretty - pretty scary, and then we spent just under four hours putting as much as we could - the stuff downstairs was gone, we put - spent four hours, just under four hours putting as much as we could into the attic of - into the ceiling and balancing stuff and standing stuff on top of benches and then as we left-----

30

When you left, where was the water to at that stage?-- It was about - just under one step away from the floorboards, so it had come up sort of one and a half, nearly two steps.

40

And did you go back to the house again on Thursday, the 13th of January after the peak of the flood?-- Yeah, yeah, we got back again on the - just - about lunchtime maybe.

And had the water subsided at that stage?-- Thursday - was that the Thursday or the Friday? It was the - we were back on the day - for some reason I forget the dates, but we were back on the day after the peak that night, if that was-----

50

So back on the Thursday I think you say in your statement. In any event, when you went back in, the peak water level had subsided to below the floor height?-- Yeah, that night it had peaked to - sort of thigh height in our second floor and when we got back there, it was now back - back down to the first landing on the stairs, which is approximately half that distance from the floor to the ground.

I take it you observed the peak height based on mud that was-----?-- Oh, yeah, yep.

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-----on the walls and the like. So, you have provided us with some photographs. If we could just bring - which you have attached to your statement. If you could just explain to us what we see in the photographs, where's this photo-----?-- Yeah, sure.

-----taken from?-- That was our lounge room, so you can see the - the tide mark just below the window sill there, and that's some of the stuff we stacked up but not understanding the water would disturb our stacking piles.

10

And so this was in the upstairs area of your house?-- Correct, yes.

If you go to the next photograph, where's this photograph taken?-- That's downstairs, that's - we had a shed in the property downstairs - out the back of the house downstairs, and water crushed the roof and everything in it and in the panic hadn't even thought about the content of the shed.

20

And the third photograph?-- Again in the shed, yes.

And then if you go to the fourth photograph, what does this - this is obviously after the floods?-- Yep. That was just the shot so we could- that's straight off our front doorstep, so that's standing at the floor height, standing on the front doorstep and-----

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Looking out into the street that you live on?-- Yeah, it shows Torwood Street, number 25 on your right-hand side, and where the water came to there a little bit higher than them.

Now, in your statement you voice some concerns and one of those concerns is about drainage problems in the street?-- Yes.

You feel drainage to be the primary cause of flooding; is that correct?-- Yeah, when we have king tides, we have water up through - that comes up through the drains. It has sort of achieved heights of - into sort of 20, 30 centimetre - 20 centimetres, maybe 30 centimetres short of coming into our garage, so in the street it would be half - half a metre plus and that's just from a king tide.

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The street, if you go back to the photos, is very concaved, so the centre's very high. You can see the water's still down in between the boat and the four-wheel drive, which is the boat we used. So the water sits in the gutters but the centre of street's higher. So depending on where you park is depending on how deep it is.

1

And in terms of your concerns about the drains, you do note that the drains in question are cleaned out regularly by the Council on your request; is that correct?-- Yes, we get two types of blockage. After the king floods (sic) they get full of rubbish and debris and we have water that gets retained and we ring up and ask them to clear the drains. After the floods we had five days of flooding until we called the Council again and said-----

10

COURT REPORTER: Sorry?

WITNESS: Yeah, each morning for five days we had flooding and we rang the Council and literally the day after we'd called the Council, the tide was higher than the previous day, but we had no flooding, so we're pretty sure they cleared the actual drainage out and water was able to escape, so - but it's just - it's just lower, the street is lower than the king tide level on the other side Coronation Drive.

20

MS KEFFORD: And I understand you'd like to see the Council do more than simply clean out the drains on those regular occasions. What else would you like to see the Council do?-- I'd like to see them - I don't think one-way valve technology's new. There's examples of it implemented in many places in Queensland. I saw photos of a one-way valve implemented in a number of Queensland cities at a - at a presentation at Milton school-----

30

COURT REPORTER: Sorry, "a presentation"?

WITNESS: There was a presentation at Milton school two weekends ago on the 10th, I believe it was, where a group of people - Peter Matic was there, our local councillor, and they had photos of valving examples of how they deal with that.

40

MS KEFFORD: The other concern that you expressed in your statement related to the development of the old Milton Tennis Centre site. Has your concern about that site been resolved?-- Yeah, initially we were obviously concerned for two aspects in the development. There was (a) the height of the buildings and (b) they were proposing to lift the actual space, the land level so - which would have resulted, obviously, in more water runoff into our lower areas but Council have procured that land, they're making it into a park next year, I believe.

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Thank you, Madam Commissioner, I have no further questions.

COMMISSIONER: Thank you. Ms Brasch?

MS BRASCH: No thank you, Commissioner.

COMMISSIONER: Mr Dunning?

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MR DUNNING: Thank you, Commissioner. Now, Mr Bolland, my name is "Dunning". I appear on behalf of the Brisbane City Council-----?-- Sorry, I didn't hear your name, sorry.

Dunning. I appear on behalf of the Brisbane City Council. I've just got a couple of questions for you. Now, if I understand the sequence of events correctly you resolved to purchase the house in late 2008?-- Yes.

10

And at that stage the issue of flooding is one that you and your wife were alive to?-- We were?

Alive to the issue of flooding because you actually asked your solicitors to make a special search in that regard?-- It was just a general search. I've done it for any other property I've purchased.

20

So you've always searched for flood?-- Yes, I think so.

Okay. And obviously it's something that was important to you and you discussed with your wife when you received it?-- We looked at it, made an assessment based on our understanding, yes.

Okay. Great. And after you'd made that assessment you formed the view that you express in paragraph 2 of your statement, that was that it indicated the premises were in a low-risk flood zone?-- That was our assessment, yes.

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COURT REPORTER: Sorry?

WITNESS: Our understanding.

MR DUNNING: Have you got your statement handy? And you've got the FloodWise Report up?-- Yes.

40

Okay, thank you. Now, your wife has an insurance background, I understand?-- She worked for, yes, an insurance company in Brisbane, commercial stuff.

Certainly. We don't need to know the name of the company but she's worked for an insurance company?-- Yes.

And can I take you to some parts of the FloodWise Report. Can I, first of all, ask you to go, please, to the third page of it, and - because I appreciate our learned friend Miss Kefford took you to some of the provisions of it but I appreciate that it's now three years ago since you were actually reading this, so what I want to do is reintroduce you to the document to start off with. So are you on the third page that has up the top "5.1 Flood Level", "Defined Flood Level," can you see that?-- Yes.

50

Okay. And it's a little hard to see on the photocopy but you can see above that is a heading "Glossary of Terms"? Right at the top of the page, you see that?-- Oh, yes, in the bar, yes.

1

All right. Now, I want to take you to a couple of those expressions so that when we go to have a look at the rest of it we both know what we are talking about. And obviously these were the sort of provisions you read when you read the document. If you go to the first one, Defined Flood Level, you'll see the first dot point is the level used for planning purposes. For example, habitable floor level of a building is the defined flood level plus 500 millimetres. So when you read it you no doubt appreciated that there was this thing called a "defined flood level" and that the habitable floors were going to have to be 500 mls above that? Agreed with that?-- Okay, yep.

10

All right. And, likewise, if we go to the next dot point. When you read it you appreciated, as it said, that generally the defined flood levels had been produced using historic information and some computer-modelling. "where no computer models are available the defined flood level is estimated on the basis of the highest recorded flood level". You obviously saw that?-- I probably read it, I couldn't commit from memory, but I probably did.

20

The likelihood is you read it because it was important enough for you to get and want to read. So the likelihood is you would have read it? Agreed?-- Yes.

30

Okay. Thank you?-- I did.

And then can I take you, please, to 5.2, and again the likelihood is you would have read what was recorded there, that the highest recorded flood level is the maximum level of floodwaters from an historic event for which Council has records? Sorry, again the likelihood is you would have read that at the time?-- Likely.

40

Yes. Sorry-----?-- Understood it.

-----you need to say it, not just nod?-- Yes, likely-----

Thank you?-- -----no-----

Can I then take you, please, to 5.6, and remember up in 5.1 I took you to this expression "habitable floor level"? And if you go to 5.6 you'll see it describes "habitable floor level" as the, "minimum level at which habitable areas of development, generally including bedrooms, living rooms, kitchen, study, family and rumpus rooms, must be constructed," you see that?-- Yes.

50

And again, so that you could make sense of it, the likelihood is you and your wife read that expression at the time you read the report?-- Yes, it's likely, yeah.

Okay, thank you. Then can I take you, please, to 5.7. AHD, Australian Height Datum, and the dot point says, "is the survey height datum adopted by the National Mapping Council of Australia as the reference point for defining 'reduced levels'. The level of 0.0 metres AHD is approximately mean sea level". So, again, the likelihood is you read that at the time you read this document?-- I don't remember but it's likely.

1

Thank you. Then can we go, please, to 5.8 and minimum ground level, and you'll see there that "minimum ground level" is described in Glossary of Terms as, "is the lowest natural ground level on the applicant's property. Check with a registered surveyor for further information on ground level". So again the likelihood is you would have read that at the time you read the document? Agreed?-- Same answer-----

10

Okay, thank you. And then 5.9, maximum ground level, and in this case it is the highest natural ground level and again recommends a registered surveyor for further information, and I take it your answer is the same, the likelihood is you would have read that at the time?-- Yep. Don't remember but likely.

20

Okay, thank you. And then can I take you to 5.11, please. The ARI, average recurrence interval, and the glossary describes it as, "a statistical estimate of the average period of years between the occurrence of a flood of a given size or larger. Eg the 100 year ARI flood event will occur on average," and it emphasises the word "average", "once every one hundred years, however a ARI of a flood event gives no indication of when a flood of that size will next occur". Now again consistent, I gather, with your other answers, the likelihood is you would have read all of that?-- Don't remember but likely.

30

All right, thank you. And those particular expressions, and the description given to them, as we've gone through them today, are straightforward enough; you'll agree with that?-- The definitions of them-----

40

Yes?-- -----reading them now they seem straightforward but-----

Okay, thanks very much-----?-- -----they don't mean much to me but-----

Now, can I ask you, please, to go to the first page of the - in fact, before we do that, I might ask you to go to the fifth page. It's the page before we see the street plan. Can you see a page that doesn't have a heading at the top, it starts with a paragraph, "Property owners can be"?-- Yes.

50

All right. Can you go down to - you'll see a heading at about the middle of the page, "Major Flood Mitigation Schemes and Floodplain Management"?-- Yes.

All right. Now, if you - I'll just take you to two passages. In the second paragraph there you'll see it says, "Since 1974 several major flood mitigation schemes have been implemented by councils to reduce flooding problems. Whilst these schemes and the construction of Wivenhoe Dam have reduced river and creek flooding, flooding can never be eliminated." Do you see that?-- Yes.

1

All right. And the next paragraph, "Other floodplain management practices implemented by council include," and the first dot point, "minimising the risk of flooding by setting minimum habitable floor levels in areas prone to creek or river flooding during major storm events". Do you see that?-- Yes.

10

Now, it's, I gather again, likely that you and your wife would have read that when you read this report?-- Same answer, yes.

Okay. Thank you. Or should I in fairness, though, suggest to you that it's possible, this is right towards the back of the report, that - do you think it's just as likely you would have read this or not quite as likely as you would have read some of the rest of it?-- In terms of the weighting of the information in this-----

20

Yes?-- -----the front page kind of set a tone for us.

All right-----?-- Did we get right through to the back and - with the same level of detail? To be honest I couldn't tell you from memory-----

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All right, but I gather-----?-- -----but it's likely - it's likely I took a fair amount of information from the front page telling me-----

All right. So you think you probably paid more attention to the beginning than the end?-- I'm pretty sure we would have read it right through but-----

All right, all right, it's no-----?-- -----more about understanding what it meant.

40

Okay. Well, then, I - would it be fair to say that in answer to the proposition I put to you is the likelihood is you read the whole of the thing not just part of it? Agreed?-- Yes.

Okay. Thanks. And, again, those two passages I've taken you to on that fifth page, they're in language that's perfectly understandable enough, you'd agree?-- The items we just went through?

50

Yes?-- Yeah, as they sit by themselves as statements, yeah.

Okay, thanks. May I then take you, please, to page 1 of the FloodWise Property Report, and I gather from your evidence, not only to me but to our learned friend Miss Kefford, 1.1 was a provision of some importance to you?-- Sorry? I missed-----

1.1 was a provision of some importance to you, I gather from an answer you gave Miss Kefford?-- Yeah, yes, definitely-----

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All right?-- -----part of the first information we read, yeah.

Yeah, all right, and, so, the first thing it tells you is, "the flood information supplied does not represent the highest probable flood level that could occur on this property, a flood of more severe" - "a flood more severe than a defined flood can/will occur although such events are rare". So that was undoubtedly something you took away from reading the document? Agreed?-- Yes.

10

Okay, thank you. May I take you then, please, to 1.7 on that page and you'll see that it records, "a flood report" - "the flood report is a guide only and should not be used or relied upon for development purposes. For development purposes it is recommended that a registered surveyor or engineer be engaged to undertake the appropriate assessments". You see that?-- Yes.

20

All right. And, again, the likelihood is obviously you read that?-- Yes.

Okay. Thank you. And then can I take you, please, to 1.8. "For the reasons set out above Council makes no warranty or representation regarding the accuracy or completeness of a flood report and Council disclaims any responsibility or liability in relation to the use or reliance by any person on the flood report". Do you see that?-- I do.

30

All right. And, again consistent with your other evidence, the likelihood is you read this?-- Yes.

Okay, thank you. And would it be right that, consistent with some of your earlier evidence, you have no difficulty in understanding the language used in 1.1, 1.7 or 1.8?

COMMISSIONER: Actually, I had thought that the witness had said a couple of times, "whether I understood it's another thing".

40

WITNESS: I do understand it as an individual statement but its relevance to where the flood levels and what the flood risk is I do not understand it-----

MR DUNNING: Then I might be mistaken. I'd be surprised if I'd have passed on without exploring that, but perhaps I'm mistaken. I do remember one remark but I thought I'd agreed - I thought I'd got Mr Bolland's agreement.

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COMMISSIONER: Well, I had thought he'd left a couple of things on the basis he may not have understood the content, but, at any rate, the larger question seems to be whether he joined the dots, and, as I understand his evidence, he didn't. And I do wonder whether perhaps this isn't more a matter of submission about whether that's the problem of the form or whether it's just unfortunate in this particular case, but I

don't want to cut your cross-examination short-----

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MR DUNNING: No, I appreciate that and I appreciate, Commissioner, you bringing it to my attention. We've got a general disposition not to tax our rate payers who have had the misfortune of being flooded with cross-examination, so we would only have done this because not only does it appear in the statement but it then got opened as well in evidence in chief when-----

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COMMISSIONER: Well, I thought what Miss Kefford did was pretty effectively show what the problem was of misunderstanding.

MR DUNNING: Well, with very great respect, no. The - there might be lots of explanations for how the statement came to express itself in the way that it did but misunderstanding - a genuine misunderstanding, that is a genuine reading of the statement and misunderstand - reading of the document and misunderstand it in our respectful submission seems unlikely and-----

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COMMISSIONER: Just - well, then, put to Mr Bolland what you're saying the situation is.

MR DUNNING: I'm about to, your Honour.

COMMISSIONER: All right, thank you.

MR DUNNING: Can I ask you, please, to go to the next page for me, Mr Bolland. And you'll see there the - a table - it has at the top, it's a little hard to read, "Flood Level Information," and then you'll see under that, "The following flood level data is based on available information," you see that?-- Yes.

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All right. Now, this is something undoubtedly you would have read because it's the crux of the document. Do you agree with that? These tables?-- I would agree I read it, I wouldn't agree it was my understanding it was the crux of the document.

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All right. All right. Anyway, we're agreed you read it. And when you read it you saw what it said, "the following flood data is based on available information," and you'll see there in item 1, "defined flood level is 5.4 metres AHD". Do you see that?-- I see it, yes.

And it tells you the highest flooding is from the Brisbane River. Do you see that?-- Yes. Yes, I see it.

50

Now, in light of that and those expressions out of the glossary on the next page you'll agree with me, won't you, the likelihood is that when you read this document you appreciated that the defined flood level for this property was 5.4 metres AHD and that was from the Brisbane River flood? So 5.4 metres above sea level and the source of flooding is the Brisbane River?-- At the time I did not understand that to be a previous flood level or any experience now at our property

we - I must admit we didn't particularly understand that table at all and-----

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All right-----?-- -----and having had it further explained to me now it's - as the crux of the document, it's not something we understood as a - stating to us this is a massive risk.

Okay. Go to - you'll see "defined flood level" and you see a footnote, "refer to Glossary of Terms for definition"?-- Yes.

10

All right. Now, you'd agree with me, wouldn't you, that had you gone to the glossary and looked at what "defined flood level" meant you would have realised that "defined flood level" was the product of either historic information or computer-modelling for that property?

COMMISSIONER: Are you asking is this Mr Bolland's construction of it now or whether it was his construction of it at the time he first saw the form?

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WITNESS: Yeah, my view to this table is quite different as now with further information it was-----

MR DUNNING: At the moment I'm simply asking-----?-- -----at the time-----

-----if you go - if you went and had a look at that definition of "defined flood level" you would have appreciated it?-- At the time I did not.

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Well I'm not asking that question, I'm simply saying that when he goes - looks at the meaning of the expression "defined flood level" he agrees that-----

COMMISSIONER: Is there a lot of point because he can look at it now and tell you, having been taken through it by you now, what he now understands but that's just not what he understood at the time. He didn't have you there, that's the problem.

MR DUNNING: Yes. I don't know that - he didn't need me there to read - perhaps I can-----

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COMMISSIONER: What are you saying about Mr Bolland? Are you saying that he did understand it and wilfully went ahead and bought this house with an understanding of it-----

MR DUNNING: No, your Honour-----

COMMISSIONER: -----and that he then didn't clear out things when the flood came in some sort of wilful adherence to a view of it? I'm just having trouble following what your thrust is.

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MR DUNNING: Your Honour, simply to say that remarks like, "This report indicated that our premises was in a low-risk flood zone," is just not right. It is a matter of regret, it appears in his statement-----

COMMISSIONER: Would you agree, Mr Bolland, you'd have to say that report indicated to you at the time, without a full understanding of it, that your property was low risk? Do you accept you may have made a mistake in the way you read it?-- At the time it was my understanding that it was not telling me I was in a high-risk area and based on that and a few other financial decisions and location, et cetera, we chose to purchase the property. If I'd sat here and if you asked me today if I'd do it again now I've digested this, you know, it's hard to say, we've been through the flood experience, but I would certainly make a different viewpoint to it.

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It's pretty clear, isn't it?

MR DUNNING: Well, I'm not going to ignore, obviously, your intimation to me so I-----

COMMISSIONER: Well, I don't want to be unfair to you, Mr Dunning, but it does seem pretty clear from Mr Bolland's evidence that he didn't join the dots with the form, he didn't look at the definitions and understand them in the context of the table, and that's the problem.

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MR DUNNING: Certainly, and on that we haven't challenged him, it's the - what is being challenged is the suggestion that having - it having been important enough to ask for the document and then to read it, "it indicated to me that it was minimal". I understand the point that you raise with me, Commissioner, and with that I'm not trying to tax the witness, that if all he did was, for whatever reason, not read the document carefully enough to appreciate what it says, we don't cavil with that and aren't here trying to do it, it's the suggestion that upon a careful reading you might have been left with the impression that's asserted in the statement.

30

COMMISSIONER: Who made that suggestion?

MR DUNNING: Well, that, in our respectful submission, is what is in terms said in paragraph 2. "I requested further information concerning the potentiality of flood due to its proximity to the Brisbane River. As a result of this request we received a report from our conveyancers, which included the Brisbane City Council FloodWise Report. This reported indicated that our premises was a low-risk flood zone. This report definitely influenced our decision to purchase the property. I'm able"-----

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COMMISSIONER: There is no statement there that that document carefully read would lead to that result. It indicated it to him, it's been made pretty clear how that came about, I do wonder the point of your cross-examination, but if you have something to put to him to the effect that when he says that's how he read it he's not being frank by all means put it.

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MR DUNNING: As I said, Commissioner, I'm not going to ignore your intimation, I've got one other topic I want to briefly raise-----

COMMISSIONER: All right, thank you.

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MR DUNNING: -----but I take it I am at liberty to address at the appropriate time on what fairly arises from the document.

COMMISSIONER: Well, it just seems to me the whole thing's a matter for submission, even if it's needed, given that everything seems pretty clear anyway.

MR DUNNING: Yes. Thank you, Commissioner.

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COMMISSIONER: All right.

MR DUNNING: Just one other matter, Mr Bolland. When you raised your house did you seek Council approval?-- Yes. Yes, we did, we sought Council approval. We went through a process with a surveying - sorry, what's the term, engineer forms, et cetera, and then we had a problem with a plumbing submission, which we then got fixed up prior to - it was resolved in November by our builder, who did the work, with his - November last year. It was resolved by him, the form was signed off, we had everything ready and the flood hit. So I have through the gentleman in Ipswich who's doing all the collection of the documents got three out of four documents reissued and it's just a dramatic process-----

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Sure?-- -----then we lost-----

One final thing. I think in answer to Miss Kefford's question you described Carter Capner as surveyors. Can I suggest to you they were your solicitors?-- Yeah, sorry.

30

Yeah. Okay. Thank you, Commissioner?-- Happy to be corrected there.

COMMISSIONER: Ms McLeod?

MS McLEOD: I have no questions, thank you.

COMMISSIONER: Miss Kefford, any re-examination?

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MS KEFFORD: No re-examination, Madam Commissioner, might the witness be excused?

COMMISSIONER: Yes. Thanks very much for your time, Mr Bolland, you're excused?-- Thank you.

WITNESS EXCUSED

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COMMISSIONER: We will take the morning break and come back at 10 past.

THE COMMISSION ADJOURNED AT 11.56 P.M.

THE COMMISSION RESUMED AT 12.10 p.m.

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COMMISSIONER: Yes, Ms Wilson.

MS WILSON: Thank you, Madam Commissioner. I call Dr Phillip Jordan.

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PHILLIP WILLIAM JORDAN, SWORN AND EXAMINED:

MS WILSON: Is your full name Phillip William Jordan?-- Yes, it is.

And you are a senior hydrologist?-- Yes, I am.

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You are employed by Sinclair Knight Merz and you have been so employed since January 2003?-- Yes, I have.

Now you have prepared a report for the Queensland Floods Commission of Inquiry?-- Yes, I have.

And that report is titled, "The Provision of Hydrological Advice to the Queensland Floods Commission of Inquiry. The Assessment of Impact of Quarrying Operations on Flash Flooding in Grantham on 10 January 2011?-- Yes, I have. That's correct.

30

Can you have a look at this document, please. Is this the report you prepared for the Commission?-- Yes, it is.

I note a page 2 it sets out your credentials?-- Yes, it does.

And you've previously provided a report to the Commission and given evidence to the Commission of Inquiry in Toowoomba?-- Yes, I have.

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Madam Commissioner, I tender this report.

COMMISSIONER: Exhibit 600.

ADMITTED AND MARKED "EXHIBIT 600"

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MS WILSON: Dr Jordan, your reports takes into account in the modelling that you've done a breach in the embankment between the quarry pit and Lockyer Creek near the northwestern corner of the quarry pit?-- Yes, it does.

And you provided various scenarios, and that scenario is

included in one of the scenarios that you provide?-- Yes, I've looked at three scenarios. I've looked at a scenario that includes the terrain that has been constructed, that existed prior to any quarrying operations on the site. A model that includes the quarry pit using terrain data from prior to the event, and so that scenario includes the breach in the embankment. And another scenario which is a hypothetical scenario which is what might have occurred if no breach occurred in the embankment.

1

I'm going to take you to those various scenarios and the modelling that you conducted in relation to those scenarios. But if I can just ask you about the breach which you refer to in your report at page 8 as approximately 55 metres wide and 8 metres deep?-- Yes.

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Where did you get that information from?-- So we had a LIDAR survey of the area from August 2011 and another LIDAR survey that was flown approximately - LIDAR, it's an acronym that stands for a light detection and ranging and it's a technology that's used with - that's flown from a, some sort of aircraft that picks up the height of the ground and the terrain in - when it's flown. So there was a terrain taken both - from August 2010 and also eight days after the flood event. And so by subtracting those terrain surfaces we were able to measure the height and dimensions of the breach.

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I see that you also conducted three field inspections?-- Yes.

And you note in your report that conditions had changed, or changes had occurred between the flood event and the field inspections, some changes?-- They may have occurred. The only - well, the most substantial change, I suppose, would be that the breach had been filled back in prior to all of my visits, I believe.

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Did these changed conditions affect the accuracy of your report?-- No, not in any way, because the modelling relies upon the aerial survey which is, was taken from prior to the flood event and immediately after, so I - the field inspection had no influence on the accuracy of the modelling.

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Perhaps now if I can take you to some of the figures that you include in your report?-- Mmm.

And the first figure that I wish to take to you is - take you to is figure 3.6?-- Yep.

Which will be found at page 13 of your report?-- Yep.

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Now this figure is titled the Terrain. The difference between 2010 pre-breach and the 1982 terrain. So this was before the January '10 flood event and comparing it to 1982 and what the differences in the terrain were?-- That's right.

And what we can see is the colours from the - the colour pallet from yellow to the red indicates a - in difference of levels, an increase in the levels?-- That's right. It means

that the level was higher after the quarrying had occurred, or immediately prior to the flood than it was in 1982. 1

So what it indicates, is it the case, that it indicates that the levels were higher prior to the flood event than it was in 1982?-- That's right.

Now I'm going to give you a pointer and I'm just going to ask you to show me and the Commission some features of this figure. We talked about-----?-- So let me see if I can pick up a - what am I pointing there? I'm not colour blind but I'm having some trouble. Here we go. Okay. So the most obvious feature is this large dark blue area here. 10

Yes?-- Which indicates the, where material had been extracted by the quarrying operations, and that pit is somewhere between four and at it's most deep point it's 10 metres below the surface in 1982. The other more important - most important points hydraulically are that there are a number of areas, features where, around the edges of the quarry pit where you can see the yellow, orange and red colours where the ground surface was higher immediately prior to the flood than it was in 1982. 20

And when we're talking about the embankments which we have previously referred to, what embankments were you looking at?-- So I was looking at each of those areas that are shown in yellow, orange or red on this figure, and so there is an embankment along - a thin, long thin embankment along the western side of the quarry pit and a number of other mounds or embankments scattered around the quarry pit, and from a flooding influence point of view the one that particularly influenced the flood on this occasion was the pit itself, and also this embankments that runs along the western side of the quarry pit which was about 380 metres long. 30

And the height?-- The height varied between three and five and a half metres above the height of the terrain in 1982.

Now if I can now take you to figure 4.2, which will be found on page 20 of your report. Sorry, I apologise for that, it is figure 4.3 that I wish to take you to. Now this figure is entitled the Peak Inundation and showing the depth of the inundation as at January 2011?-- Yes. This is our reconstruction of what actually occurred during the event. 40

So this is what - your reconstruction of what occurred on 10 January 2011?-- Yes, that's right.

And you're looking in this figure at the depth of the waters?-- Yes. 50

Now if we can just pick out some features. Can you show us where the quarry sits?-- So the quarry - the quarry is this large dark blue area here.

And can you show us Lockyer Creek?-- So Lockyer Creek runs along here, loops around the quarry and continues in this

direction and off the figure over here.

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And Sandy Creek?-- Sandy Creek runs down here and it crosses through - this is where the railway bridge is here, it runs through there and connects into Lockyer Creek here.

And the town of Grantham?-- So the town of Grantham starts about here, runs along the roadway here, and it covers this area here where you can see the smaller - the smaller parcels of land are indicated by the smaller areas of grey lines, if you like, over the top of the figure, that's where the houses are in Grantham.

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And which way was the water flowing?-- So the water was flowing from left to right on the figure, from west to east.

This figure includes the embankment collapse, can you indicate to us where that occurred?-- Yes. So the embankment collapse is - it's where you've got this dark blue area of colour here, connecting the main channel of Lockyer Creek to the quarry pit.

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And if we can look at the next figure, which is figure 4.4, this demonstrates - this model shows the depth without the quarry embankment collapse?-- Yep. So this is a hypothetical scenario that I ran that assumed that the embankment didn't collapse and you can see - you can faintly see that you've got light blue colours here. So the water did - so you don't have the same connection of dark blue colours across where the embankment collapse actually did occur.

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And what we're seeing here is hypothetical?-- Yes, it's hypothetical.

And why did you consider it necessary to run such a hypothetical model?-- I was just wanting to understand the potential sensitivity of any assumptions around when the embankment collapse might have occurred and what influence it might have had on the results for the flood in Grantham.

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Figure 4.2, which was the initial figure that I asked you to look at and then we moved on to 4.3, that shows pre-quarry terrain, so this model takes into account no quarry; is that the case?-- That's correct.

Now what is the difference between figure 4.3 which takes into account the quarry and the embankment collapse to what we have here?-- So that - the only difference is that the terrain in the area of the quarry has been modified in the two scenarios. So in the - so basically the differences are what was shown on that figure 3.6 that I included earlier so - that I showed earlier is that that - there was those two differences in the way that the terrain was included in the model.

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We'll come to your conclusions which we can join all of this information together?-- Yep.

There is another model that you did, and that was in relation

to the peak velocity?-- Yes.

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And if I can take you to figure 4.5 and for the moment let's put aside any hypothetical?-- Mmm-hmm, yes.

Let's just look at before the quarry was constructed and the effect of the quarry on the hydrological models that you did?-- Mmm-hmm, yes.

4.5 shows the velocity before the quarry. Now when we're talking about velocity we're talking about the speed of water; is that the case?-- Yes, it's the speed of the water.

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Okay?-- And it's a depth average velocity. So, in other words, it's the average speed of the water in - at that point across the full depth of whatever water is flowing at that point.

Now it will come up in one moment. Okay. So the red suggests the greater the speed?-- That's right. Red are higher speeds and green is low speed.

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And we can see the greater the speeds going along Lockyer Creek?-- Yes.

And we can also see some red which I believe is at the railway; is that the case?-- Yeah, there's some - some red spots in the model across the top of the railway. I wouldn't place a great deal of reliability on those particular values mainly because we've got - you've got a - I suspect it's due, potentially due to some small numerical instabilities in the model and that the model mightn't have been representing the weir flow behaviour over the railway completely accurately at those points.

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So do we discount those red dots reflecting a velocity at the railway?-- I would - yes, I would discount those particular dots in the immediate vicinity of where it's going over the top of the railway line.

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If we can then look at the next figure which talks - refers to the peak velocity as at the event of the 10th January 2011?-- Mmm-hmm.

And perhaps you could explain to us if there are any differences that you can see in this model with including the construction of the quarry?-- Yep. So the most obvious differences are in - obviously are at the vicinity of the quarry itself, or in the quarry itself, and this area of red, yellow, orange colours coming from where the breach occurred across to the southwestern corner of the quarry basically confirms that the model is replicating - well, the model is forcing high velocity water through the breach, which is what you would have expected would have occurred during the event.

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And what effect would that have on the town of Grantham?-- Well, based on the - based on the comparison in both velocities and the depth plots that I've included later in the

report, the influence of that on Grantham was insignificant and, if anything, there was a reduction in flood levels and velocities through the town due to various other things that were going on in the model.

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And can we find that model at figure 4.8 which this map - this model compares the results for water height for the actual scenario, that is as at 10 January 2011, and the scenario based on the terrain before the development of the quarry?-- Yes, that's right.

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And when the legend we've got - a positive number for the yellow and orange indicates that the water level was deeper in the actual scenario than at the time before the quarry was built; is that the case?-- That's right.

And then also we've got - the negative numbers show that the water level was lower in the actual event than they would have been if the quarry was never constructed?-- That's right.

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And the green is neutral?-- Yeah, the green is neutral to within one centimetre.

So the colours that we're looking at of significance would be the yellow, orange and red?-- Yes. They would indicate areas where the quarry detrimentally increased flood levels above what would have been observed without the quarry in place.

The town of Grantham, it shows that there was a reduction in the water surface level?-- That's right. There's a reduction shown and I'll just highlight it up here. So the town of Grantham again is this area where all these smaller petitions of land are, and all across that area was showing a reduction of between one and 10 centimetre in peak flood level.

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And perhaps if you can assist me in just giving us some perspective of what these colours mean. The yellow, which is .01 to .10, is that a significant change?-- I don't know how to answer that. So 10, I would - it's significant in that - yes, well, it's significant-----

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Well, perhaps it's a question that you can't answer?-- Yeah, it - well, it's significant in that I can be certain that there would be any - that there would be an increase between the two scenarios at those points.

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COMMISSIONER: The trouble is really what do you mean "significance", statistically significant, significant if it happens to be your block of land, significant-----

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MS WILSON: That's right, it was my poor question. And at figure 4.10 we look at the change in velocity?-- That's right.

And it follows the same format as the previous figure?-- Yes, it does.

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And we can see some - the red and yellow indicates a higher change in velocity?-- That's right.

And that figure speaks for itself about where that occurred?-- Well, I would just point out a couple of features on this figure, so the one I talked about earlier was it clearly shows where the breach occurred and there was a jet of high velocity water coming across the quarry pit, and the other - the other key feature would be that the effect of the embankment on the western side of the quarry forced more water during the actual event through this break out to the southern side of the quarry than would have occurred with the 1982 terrain.

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If we can now go to your conclusions, which you can find at page 36?-- Mmm-hmm.

And can I also have when we're referring to your conclusions, can we have up figure 4.1 on the screen? While we're waiting for that, if I can just take you through in summary the effect of your conclusions?-- Mmm-hmm.

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Where you state, "The modelling of the January 10 2011 flood event using the model showed that peak flood levels and velocities through the town area were consistently lower for the simulation with the quarry in place than using the pre-quarry terrain."?-- Yes, that's right.

In the second paragraph, you talk about the water level hydrograph at location B?-- Mmm-hmm.

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And we will just have that up and this figure up that we - where you can identify location B for us?-- Yeah. Location B is here. So that is in a slightly lower area on the - on the northern - northern side or - of Lockyer Creek on the flood plain where - yeah, where some water in the actual flood event came through and out past location B and down through the town.

And you talk about a delay by 10 minutes when compared to pre-quarry terrain simulations. Can you tell us the effect of that delay, if any?-- So the delay was basically caused by water being constrained by the embankment on the western side of the quarry or largely by the embankment on the western side of the quarry, so the water - so, the water was effectively held up or constrained in getting through that constriction and the effect of that is that the water levels in the actual event rose about 10 minutes later at location B than they

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would have if the quarry hadn't been there.

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In the fourth paragraph you refer to the embankments along the western side of the quarry, which we have referred to in the previous figures-----?-- Mmm-hmm.

-----causing additional resistance to flows on the upstream western side of the quarry pit?-- Yes.

And then can you just explain to us the consequences of that?-- So, the consequences of that or a few consequences of that, it constrained the flow to keep more of the flow in the main channel of Lockyer Creek, it also forced more water through the southern - the break out on the southern side of the quarry, and as a result of those two effects the flood levels in Grantham and the velocities in the town of Grantham, which are downstream of there, were lower with the quarry in place than if it hadn't been there.

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Thank you, Dr Jordan. I have no further questions.

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COMMISSIONER: Ms Brasch?

MS BRASCH: No question, thank you, Commissioner.

COMMISSIONER: Ms McLeod?

MS McLEOD: I have no questions. Might I reserve my position with respect to Dr Jordan at this time?

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COMMISSIONER: In respect of?

MS McLEOD: Might I reserve the Commonwealth's position with respect to Dr Jordan's evidence at this time. I have no questions at that point in time. I need to get some instructions from our hydrologists.

COMMISSIONER: I am a bit mystified about how - what it's got to do with the Commonwealth but I dare say if something turns up you will let us know.

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MS McLEOD: And certainly if nothing turns up we will let you know too.

COMMISSIONER: All right. I would be a bit inclined to excuse him though, Ms McLeod, on the basis that if you have got some issue, it can probably be resolved in writing.

MS McLEOD: I am content for that, Commissioner.

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COMMISSIONER: Thank you.

MS WILSON: I have no further questions. May Dr Jordan be excused?

COMMISSIONER: Yes. Thanks, Dr Jordan, you are excused.

WITNESS EXCUSED

MS WILSON: I call Mr Simmonds.

JAMIE BEN SIMMONDS, ON AFFIRMATION, EXAMINED:

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MS WILSON: Is your full name Jamie Ben Simmonds?-- It is.

And you're a project director of Strengthening Grantham?-- I am, yep.

And can you tell us what that role does?-- Basically as the project director I oversee all works in relation to the redevelopment of the new area of Grantham, the land swap arrangements, and basically the redevelopment of the Grantham.

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Are you employed by the Lockyer Valley Regional Council?-- I am.

And have you prepared a statement for the Queensland Floods Commission of Inquiry?-- Yes, I have.

Can you have a look at this statement, please? Is this your statement that you have signed?-- Yep.

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Madam Commissioner, I tender that statement.

COMMISSIONER: Exhibit 601.

ADMITTED AND MARKED "EXHIBIT 601"

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MS WILSON: Mr Simmonds, a large portion of your statement addresses the Grantham Development Scheme?-- Mmm-hmm.

Madam Commissioner, I note that the Grantham Development Scheme has already been tendered as an annexure to the statement of Brendan Nelson of the Queensland Reconstruction Authority, which is Exhibit 538, and it is annexure BGN 06 of that statement.

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COMMISSIONER: Thank you.

MS WILSON: The Queensland Reconstruction Authority, the QRA, prepared the Grantham Development Scheme?-- That's correct, yep.

The council, though, provided information to the QRA to assist

them to prepare that scheme?-- That's correct.

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Can you tell us what information that the council, Lockyer Valley Regional Council, provided to the QRA?-- Yes. We undertook community consultation to develop a master plan over the Grantham area. This included the new estate as well as some of the land down the bottom that was affected in the flood. We developed that master plan with the support of a number of consultants and then we provided that master plan to the QRA. Having said that, there were different iterations of this master plan as it all moved quite quickly and things changed rapidly, so as we progressed we updated that master plan to QRA.

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And how long did it take for the QRA to develop the Grantham Development Scheme?-- I suppose if you're asking at what time was the actual development scheme gazetted or finalised, the final scheme was produced, that was produced, I believe, on the 4th of August, and we commenced - you know, going back to the beginning when we first provided the master plan, I believe that was probably in March of some time. I can get more - the exact date's in here if you'd like.

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No, that's fine. Now, council was not directly involved in the drafting of the scheme?-- We were not, no.

The involvement of the council was providing the information that you set out before?-- That's right, so it was the QRA's tool, we provided the information to go in that.

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The council had limited opportunity to provide feedback on the initial draft scheme prior to its release for public comment?-- Mmm-hmm.

You refer to that limited opportunity in paragraph 4 of your statement?-- Mmm-hmm.

Did that cause issues to the Lockyer Valley Regional Council?-- I think in some ways it did, but having said that, I don't think there was any - any way to avoid it. Given the timeframe in which we were working under, we provided the information to QRA and QRA developed up their scheme, and when they had the draft scheme ready, they did bring it up to council and it was released, I believe, on the very next day. So, we didn't have a lot of input into the draft scheme, but we did provide a submission further on to that draft scheme and, I think, again, given the circumstances around the timing, I think that was probably quite normal.

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And what were the difficulties that that may have created?-- Difficulties around information presented in the scheme, it wasn't quite in line with what we had in our most updated master plan, minor typos really, some errors that were issues, but we dealt with them through the submission. So, nothing that jeopardised the project, and I would stress too that the speed at which all this happened was - was significant and I think if I were to stand here and say there weren't problems I wouldn't be truthful, there were plenty of problems, but none

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of them risked the project at the end of the day.

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And could the problems be addressed and have - sorry, could the problems be addressed?-- Many problems have been addressed and we are currently addressing some of the other problems, and again I will stress the project is not at risk at any of those projects - oh, problems.

Can you just give us some example of the types of problems that you are referring to?-- Of course. So, in the statement, for example, it was intended - it was always intended between the QRA and council to have the reconfiguration of a lot B exempt development and that was - that was the plan from the beginning. Now, because of some errors in the development scheme, and they were simple errors, they were basically typos, it resulted in us having to write a code assessable application to ourselves and approve that to allow the reconfiguration to move forward. Again, that was an issue that was - that arose. It was dealt with and the project proceeded.

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After the release of the draft scheme, council had an opportunity to provide a submission-----?-- Yes.

-----outlining some issues?-- Yep.

And did the council in that submission address these issues that you have just told us about?-- Yeah, many of them were dealt with. The issue around the code assessable application was raised after the submission period ended. So, we weren't able to modify the development scheme at that point and that was why we decided in coordination with the QRA to proceed down a code assessable application.

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And those issues have now been addressed?-- The code assessable application has been approved and we have - perhaps to give you a little bit of background, the reason we needed the code assessable application - I don't want to dwell into too much detail - but - was to allow us to go to a ballot. We couldn't go to a ballot until the lots were titled, the code assessable application had to be approved to title the lots. So we were in a situation where we had to approve the code assessable application, the next day title the lots, and then the next day hold the ballot.

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When you are referring to the ballot, what are you referring to?-- Sorry, I'm referring to the ballot in which participants in the land swap took part. So, there was a ballot where they put in their preferences around which lots they wanted.

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And the land swap scheme, that is not - the land swap process is not governed by the scheme?-- It is not, no.

That is an initiative of the Lockyer Valley Regional Council?-- That's correct, yep.

Is it the case that you have to - the

Grantham Development Scheme had to work with arising situations like the land swap process?-- Well, that's right, we couldn't give away blocks if we didn't have the blocks there, so, yeah. 1

That just needed a little bit of refinement after the development scheme had been released?-- That's right, thus the code assessable application, yeah.

Now, residential development in flood devastated areas is not encouraged?-- Yes. 10

You refer to that in paragraph 13. What do you mean by that?-- In the development scheme - I believe they call it constrained land or limited use land I think is the term - the idea is - and this is the whole premise of the land swap, the idea was a voluntary land swap to take people's land at the bottom and give them a piece of dirt up on the top. So, in doing so, we wanted to take that land that was flood affected and remove any possibility of that to be used as residential in the future. 20

Is it a policy of the Lockyer Valley Regional Council that residential development if flood devastated is not encouraged?-- No, that would be in the development scheme. The policy that we have in terms of the relocation or the land swap is - dictates the terms of the land swap. So, in effect, the land swap process does create a situation where residential development is not encouraged because council takes ownership of the land and then we can do what we need to do with it, but the only way to discourage residential development is through a planning scheme or development scheme which the QRA administered and created - sorry, the QRA created. 30

And if we can just quickly go through some of the matters addressing the land swap scheme, if a landowner chooses to participate in the program, they will receive a block of land in the new subdivision?-- That's right. 40

And the title for the owner's existing property will transfer to the council's ownership?-- That's right.

The amount of land offered by the council is determined by the size of the landowner's existing block?-- That's correct.

No compensation will be paid for the smaller size of the new block; is that the case?-- That's right, so if someone chooses to move from a one acre block to a 1,000 square metre block we won't pay compensation, that's their choice. 50

And the resident is responsible for meeting the cost of building their home?-- That's right.

Is it the case that all mortgages and other loans linked to a landowner's existing property must be acquired by the private property owner in order for the transfer to take place?-- Sorry, I don't fully understand the question.

Sorry, is it the case that all mortgages and other loans linked to the land operate's existing property must be acquitted by the private property owner in order for the transfer to take place?-- Yes, that would be right so we wouldn't be taking on any liability in the transfer.

Residents who have participated-----

COMMISSIONER: Can I just stop you for a minute? How do they do that?-- Sorry? 10

How do they do that, the flood affected people in Grantham who have mortgages, how do they acquit their mortgage?-- Well, many of the people in Grantham actually don't have mortgages, they're historical - which I found interesting as well - a lot of it's family owned, you know, over the years. The ones that do, I understand - this isn't an area where I have - in discussions with people that I talked to, but we haven't had control obviously of that, but what I understand is the banks are very willing to support them in the process, so they're willing to work through the paperwork because it does - they basically go from an asset that's - doesn't have much value at always to an asset that has quite a significant value on the hill, so the bank's have been working very closely with----- 20

So, those debts can't literally be acquitted presumably, they're actually just transferred to the new block?-- I think that's probably realistically how it's happening. So, the banks at some point transition the debt, I suppose. I don't know precisely how the banks are working it, but I do know they're working closely with the landowners. 30

Thank you.

MS WILSON: And, finally, what options are available for those residents who don't volunteer to participate in a relocation program?-- From my point of view in the project that I work with, if they don't choose to participate, that's fine, we will keep them informed and we will have future ballots to see if they are interested. In terms of options, we have no intention of - council at this point has no intention of purchasing any land or resuming any land or anything like that, this was solely a voluntary land swap. 40

And if you can just have a look at this document, please? That's the Grantham Relocation Policy?-- It is, yep.

And that is the policy that we have been talking about recently and talking about the land swap?-- Yes. 50

Madam Commissioner, I tender that document.

COMMISSIONER: Exhibit 602.

ADMITTED AND MARKED "EXHIBIT 602"

MS WILSON: I have no further questions.

COMMISSIONER: Thank you. Mr MacSporran?

MR MacSPORRAN: Nothing, thank you, Commissioner.

MS McLEOD: No questions, thank you.

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COMMISSIONER: Thank you. Do you wish the witness excused?

MS WILSON: Yes, I do, Madam Commissioner.

COMMISSIONER: Thanks very much. You are excused?-- Thank you.

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WITNESS EXCUSED

COMMISSIONER: Now, it's a bit early to adjourn but there is going to be a mention at 2.15 so I am inclined to, unless you have somebody you want to-----

MS WILSON: No, Madam Commissioner.

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COMMISSIONER: All right. The mention at 2.15 doesn't involve any of the other parties, so we will resume for hearing purposes at 2.30, I imagine, as long as that mention is over. All right. 2.15.

THE COMMISSION ADJOURNED AT 12.50 P.M. TILL 2.15 P.M.

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THE COMMISSION RESUMED AT 2.14 P.M.

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COMMISSIONER: Yes, Mr Newton, you're appearing?

MR NEWTON: Good afternoon, your Honour, yes. May it please your Honour, I appear for IAG Australia, NRMA and CGU-----

COMMISSIONER: I'm sorry, I'm having trouble hearing you. You're appearing for?

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MR NEWTON: IAG, NRMA and CGU in response to an e-mail sent to their solicitor Ms Haly this morning from a Ms Moynihan.

COMMISSIONER: Thank you. Yes, Mr Callaghan?

MR CALLAGHAN: The issue is - or has come before the Commission by reason of requirements directed to a Mr Andrew Cornish and a Mr Peter Harmer. There is a history of correspondence leading up to the receipt of a letter dated 21 September from DLA Piper to the Queensland Floods Commission of Inquiry indicating that certain material will be delivered to the Commission tomorrow.

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I might tender, on this matter at least, a bundle of correspondence, covered by a chronology, which summarises the effect of those documents.

COMMISSIONER: Exhibit 603.

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ADMITTED AND MARKED "EXHIBIT 603"

MR CALLAGHAN: The correspondence is probably fairly self-explanatory unless, Madam Commissioner-----

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COMMISSIONER: Yes, I have seen it.

MR CALLAGHAN: -----you required anything else from it.

COMMISSIONER: Thank you. Mr Newton, the situation seems to be fairly simple, as I see it. We're concerned in fact with Mr Cornish and Mr Harmer. They were both provided with requirements, which reflected earlier requirements, on the 20th of September, with the prescribed period by which they were, pursuant to the Act, either to comply with the requirements or to satisfy me that they had a reasonable excuse for not doing so. Neither of those things happened. It seems all that was received was a letter in which your solicitors indicated when they would be ready to provide the material with, as something of an afterthought, an application for an extension of time but nothing which could amount to a reasonable excuse and I simply am not satisfied on the basis of that letter that there was a reasonable excuse. That being

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the case it seems to me that there is a prima facie breach of section 5(2) and I have asked for this mention as a courtesy, I suppose, to your clients, but, in fact, I don't see that there is provision for them to be further heard under the Act, or not until they make a bail application, if that should come about. But, in any event, I'm willing to hear any submission you might have.

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MR NEWTON: Your Honour, can I make it clear what our position is this afternoon? And that is that in order for your Honour to make that determination you would need to hear from my clients and you would need to hear about the work that was done, the instructions that had to be taken, the documents that had to be considered and advised upon-----

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COMMISSIONER: I'm afraid not, Mr Newton, because what the Act says is that the person served with the writing shall either comply with it or within the prescribed period satisfy me. Satisfaction after the prescribed period won't do.

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MR NEWTON: Your Honour, can I make our position clear? We've been given this notice this morning. We haven't had time to prepare affidavits detailing the volume of material that my solicitors and my clients have to digest, the decisions that had to be made as to what part of that material is relevant to your Honour's requests, et cetera, in order to prepare the affidavits. Now-----

COMMISSIONER: They sound to me like things that might go to penalty but the breach seems to be established.

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MR NEWTON: No, no, or - I want to make clear the basis upon which I'm here. We're not here to suggest to your Honour that you are in a position today to determine whether or not there has been a failure to comply and with-----

COMMISSIONER: That occurs by the time at which the requirement either has not been met or I have not been satisfied that there's a reasonable excuse for non-compliance, that is by the end of the prescribed period. That time has passed.

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MR NEWTON: Well, your Honour, there a lot correspondence, very diligent correspondence that I have seen where Ms Haly on behalf of those insurance companies has within time always requested more time and in some circumstances that request has been met and in other circumstances it has not.

Now, I'm not sure what your Honour is referring to when you say that none - there was no request made within the statutory period for further time-----

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COMMISSIONER: Try looking at the Act, Mr Newton. If you look at section 5-----

MR NEWTON: Yes.

COMMISSIONER: -----(2) you will see what is required of a person served with a writing under a chairperson's hand, which this was, and you will see that they must either - comply in all respects with the requirement, which your solicitors often seem to refer to in the correspondence as a "request", it's not, it's a requirement. The alternative to complying in all respects with the requirement is, (2), "within prescribed period which has passed," as I say, "satisfy the chairperson that the person has a reasonable excuse for not complying". That has not occurred. Neither of those things has occurred.

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MR NEWTON: Well, correspondence has been written explaining to the Commission why matters were going to take longer than had been anticipated. The response - the responses that we received all said that because of the arrangements that the Commission has for the taking of particular witnesses those requests could not be acceded to. Now, with respect, that's not a basis for determining whether or not a reasonable time was given to comply or not-----

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COMMISSIONER: It's not a question about a reasonable time to comply. The question is was there a reasonable excuse offered which would satisfy me within the prescribed period. I wish you would pay attention to the terms of the section.

MR NEWTON: I'm well aware of the terms of the section, your Honour, and can I make this position clear: if your Honour is going to make that determination this afternoon your Honour will do so without having heard properly from us because I want to make clear that in order to determine, in our submission, whether or not there has been a failure to comply, and under that section a failure to comply is not merely non-compliance, in our submission, it has to be a failure to comply, that your Honour needs to hear us, and in order to explain whether or not there has been a failure to comply, not merely non-compliance, we would need to put material before you to show when receipt of the requests took place, what volume of material was required to be analysed as a consequence of those requests or requirements, what instructions were taken and how long it took to properly respond to those requirements.

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COMMISSIONER: What do you say are the elements of the failure to comply as opposed to the non-provision of the statements which were the subject of the requirement, what else is there?

MR NEWTON: The term - it has to be a failure to comply and the failure to comply, in my submission, is not merely non-compliance.

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COMMISSIONER: The distinction being?

MR NEWTON: One involves a good excuse and one involves no good excuse, there has to be failure-----

COMMISSIONER: No, there are alternatives in this section. You can either comply or if you fail to comply you can satisfy me, in this case, that you have a reasonable excuse for not

doing so. Those are the alternatives. We have a failure to comply, the next question is has a reasonable excuse offered - been offered which has satisfied me and the answer is, no, it hasn't.

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MR NEWTON: Well, as I say, our primary submission is your Honour will need to hear us, you haven't done so. In fact, you said you were alerting us really as a courtesy, in my submission that's entirely an incorrect approach. But I will then deal with the correspondence which we have written to the Commission in relation. In relation to all the requests that have been made my solicitors have been prompt in responding and on the 14th of September, and it will be in the bundle which has been sent to you. There is a letter from Ms Haly to Ms Moynihan which points out that an extension of time would be sought, noting the time at which various requests were made or requirements were expressed, and then an extension to be sought until the 23rd of September, that is tomorrow, in fact, given the large volume of requests across a range of issues and policyholders, and the statements to which that letter is directed are identified for the Commission, and your Honour will see that, in the concluding paragraph, it's said that, "our client therefore seeks an extension till the close of business on Friday, 23rd of September". Now, that's well within the time that we're talking about.

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COMMISSIONER: You didn't get that extension.

MR NEWTON: They were given - they were given an extension-----

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COMMISSIONER: Yes.

MR NEWTON: -----until a date which was less than the time that had been asked for and the reason it was given in the Commission's letter of the 16th was this: "You will appreciate from my previous correspondence that with the Commission sitting next week from Monday the Commission cannot acceded to your request". Now - and therefore they - the Commission requested those statements be provided by the close of business on Wednesday.

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Now, when Ms Haly wrote saying it wouldn't be possible to do them by the due date that was because her considered, professional opinion was - from someone who is dedicated to the task, is that it would not be possible to comply with the due date. Now, that seems to have been accepted because an extended date is given, namely the 21st of September, which was less than the time that Ms Haly had requested in the correspondence-----

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COMMISSIONER: Would you like to look at the letter of the 16th of September from your solicitors and what it says about when an extension is sought and in relation to three of the requirements?

MR NEWTON: I'm sorry, your Honour, I missed that.

COMMISSIONER: There's a letter of the 16th of September-----

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MR NEWTON: Yes.

COMMISSIONER: -----from your solicitors which deals with three of the requirements and seeks an extension until close of business Wednesday, 21st of September.

MR NEWTON: Yes.

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COMMISSIONER: The 21st of September has come and gone.

MR NEWTON: Yes. Right. Mr-----

COMMISSIONER: And that was the close-off date.

MR NEWTON: But there has been subsequent correspondence about all of this.

COMMISSIONER: Which is the subsequent correspondence to which you refer?

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MR NEWTON: On the - on the - well, can I say, because the letter to which your Honour just took me is a letter in relation to the witness Streeter. The witness Streeter has in fact executed his affidavit, it is in Brisbane and your Honour will have it this afternoon.

COMMISSIONER: It's not just about the witness Streeter, as I read it.

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MR NEWTON: The letter of the 16th, in relation to Ms Haly, refers to Mr Streeter's response.

MR CALLAGHAN: I think there are two of the 16th.

COMMISSIONER: Well, that may be a catch, but the letter I'm looking at refers to requests, as your solicitors call them, for a written statement in - on behalf of NRMA and CGU in relation to information from Mr Dawber, Ms Campbell and Miss Dobrowa. And that's the letter that says that an extension's sought in respect of those until close of business Wednesday, 21st of September. All of those requirements were the subject of the fresh requirement which set the prescribed period, nothing turned up.

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MR NEWTON: But, your Honour, in relation to all of that, on the 19th of September my solicitors wrote to the Commission, to Ms Moynihan, referring to the correspondence of the 14th and 16th of September pointing out that a request had been made for an extension until the 23rd.

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COMMISSIONER: And at the end of that letter there's a request to revise the timetable-----

MR NEWTON: Yes.

COMMISSIONER: -----till close of business on 21st of September, that was done, and a requirement was issued which has been ignored.

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MR NEWTON: But when your Honour says it's been "ignored", it hasn't been ignored-----

COMMISSIONER: Well it hasn't been complied with.

MR NEWTON: Well it doesn't mean it's been ignored. Your Honour will see that one of the e-mails from Ms Haly came in at 11.53 p.m. last evening. Now, there's been a lot of work done in all of this, until very late in the day and late in the morning. Now, to say there's been a failure to a comply in those circumstances is to misunderstand the authorities, with respect-----

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COMMISSIONER: Show me an authority that says-----

MR NEWTON: I don't have them here but I read them before I came down. To be perfectly frank, I did not think that this position was going to be taken this afternoon.

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COMMISSIONER: Well, then, you must not have read the Act closely, Mr Newton, is all I can say.

MR NEWTON: No, what I read - what I read closely was the Act and your Honour's e-mail this morning which said that you were considering your position under section 5A. It did not say in that e-mail that you would need to be addressed this afternoon on the presumption that there had been a failure to comply.

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COMMISSIONER: Well, in fact, the Act doesn't, it seems, contemplate any further appearance once there has been a failure to comply and once I reach the view that I'm not satisfied that there's a reasonable excuse. All that happens next is that I issue a certificate and there's an ex parte application to a Magistrate for a warrant.

MR NEWTON: Yes. Well, that's right. Now, I want-----

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COMMISSIONER: Now, I called this mention in the event that you can convince me that there's any reason why I wouldn't issue a certificate. You're not doing well because you are simply arguing about how hard it's been and there's been correspondence, although all of it seems to indicate your solicitors undertook to provide the material by close of business yesterday. The failure to comply or the lack of reasonable excuse for doing so, you don't seem to be in any position to point out why it is that those things simply didn't happen.

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MR NEWTON: Because it simply wasn't possible.

COMMISSIONER: No, that's true, it is impossible.

MR NEWTON: Had you - had you - no, no, no. I won't let that go unanswered. That's not what I meant, as your Honour

probably knows. I didn't mean it was not possible to explain, I meant it was not possible to comply because of the enormous workload that was involved.

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Now, the correspondence from DLA Piper is consistent to your Honour and doesn't seek to in any way misstate the position. It identifies and keeps the Commission up-to-date in relation to the state of preparation. In fact, the letter that went to the Commission last night, on the 21st of September, at 11.53 p.m., identified what affidavits had been executed. That letter said, in relation to Dawber, Dobrowa, Campbell, Lynn Doyle and Acimovic, that the statement concerning Dawber cannot be executed until its author returns to Brisbane from interstate on Sunday and the expectation is it will be provided to the Commission on Monday. Streeter's statement has been executed and will be able to be provided to Commission Thursday, which is today. That's the position, it is-----

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COMMISSIONER: All right, there's no point taken about Streeter, it's Mr Cornish and Mr Harmer, I think it is.

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MR NEWTON: Now, as I understand it, are they - might I ask, are they the two statements which are directed to those gentlemen in their capacity as the CEO of the relevant company?

COMMISSIONER: Yes, I think so.

MR NEWTON: Those statements as - the main statements in relation to those witnesses are due, as I understand it, tomorrow.

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COMMISSIONER: I don't think that's correct. The requirement said, as I recall it, and I'll check, Wednesday, 21st of September, 4 p.m. Wednesday, 21st of September for two, and the other one is 4 p.m., 22nd of September, which is today, for Mr Cornish, but for each of Mr Cornish and Mr Harmer there was a requirement to provide a statement by 4 p.m. on Wednesday the 21st September.

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MR NEWTON: What is required today, might I ask, you said in relation to Mr Harmer?

COMMISSIONER: That's another one from Mr Cornish-----

MR NEWTON: Well-----

COMMISSIONER: -----in relation to Mr Acimovic. The ones in relation to - I'll tell you exactly what was supposed to be provided by close of business yesterday, 4 p.m. yesterday. A statement from Mr Cornish in relation to Mr Dawber, another relating to Ms Campbell.

50

MR NEWTON: Well-----

COMMISSIONER: From Mr Harmer, a statement in relation to Miss Dobrowa and another in relation to Ms Doyle.

MR NEWTON: Right. Well, can I go through - because they are - they are the witnesses to whom I refer, your Honour. I've referred to them by their name rather than the name of the person who was going to give an affidavit.

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COMMISSIONER: Mmm.

MR NEWTON: But in relation to Dawber, the relevant affidavit, which may be by one of the gentleman you mentioned, is - has not been executed merely because the witness is out of Brisbane. It will be executed, I understand, on Sunday, to be provided to the Commission on Monday. That's what the letter-----

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COMMISSIONER: Why? Why should being out of Brisbane prevent him using his hand to sign a document and get it to the Commission when he's supposed to? How is that a reasonable excuse?

MR NEWTON: Does your Honour have any regard to the practicalities that intrude into these things?

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COMMISSIONER: I have plenty of regard for the time that's been outstanding for these and the fact that your clients seem to feel that they can simply disregard requirements and write letters to the Commission suggesting that, you know, "When it's convenient we'll get these things to you"-----

MR NEWTON: That is, with respect, a very unfair characterisation of the correspondence, which I have read carefully. Miss Haly has written in very polite terms pointing out the difficulties, when there were difficulties, of putting together these statements within time and asking for extensions to be given for reasons which she identifies. Now-----

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COMMISSIONER: Mr Newton, I don't propose to enter into an argument with you about these things. I pointed out the state of affairs as I see them. What do you propose to do about it?

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MR NEWTON: Well, can I suggest this, that we can give your Honour - we can give the Commission the statements of Streeter and Campbell today. They have been executed and they are in Brisbane. The statement-----

COMMISSIONER: Sorry, when you say "Campbell", you mean Mr Cornish's statement in relation to Campbell?

MR NEWTON: In relation to the witness Campbell. The person who has lodged a complaint with the Commission. Streeter is one of our witnesses. His statement has been executed. Campbell is one of the parties who has complained. The statement from the deponent dealing with that witness' complaints has been executed and is in Brisbane. The Commission will have both of those today.

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The statement in relation to Acimovic has been executed. It's in Sydney. It's being sent up but it has been executed. Now,

as the letter from Ms Haly at midnight last night said, that the CGU statement in relation to Dobrowa is complete, subject to the inclusion of some exhibits and has to be executed in Melbourne and then returned to Brisbane. It can be provided to the Commission by Friday, that's tomorrow. Now, that's the expectation that Ms Hayley tells me will be able to be met. So that statement will be available for the Commission tomorrow.

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In relation to - the statement in relation to the Lynn Doyle, again the expectation, according to the letter last night, is that it will be able to be delivered to the Commission tomorrow.

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And I've already dealt with the Acimovic point. Now-----

COMMISSIONER: What about the Dawber one, are you still saying, well, when he gets back?

MR NEWTON: The Dawber one - well-----

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COMMISSIONER: It's a little hard to believe in this age of technology you can't get a statement executed and back to Brisbane.

MR NEWTON: Does your Honour have any idea how many exhibits there are to these documents?

COMMISSIONER: No, I don't, but I don't think that it can be out of the question that they can be-----

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MR NEWTON: This is not in isolation-----

COMMISSIONER: -----sent to Brisbane-----

MR NEWTON: This is not in isolation-----

COMMISSIONER: -----accompanied by an executed statement. I don't think you're assisting your case, Mr Newton.

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MR NEWTON: Your Honour, this is not-----

COMMISSIONER: We will see what arrives tomorrow at the Commission. I will reflect. It seems to me, as I say, that there's a prima facie breach of the section-----

MR NEWTON: Well, before your Honour adjourns - I see your Honour packing up - can I - what I was going to ask your Honour to do is this, permit us to give the statements that we currently have executed in Brisbane, as no doubt your Honour will. There will be further statements delivered I'm assured tomorrow. If your Honour is still of like mind to determine that the prima facie case of failure to comply has been made out, or that's your Honour's concern, if you would notify us so that we can put in material that shows why your Honour, in the exercise of your discretion, would not take the next step and issue the complaint to the Magistrate so that an arrest warrant can be issued.

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COMMISSIONER: Well, I have some doubt that there's any statutory scope for that but given that it does appear to be a discretion I suppose that's possible. We will adjourn on that basis, thank you.

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THE COMMISSION ADJOURNED AT 2.36 P.M.

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THE COMMISSION RESUMED AT 2.39 P.M.

COMMISSIONER: I understand we have a witness by telephone, Mr Callaghan?

MR CALLAGHAN: Yes. I call Stuart John Ritchie.

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STUART JOHN RITCHIE, SWORN AND EXAMINED VIA TELEPHONE LINK:

MR CALLAGHAN: Mr Ritchie, it's Peter Callaghan, counsel assisting, speaking. You can hear me okay?-- Yes, I can.

Could you tell the Commission your full name, please?-- Stuart John Ritchie.

30

You're the manager of Environmental Services at Rio Tinto Coal Australia; is that correct?-- That's correct.

You have provided a statement to the Commission dated 14 September and that statement has nine annexures; is that right?-- Yes, that's correct.

We have a CD with that statement and annexures on it. I'll tender that.

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COMMISSIONER: Exhibit 604.

MR CALLAGHAN: And there's a copy - a hard copy for the Commissioners.

ADMITTED AND MARKED "EXHIBIT 604"

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MR CALLAGHAN: I'll also tender at this stage a folder of documents relating to the Hail Creek Mine, also on CD, and again I believe, Mr Ritchie, you have a copy of that; is that

correct?-- Yes, I do, thank you.

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And a copy for the Commissioner.

COMMISSIONER: That will be Exhibit 605.

ADMITTED AND MARKED "EXHIBIT 605"

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MR CALLAGHAN: And, Mr Ritchie, even though you've provided quite a detailed statement are you aware that there was a submission that was made by Rio Tinto to the Commission much earlier in the year?-- Yes, I am.

And your statement elaborates on some of the concerns expressed in that submission; is that correct?-- That's correct.

20

That's SJR-1 to your statement; is that right?-- That's correct.

All right. Now, you have responsibility for the environmental performance of Rio Tinto's coal mines in Queensland, including the Hail Creek Mine located west of Mackay?-- Yes, I do.

Can I just ask some general questions. Because you're the first witness that we're calling on this particular topic I'm going to ask you to give us a bit of an overview about water management at mines generally, if that's okay. Can you tell us about the different uses of water in the process of mining coal?-- Yes. There can be a number of different uses. We - it is often the case that - that coal mines have their own catchment area which will collect water or - or a water supply may be provided through some treated and supplied water. That water can be used for a range of - of uses, including processing of coal or washing of coal, for dust suppression, for treatment for use as potable water supply on site, and they would be the major use of the water.

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All right. Thank you. So it's obviously important to have a supply of water available at a mine?-- Yes, that's correct.

Once water has been used in the mining process, and you described a moment ago things like washing coal and so on, does it become what's called "mine-affected water"?-- The term "mine-affected water" really comprises water that may include water that's been used for - for processing purposes, but also is generally considered to include water that falls within disturbed pit areas and is surplus to operational requirements.

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All right. So it's water that's collected in the pits along with water which may have been used in the processing, or for the purposes of processing; is that right?-- Yes, as a general definition, yes. 1

Okay. So when we talk about mine affected water, how is it actually affected?-- It could be affected in a number of ways. The processing of coal may well carry - may well result in contaminants to the water that may include particular matter, or other materials that have washed from the coal. Water that's collected in pit is typically affected by, again by particular matter. Also, potentially salts and other contaminants that may be associated with the materials that the water comes in contact with. 10

Certainly salt is something which comes through in the materials that we've read, and the issue of salinity. What other sort of particular matter are you talking about, or what other contaminants might be associated specifically, I suppose, from your point of view with coal mining?-- I guess, you know, there can be a range of materials. The ones that we watch most closely, as you've already mentioned, would include salt, but particular matter itself ie particles of material, of dirt that are entrained in the water is, can contribute to cloudy or visually dirty water. There can also be specific trace, trace elements, if you like, or minor elements that might include metals or more complex salts. 20

Okay. How do we measure these sorts of things, and I suppose specifically - well, how do you measure contamination of water as a general rule?-- Well, there's obviously a laboratory test that exists for every type of material that you're looking for in a body of water. The general process for doing that is to collect a water sample and submit it to a laboratory. The laboratory will then apply a particular analysis technique to report back on the level of the contaminants that they've found. 30

And do these reports commonly express the level of contamination in terms to EC that is electrical conductivity?-- If your analysis is for electrical - is for salt then electrical conductivity is one particular analysis type that's used. 40

All right. Now the principal means used by mines to dispose of affected water is by discharging it into nearby waterways; is that correct?-- Only if that mine affected water is in surplus to their requirements.

All right. When those sorts of discharges occur, that situation is regulated by the Department of Environment and Resource Management; is that right?-- That's correct, yes. 50

And in the first instance DERM issues what is, in effect, a permit to release water that is known as an Environmental Authority; is that right?-- That is correct. The Environmental Authority, though, may also regulate a range of other environmental aspects of a coal mining operation.

Sure. I should perhaps say that as part of an Environmental Authority there might be authority to release water; is that a better way of putting it?-- That's correct.

Okay. Well, the history of the Environmental Authorities or the relevant Environmental Authorities is as has been canvassed in some of the submissions which we've received. Can I take you to paragraphs 17 and 18 of your statement?-- Yes.

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And you describe there the differences between the environmental conditions which were in place immediately before and after the incorporation of what we know are called the Fitzroy Model Conditions; is that right?-- That's correct.

Now one of those differences is in the flow rate which before the Fitzroy Model Conditions came in didn't really exist as long as the waterway was flowing; is that right? There was no minimum flow?-- That's correct, yes.

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After the model conditions came in a two cubic metres per second flow was required before you could discharge water; is that right?-- That's correct.

And a model created by Rio Tinto indicates that this reduces the number of days upon which you have an opportunity to discharge water from an average of 115 days per year to an average of 15 days per year; is that right?-- That's correct.

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And paragraph 18, you speak to the process by which the model conditions were introduced into the Hail Creek Environmental Authority and point out that some of the conditions were difficult for you to comply with; is that right?-- That's correct.

One of those issues was the speed with which the implementation took place and the indication by the government that they would enforce the terms, if necessary?-- Yes.

40

How was it communicated to Rio Tinto that the terms would be enforced if they weren't voluntarily accepted?-- Can I preface my answer by saying that, as my statement indicates, I wasn't in the employ of Rio Tinto during that particular time and so I'm working off documents that were available to me.

Yes?-- I'm not sure that I can recall a specific document that refers to that except from, I guess, anecdotal discussions that I've had in relation to, to the Department's approach to bringing into being the model condition.

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All right. So you're not referring, or you're not aware of, as you sit there, anyway, any specific document which indicated that?-- No.

All right. Do the documents, to your knowledge, disclose any of the - or any aspect of this process, whether it was

negotiated or discussed with DERM at any stage?-- Yeah, I am aware of documents that were used in the negotiation of those conditions, but I'm not familiar with the detail, content of those documents.

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What sort of documents are we talking about?-- Documents similar to those that I've included within my annexure and particularly the TEPs that I included with the annexures at annexure 7.2, 7.5 and 7.8 which include TEP - sorry - well, TEP documents that came out of those discussions, but in the form in relation to the implementation of the model conditions these were documents that were effectively draft EA documents.

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Okay. All right. Now can I just turn to the topic of flood preparedness, again, first of all on a general basis. Water storage facilities at mine sites are intended to have some free board going into a wet season, that is to say some leeway so as they can cope with a large rainfall event; is that right?-- Yes, in general that's true.

20

These are just general - well, that is a general proposition. Now I'm going to ask you about the Hail Creek mine dams. Can you tell us how much free board is intended to be available at them?-- No, not specifically. They do have a target free board level that they look to go into each wet season with, but I can't tell you exactly what that is in terms of the percentage storage or height of water.

I suppose what I - the point I'm leading up to is the query as to whether the - as a result of the Fitzroy Model Conditions regarding discharges being adopted, whether that resulted in water storages having more in them at the start of the wet season than they might have before that?-- That's correct, and certainly that was the case leading into the, into the 10/11 wet season.

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Yes. All right. Can I take you to paragraph 33 of your statement, and you say that at the end of January 2011 the water storages at Hail Creek were at 105 per cent capacity; is that right?-- Yes, that's correct.

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And we might turn to your annexure SJR 6, if we look at the bottom row in the chart there, is that the percentage to which the dams were full over the course of the wet season?-- That's correct.

COMMISSIONER: Can you just hold up for a minute while that's got up, Mr Callaghan.

MR CALLAGHAN: I am sorry. We are just waiting for that to come up on the screen, Mr Ritchie.

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COMMISSIONER: Apparently it can't be done, so don't worry.

MR CALLAGHAN: I'm not sure if the hard copy was handed up to you, Madam Commissioner. I think there's probably only one for you to share with the deputies but-----

COMMISSIONER: I think I can turn it up on my own USB, it's just that it won't make much sense to anybody else watching.

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MR CALLAGHAN: Okay.

COMMISSIONER: What was the table you were talking about?

MR CALLAGHAN: SJR 6.

COMMISSIONER: That's the attachment. Is the table SJR 3 or-----

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MR CALLAGHAN: The first page - it's called table SJR 3 but that is, in fact, annexure SJR 6, yes.

COMMISSIONER: Thanks.

MR CALLAGHAN: And the top part of that table, Mr Ritchie, shows the extent to which the mine pits themselves were inundated with water at some stage over the wet season; is that right?-- That's correct.

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And, logically enough, there was a huge increase in January across the board; is that right?-- That's correct.

I wonder, though, can you give us any context to this? Were those increases more than ever? Were they out of the ordinary?-- Well, in considering the in pit volume, so the numbers in the top half of the table, yes, that is; and if I can take you back to your earlier point, if you look at the total in mine storage volumes you can see that they were at capacity, you know, all the way back in November. So the reason that we see that increase in in pit storages is because there was nowhere to direct that water from the pit.

30

I follow. So if - there are two rows of figures shaded in light yellow and if we add those together we get the figure in dark yellow down the bottom; is that right?-- That's correct. But please bear in mind the very bottom dark yellow line, the percentages only relate to the numbers in the lower half of the table.

40

Dams only?-- Yes.

Yes, I understand that, thank you. Well, with those figures, with the amount of water in the mines, can you tell me this: Were they spilling water or what was the story?-- In relation - sorry, if I can just clarify, are you referring to the water in the pits or within the storages?

50

No, the storages?-- No, they weren't. My understanding is that we, that we made sure by pumping that our storages were not running, over topping at all. Now the reason that we see values greater than 100 per cent is that in some cases we have some, I guess, leeway with some of those storages where we operate to a full supply volume that may not coincide with the over topping level.

Yeah. We have some familiarity with dams like that. Was there any risk, though, of - I'm sorry. When you say you were pumping, where do you pump it?-- Well, predominantly we were pumping water from one pit to another. So if we were trying to focus on a particular pit area to try and maintain operation, it meant that we were usually sacrificing other operational pit areas to store water.

1

Sure. But were you also pumping out of dams into pits?-- I understand that in one case we were pumping to ramp zero which is, while it's listed in the water storages, is actually a pit area and we were, I understand, pumping back from our traditional dam storages to ramp zero which does, in fact, have, I guess, capacity above what we believe to be a safe full supply level.

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All right. There are risks if the dams get too full, I take it?-- Yes, yes, there are, and I outlined some of those risks within my statement.

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Yes. What about water in the pits. Was there any slumping of pit walls or anything like that, any spillage from the pits?-- We did have some localised slumping in, particularly, I believe, in ramp zero. I'm not - I would expect that we had some slumping within the other pits but I'm not familiar with the exact detail there.

All right. It's just one of the conventional risks associated with inundation, I take it?-- That's correct, yes.

30

At paragraph 18(b) of your statement you say that when water is impounded in mines for long periods, and by that I assume you mean in pits, its quality deteriorates?-- Yes, that's correct.

And the longer it's left there the more it deteriorates?-- That's correct.

And presumably that's just because it's absorbing materials from the ground that it's sitting in; is that right?-- That's correct, yes.

40

And there's a bit of a vicious cycle at work because the more it deteriorates the harder it is for discharge requirements as to quality to be met; is that right?-- That's correct, yes.

And so it has to stay there for longer?-- Yes, yes.

It is the catch 22; is that right?-- Yes, that's exactly right.

50

All right. Can I ask you then now about the transitional environmental programs and again, if you don't mind, I'll start off on a general basis about the general process of TEPs being granted. You make the application to DERM; is that right?-- Yes, that's correct. The Act does allow for DERM to require an EA holder to submit an application for a TEP, but certainly in the instance we're referring to, these were all

voluntary TEP applications.

1

And as far as you know, does anyone else see the contents of these applications apart from you, the applicant, assuming that you are the applicant, and DERM, who receive them?-- Yes, that's my understanding, that the contents are maintained within those two parties.

Okay. Now I take it you have some idea before you make the application about the sort of information that DERM is looking for?-- Well, yes. I mean, we, you know, we make an assessment as to what information is important and what information might be required to justify the particular aspects of the TEP that we're applying for.

10

There's a template application, I think, that DERM provide; is that right?-- That's correct.

Do you use that?-- My understanding is that in the circumstances relating to go Hail Creek Mine, that the template was not used, and the TEPs were drafted from a blank piece of paper.

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Do you have anything, or are you in a position to offer what may just be your own opinion about the usefulness of the DERM template application?-- My opinion would be that it may not provide sufficient scope to justify the circumstances of the TEP.

And for that reason - well, sorry, was that one of the reasons for which it wasn't used at Hail Creek?-- I would - I believe so, but if I can just restate that when the TEP process started at Hail Creek I was only just commencing my role and so we really continued with the first draft of the TEP right throughout that process, so its format had been established but we retained that format throughout the new TEP applications that were made.

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And, look, I appreciate you're speaking - or you're not speaking from personal knowledge about a lot of things, but can you say whether there's any sort of consensus either at Rio Tinto or in the industry about the usefulness of those templates?-- I'm really not sure I can offer an opinion on that.

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That's okay?-- I'm not - I haven't seen TEP applications made by other proponents myself.

All right. You'd be aware of the standard criteria in the Environmental Protection Act, that is the criteria that apply to the making of a decision to grant or refuse a TEP?-- Yes. I couldn't quote them verbatim but-----

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I'm not - it's all right I'm not going to quiz you on them?-- But, yes, I am familiar with them.

I'm just wondering, do you tailor your application for a TEP to address those matters?-- Certainly that should be the

case, yes, we should be tailoring to meet those requirements. 1

All right. Tell me this, and again by reference to the documents if you have to, but were the Rio Tinto applications for TEPs dealt with by different officers within DERM, or is there a dedicated Rio Tinto officer, or how does it work?-- The understanding I have in relation to the application process for TEPs is that DERM has a strong preference for its regional officers to be the first one to contact for applications such as TEP applications. Now I'm aware that those TEPs will go to different parties for advice within DERM, but it is usual and it has been my experience through this period that we've maintained a close contact with regional officers of DERM. 10

And just to come back to my query about whether there's different officers who deal with different applications even whether it's within the regional office or as between regional and any other office, do different people deal with this at different times?-- Yes, there have been different people dealing with them at different times. 20

And, again, is there, either from your knowledge or the documents or from any consensus you're aware of, is there a view as to whether their approach is consistent across the board, or whether things get done differently by different officers or what's the story?-- I think it would be our view that different officers can take different approaches to these things. 30

All right. Are you able to give us any example of that or point to any of the materials which might help us understand that?-- I think perhaps the materials that best address that are the documents at annexure 7.3 relating to comments from DERM in relation to an earlier TEP application, and then I think discussions that occurred with other officers within DERM that resulted in the final TEP which I provided, annexure 7.2.

7.2? Sorry, did you say 7.2?-- 7.2, yes, that's correct. 40

All right. 7.3 is correspondence with DERM-----

COMMISSIONER: 7.2.

MR CALLAGHAN: Yes. 7.3, though, is the first that he referred to, and that's correspondence with DERM; is that right?-- Yes.

I've just managed to turn that up. What was it in 7.3 that-----?-- So in 7.3 is a single item which is email correspondence with the Department providing comments on our earlier submitted draft TEP. 50

Can you just tell me the time and date of the email that you're looking at?-- So at the top header of the email, because it was circulated through two parties before it got to me, the date is Wednesday the 2nd of February 2011 at 4.35

p.m.

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Okay, thank you. That's from Gordon, Rory (RTCA) to you; is that right?-- That's correct.

And which - are we looking at the comments in the middle of the page?-- Yes. So at - for example, at page 2 there are comments in the second paragraph suggesting that the Department recommend "some form of natural flow exist within the receiving waters" and the third dot point suggesting that the currently proposed EC limit of 2000 microsiemens per centimetre is highly undesirable.

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MR CALLAGHAN: Yes. Sorry, Mr Ritchie, can you just hold on one second. We've just got some shorthand reporters here and that didn't come across too well. I'll just repeat it. It was, "The currently proposed EC limit of 2000" - what's the measurement per centimetre?-- It's a micro and siemens S-I-E-M-E-N-S.

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"Per centimetre is highly undesirable and really should be regarded as non-permissible", I think that was the bit that you read; wasn't it?-- That's correct.

Okay. Sorry, can I just bring this back to the point I was querying you about, about DERM's approach. What are we gleaning from this? This is a departmental recommendation from someone and what's your point?-- So my point is that, you know, that was the recommendation from one person within DERM. The subsequently approved TEP did accept those suggestions, but further, I guess, to reinforce the point, our subsequent TEPs also went beyond those comments.

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Went what beyond those comments?-- Went beyond those comments. So in terms of the water quality limits and the flow conditions of receiving waters, the - what was subsequently provided in the later TEPs were different from those conditions.

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I see. But I think you say that the subsequent TEP did contain those or did allow that even though it was said to be highly undesirable; is that right?-- That's correct, yes.

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I see. And do you know whether the comments were made by the same person who subsequently issued the TEP or was it a different person?-- No, they were a different - different person.

And so you were, in fact, directly answering my question about whether there was a different approach as between-----?-- Yes.

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-----different officers. Thank you. Can I take you to paragraph 42 of your statement where you emphasise that the speed of approval is extremely important when we're talking about TEPs; is that right?-- That's correct.

And-----?-- Well, can I - can I just clarify that in the circumstances in which we're - we're referring to, yes, yes, indeed, the speed of approving TEPs becomes very critical.

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We have probably already alluded to some of the reasons why that might be so, but can you just elaborate on that for us?-- So - well, the reasons are and I think relate to the comments that I made as to the suitability or otherwise of the TEP process in these particular circumstances, but for Hail Creek Mine it - because it exists at the very head of a catchment, the nature of flows within the creeks that surround the mine and effectively become the receiving waters for our discharge is very quick and very peaky. So, in other words, the creeks flow, they will flow rapidly and then they will cease their flow equally rapidly within a short period of time and often within periods of days, whereas where the TEP process really relies on - on an application and approval process that may typically take weeks rather than days.

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The concerns you just expressed, are those which you have recorded in paragraph 50 of your statement?-- That's correct, yes.

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But if advantage was to be taken of the flow in the waterways you describe, how quickly would a TEP have to issue or be approved?-- We would say that it would have to be within hours, if not within the day.

Otherwise the opportunity's lost?-- That's correct.

In paragraph 46 you allude to the concept at least of a preemptive TEP to give permission to release water in certain circumstances when rainfall of a certain amount is either happening or forecast, I suppose; is that right?-- The reference is really saying that the intent - the stated intent of the TEP within the Act is used to address an existing non-compliance and bring that non-compliance into compliance within a period of time. Now, in the circumstances in which we found ourselves during the 2010/11 wet season, there wasn't - there was not, in fact, a non-compliance prior to commencing

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the application of TP. So, it really, in my opinion, goes against the intent of the TP mechanism to - to bring an activity into compliance, whether it is, in fact, not a non-compliance prior to the TEP being applied for.

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Yes, I follow. All right. At paragraphs 56 to 57 you set out some of the requirements of the TEPs granted to Rio Tinto that were difficult and, indeed, you would say impossible to comply with; is that right?-- That's correct, yes.

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Including access to monitoring locations and the obtaining of appropriate samples?-- that's correct.

Are these requirements the same as those that are in the overarching environmental authority?-- By and large they are, they do tend to reflect the EA, that's correct.

Did DERM require that they, in fact, be included in the TEP as well?-- Again, with those earlier discussions I wasn't involved with - with some of the dialogue with DERM, but my understanding would be that given the circumstances there would be no - no reason that those conditions should be relaxed.

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Right. At paragraph 55 you say that the TEP granted was ineffective in addressing the volume of water at Hail Creek; is that right?-- That's correct.

Did Rio Tinto anticipate that that would be the case?-- Rio Tinto's perspective was that we were - we were very keen to obtain some relief from - from the restrictions that had come through on the model conditions, so any relief was going to be better than nothing, and I guess there was - in agreeing to those early TEPs there was a sense that hopefully the wet season wouldn't - wouldn't continue to be an excessive wet season and that - so certainly when the intent - when the TEP was agreed it was hoped that it might address the situation, but the events of the wet season really means that the initial TEP and, in fact, the subsequent TEP were - remained ineffective due to the circumstances of the weather.

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And I suppose what I'm interested in knowing is whether the apprehensions that you would no doubt have had about their effectiveness or impossibility were raised with DERM either pre-application or at any stage and whether there was any response to such concerns if they were expressed?-- Yes, that's correct. I mean, those - those concerns were raised. The second part of your question was-----

Was whether DERM or - whether and how DERM responded to the expression of those concerns?-- I guess that the sense that I got from my discussions with DERM with respect to that were that they believed that they were constrained in what they were able to allow us to do and that was the - that was really the reflection that that made.

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And, again, this may be just no more than your opinion, but do you accept that they were, in fact, constrained with what they

were allowed to do?-- Yes, it's my opinion that they were - that they were constrained in relation to how far they were allowed to take the TEP.

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So it was a difficult situation for everybody?-- That's correct.

All right. In annexure SGR 7 there is some correspondance relating to two directions to cease discharge, directions given to Rio Tinto by DERM during the currency of the TEP; is that right?-- That's correct.

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And in both cases, DERM's reason for giving the direction to cease the discharge was said to be based upon rising EC levels downstream; is that right?-- That's correct.

Now, did DERM provide to you the basis, presumably some scientific analysis, of their decision in that regard; in other words, did they show you any scientific evidence that the discharges from Hail Creek were causing an increase in EC levels downstream?-- No, there was no - no correspondance to that effect. I was - I was at a workshop where DERM officers showed me some data relating to EC levels in the lower reaches of the Fitzroy Basin, but that was general information and there was never any point - any correspondance or dialogue suggesting that Hail Creek was the cause of those elevated EC levels.

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I see. In respect of the first direction to cease discharge, may I take you to SJR 7 at 7.7, annexure item 7.7, "Evidence of meeting with DERM to discuss the directive to cease discharge."?-- Yes.

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And there are some notes there of a meeting with DERM in relation to the Hail Creek cessation of discharge issue; is that right?-- That's correct.

There's a series of bullet points there. Can I take you to the fifth bullet point down, which reads, "DERM were keen to understand the water storage and quality situation at HC and stated that they wanted to see HC move from the current three-quarter production capacity to above a '90 per cent' production capacity; and were interested to know what volume discharge would be required to achieve this position." You accept that's the way that reads?-- That's correct.

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Did DERM indicate as to why it was interested in the mine's production capacity?-- No. My understanding was that they did appreciate that - that mines such as Hail Creek were struggling and that, you know, they were endeavouring to assist those mines come back to increased production.

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Right. Struggling as a result of-----?-- Of water inundation.

Flood issues?-- Yes.

Did they indicate where that 90 per cent figure came from?--

No.

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On the copy we have of that e-mail, there are some lines which have been blacked out. Is it the same on your copy?-- It is, yes.

Do you know what - and just in general terms first of all - do you know what sort of material that was? We just don't know why that's been edited?-- I - yes, no, I'm not sure either. I would have to check an original copy, but I don't have one available with me at the moment.

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All right. We might follow that up with you. Presumably somebody thinks something's sensitive, so I don't need you to do it now, we might just check that with you later?-- Certainly.

Now, can I take you to the second direction to cease discharges, and still within SJR 7 there is an e-mail at 7.13, that's annexure item 7.13, "Evidence of advice from DERM that discharge can recommence.", is the cover sheet?-- Mmm-hmm.

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An e-mail of Friday, 2 September 2011?-- That's correct.

It sets out a conversation that you had with a Chris Loveday of DERM?-- Yes.

And there is an agreement, it seems an oral agreement, between the two of you as to Rio Tinto restarting discharges from Hail Creek and the rate of those discharges?-- That's correct.

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And that's a verbal permission, if you like, to do that?-- Yes.

What's the status of an agreement like that? Is that, in effect, a provisional TEP or what - how should that permission be viewed?-- We viewed it as a recommencement, as an agreed recommencement of the existing TEP.

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Okay. And do you know - we can probably check this anyway - but what's the status of the direction to cease discharge? Is that pursuant to another provision or, again, is that just something that is agreed between the parties?-- Yes, so it's my understanding that - and I can't recall if this was a provision of the Act or a provision of the TEP drafting itself - but we were operating under the basis that the Department had the power to demand a cessation of discharge at any point in time, and so we understand that that was a legally enforcement statement that they could make.

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And then they just withdrew their demand; is that right?-- That is correct, yes.

Okay. And does that process, that withdrawal, have to be documented, or was it documented, do you know, formally at all?-- No, it hasn't been any more formally documented than in that e-mail and I did - I did make a note that I should

have reflected that discussion back with Chris Loveday to ensure that we did have something more formal, but that was not done. 1

Okay. Can I take you to paragraph 63 of your statement? You compare the drawn out mine discharges in the dry season with the larger releases of water in the wet season. Are those long drawn out mine discharges, would you say, the consequence of the TEP and Environmental Authority requirements?-- Yes, I would. 10

And in what sense do you mean that the drawn out mine discharges are less desirable?-- Really for two reasons, that the - and I go back to the discussion we had earlier - that the longer that we hold water, we - you know, we have noted a trend that that water quality's deteriorated, so in holding that water for so many months we end up releasing a lower quality water or certainly potential to do that, but that, secondly, the receiving waters, and again I draw your attention to Hail Creek's position within the catchment, that - you know, we are now or at the time of writing discharging with - to creeks that had no flow and, therefore - you know, there is no potential pollution effect, that the water that's seen downstream is mine affected water and we don't believe that that's a desirable outcome. 20

Really you are saying that from an environmental point of view, are you?-- I am, yes.

Yes. Well, at paragraph 69 you outline certain types of provisions that Rio Tinto would like to see in environmental authorities and is it the case that a new approach has been adopted since the floods of last wet season?-- Yes, yes, it is the case, so I outlined it in my statement, that there's been a number of discussions with industry specifically and with RTCA or Rio Tinto Coal Australia directly in reviewing the Fitzroy model conditions. It's our belief that the - that the approach that's contained within those reviewed conditions does provide greater flexibility, but it's still too early at this stage to, in fact, demonstrate that that's the case. 30 40

Yes. The notes in the review model conditions which are in SJR 8 indicate an invitation by DERM for individual mine operators to negotiate conditions under which low, medium and high quality water can be discharged during and after high flow or rainfall events; is that right?-- That's correct.

And is that the plan? Will Rio Tinto attempt to negotiate such conditions?-- Yes, we have already started that process. 50

All right. And how's it going?-- We have had, I guess, one initial discussion. At this stage, we have some concerns with the application of the low or no flow scenario in so much as the approach that's included within the framework conditions requires a very low end of pipe water quality which we don't believe we can meet. Now, the - so, I guess our success in that - in those negotiations really depends on whether we can justify a case to DERM that those end of pipe limits be

relaxed and our preference would be that they refer more to downstream water quality objective levels rather than end of pipe limits.

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All right. And just finally can I take you to the topic of risk management as regards the water storage at dams. I think paragraphs 69 to 72 of your statement cover those sort of concerns; is that right?-- Yes.

You suggest, I think, that there should be some level of event that mine water storage systems are designed to cope with?-- That's correct.

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And that should be linked to community expectations?-- Yes.

How do you think that should be set?-- Well, in effect, we believe that that process already happens through - through a due approvals process that - so to take an example of a greenfield mining development that in putting forward the operator's proposition for a mine that the risk of exceedance of a mine or a management system is transparent and is open to some negotiation with the regulators. What we believe is happening is that that process already occurs, but when the EAs are set or in the particular circumstances we have seen with the model conditions applying down the track, those implicit design parameters have been lost and, therefore, we end up with a water management system that's designed for a certain capacity to overflow that is restricted by the establishment of model conditions that, in effect, don't allow that system to work as it was designed.

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Right. You say the Hail Creek Mine water management system is to withstand a one in 10 year event; is that right?-- Yes.

And is that standard?-- I couldn't say.

Well, put it this way, who decided that?-- Well, my understanding is that that was what was proposed by the mine during its - during its approvals process and in having approval, that - those design parameters, in effect, are implicitly approved.

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And I suppose the degree of acceptable risk would obviously enough vary accordingly to proximity of the mine to population centres and whether drinking water quality was likely to be affected and that sort of thing; would you agree?-- That's correct, yes.

All right. Just hang on on the phone for a moment, Mr Ritchie. Mr MacSporran, may have some questions for you.

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COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: Thank you, Commissioner. Mr Ritchie, can you hear me?-- Yes, I can.

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My name is Alan MacSporran, I appear for the State and in particular in this case DERM. You understand that?-- Yes.

Mr Ritchie, the mine owner, in this case Rio, has a responsibility to have a waste water system in place to cope with extreme events such that happened in 2010/2011?-- Well, no, it has a responsibility to have a mine water management system that will cope with an event that would agree with the regulator at its approval.

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All right. And then there is an ongoing responsibility, is there not, to deal with matters as they arise?-- Yes.

And it's an important matter both from the point of view of the environment and from the point of view of the profitability of the company concerned, is it not?-- Yes, it is.

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Because, as you have told us, in December 2010 you had - the storage capacity at the mine was at 98 per cent full?-- Yes.

And then in January, of course, with the further rain it was 105 per cent full?-- That's correct.

And, as you have told us, there's a risk if a dam gets too full from a health and safety point of view, firstly?-- Yes.

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And, secondly, if the pits, that is the production pits, get full or inundated, the mine can't operate to make money for the mine's owners?-- Yes.

So, it's important that there's planning to avoid those sorts of events?-- Well, I think it's important that - we believe it's important that planning actually addresses those circumstances appropriately.

And you would say, would you, that your planning, that's Rio's planning in this case, did appropriately address those possibilities?-- Sorry, are you referring to the - the-----

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The events of 2010/2011? You were caught totally by surprise, were you?-- No, we weren't caught totally by surprise but we were not in a position to establish or to increase our storage capacity either in the - either from the end of the previous wet season or at the start of the '10/'11 wet season by virtue of the imposition of the model condition.

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But you were-----?-- So, our response to that was rather than release and generate a non-compliance was to allow productive pit areas to be inundated with water.

But you were ultimately forced to apply for a TEP later January 2011, weren't you?-- Yes.

Then, of course, if I can just trace the history of that

briefly, you applied, did you not, on the 18th of January firstly?-- I believe so, yes.

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And that was approved, it was assessed and approved by DERM on the 29th of January?-- That's correct.

You'd agree that was a timely approval?-- With respect to the TP process, yes, I agree that's a timely approval.

Of course, DERM can't assess an application for a TEP until it's put in, can they?-- No.

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And you understood that?-- Yes, yes, we understand that.

You next applied for a TEP on the 18th of April 2011?-- That's correct.

That was approved - I'm sorry, that was refused, was it not?-- It was considered a deemed refusal - sorry, I just need to turn to the correct annexure.

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Yes, by all means, and, if you could, just tell us which one it is when you dig it up?-- It's annexure 7 point - point 1 - 7.1. 1

So it's a deemed refusal, and why was that, can you tell us, briefly?-- So the - there was an application submitted on the 18th of April 2011 to make some adjustments to the TEP. That was - we had no correspondence from DERM until at the meeting of the 24th of May where we were informed that the application of the 18th of April was a deemed refusal due to the time elapsed from the submission of the application. 10

But in between those two dates and the 19th of May DERM issued a directive to cease discharges?-- That's correct, and that was - that was a cessation of the January TEP that was the in force TEP at the time.

Yes, all right. So you discovered, as you say, later in May, that it was a deemed refusal?-- Yes. 20

COMMISSIONER: Is it simply a deemed refusal if DERM don't act on it by a certain time? Have I understood that correctly, Mr Ritchie?-- Yes, my understanding is that the Department has 20 days and at that point it becomes a deemed refusal.

Thank you.

MR MacSPORRAN: And then on the 2nd of June the company submitted a further application for an amended TEP?-- That's correct. 30

And that was approved on the 10th of June and notified to the company the same day?-- That's correct.

That's again in a very timely manner?-- For the TEP process, yes.

Well for any process it's fairly timely, isn't it? It's what, eight days? Seven day, eight days?-- Well, the reason I make that caveat is - and I make the point within the statement, that it's my experience that in approving TEP it is usually the case that they go for the full 20 days of the Department's assessment period. 40

Well this one's a timely, very timely approval then?-- Yes.

Yes. No complaints about that one. Is that right?-- Well, again I just make the caveat that we're of the opinion that the TEP process is really not appropriate for handling the restriction of discharge that had arisen from the imposition of the model condition. 50

Then on the 28th of June you submitted a further application for an amended TEP?-- That's correct.

And that was approved on the 11th of July and notified to the company on the same day?-- That's correct.

Now, that whole process was seeking to deal with the inundation of the mine arising from the January floods; was it not?-- That's correct. 1

One advantage of - I think you've said this earlier in your evidence, it is an advantage to be ready to - with a TEP to commence releases prior to a major flood event so that you're prepared or more prepared. Did you give that evidence earlier today?-- No, I clarified that point by saying that that particular statement was not suggesting that we apply for TEPs in the event that a non-compliance might occur, but, in fact, saying that - reinforcing the fact that the TEP mechanism is not appropriate for circumstances where a non-compliance did not in fact exist. 10

Well, was that your view in November 2010, was it?-- Sorry, I missed that.

Was that your view in November 2010? The TEP wasn't an appropriate process to deal with these issues where there had been no - non-compliance?-- Again I'd need to make the point that I wasn't working with for Hail Creek Mine or Rio Tinto Coal in November 2010. It was not - my understanding of circumstances at that time was that there were concerns being raised by industry generally in relation to the circumstances of the mine and that the Department, and I'm not sure of their timing, had indicated that the TEP mechanism would be the way that that would be pursued but I can't speak for Rio Tinto's perspective on that issue at that time. 20

Well, what we do know is that the company and the Department did get together and approve and implement, if you like, a TEP after the events; is that so?-- That's - after - well, after the event. Well, in the - in January, so at the point where the mine was - was becoming restrained in its production, or had become constrained in its production was the point at which the first TEP application was made. 30

And the Department, that is DERM, had approached the company as early as November 2010; had they not?-- I'm not - I'm not sure if that's the case. 40

Your records don't reveal that?-- Not - not that I'm aware of, no.

I suggest to you formally that on the 16th of November 2010 at a site inspection by DERM officers the company was invited to submit a TEP to reduce the risk of non-compliant discharges and to "develop a detailed release strategy that would provide the best outcome for the environment and community downstream of the mine". You've never heard of that suggestion before?-- No, I'm not aware of that. 50

Well, have you searched your company records thoroughly going back to November 2010?-- I've spoken to a number of people and reviewed the documents that I was able to find in the time I had available.

Right. That's a significant matter, isn't it, that if -
 assume for the moment it's correct. It would be significant
 that DERM approached the company as early as November 2010
 with the invitation to submit a TEP?-- Yes, in - and again I
 make the point that the TEP process is not, we believe, an
 appropriate mechanism for those circumstances-----

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Well-----?-- -----but in the circumstances that - where we
 found ourselves being effectively required to use TEPs then,
 yes, it's significant.

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Well, whether you thought it was the appropriate mechanism or
 not, it is the mechanism that was ultimately applied, wasn't
 it, after the event of the floods in 2011?-- That's correct.

Is that right?-- Yes, that's correct.

And again I suggest to you that DERM approached you in
 November 2010 and the company didn't take up the opportunity
 to submit the TEP at this time and instead advised the
 Department they had adequate contingencies in place should
 they receive significant rainfall during the wet season. I
 take it because you're not aware of the TEP invitation you
 don't know anything about the company's response?-- No, I'm
 not familiar with that.

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It would appear that the company didn't have in place adequate
 contingencies in the event of significant rainfall during the
 wet season; is that so?-- Well, in terms of maintaining an
 operational mine that would be correct but in terms of
 ensuring a non-compliance to the Environmental Authority the
 mine did in fact not - did not end up in a position where it
 was in non-compliance.

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Well, on the 5th of January the mine did advise DERM they
 wouldn't be able to comply with the conditions of their
 Environmental Authority due to significant rainfall on site
 during December 2010?-- Sorry, on what date was that?

In December - sorry, 5th of January 2011. Do your records
 reveal that?-- I don't - I don't have direct knowledge of
 that - of that correspondence, no.

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So again if you-----?-- But can I say that I would expect
 that that would have been the trigger for the development of
 the TEP that followed.

And had it been in place before those events in December 2010
 you may not have lost production the way you did subsequently.
 Is that a fair comment?-- Well, the record - the record
 suggests that the TEP that was subsequently approved was
 ineffective. Now, if that same TEP had been approved in
 November of 2010 there may have been some alleviation but I
 suspect the mine still would have been suffering loss of
 production.

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Well, we simply don't know because the company refused to be
 involved; is that so? Do you accept what I've put to you as

being correct at that level?-- I'm happy to accept that - that those discussions occurred.

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Okay. All right. Now, the model conditions came in following the Hart - Professor Hart's report, didn't they?-- That's correct.

That was in 2009?-- That's - I believe that's correct, yes.

The report itself I think was 2008 but the conditions were imposed on and from around 2009?-- Yes, I think around October, I have the record there.

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And the industry has generally expressed a view they're too onerous, the model conditions that came into effect at that time?-- That's correct.

It's the case though, isn't it, that any mining company is free to apply for an amendment of any of those model conditions?-- That's correct.

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And DERM's position is this, is it not, that if the amendment is - amendment application is supported by science that establishes that there's no environmental harm arising out of the proposed amendment it will be accepted?-- I understand that that's the Department's position, yes.

And is it the case that if I take your company, for instance, no such amendment supported by science has ever been sought?-- It's my understanding, and I haven't looked at these documents in detail, the documents I referred to earlier in relation to the negotiations did endeavour to provide some supporting information in relation to the level of environmental harm.

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When was that, Mr Ritchie? I'm just not clear when - what time you're talking-----?-- I believe that was in October 2009.

All right, but you're not able to tell us the details of what material was supplied for that purpose?-- No.

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Is that because you haven't seen them or you're simply not familiar enough with them?-- I'm not familiar enough with those documents.

But they do exist?-- Yes.

Can you tell us anything about the categories of amendment that was sought and the type of scientific studies that were provided?-- No, I couldn't say with any certainty.

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Can you tell us who they were provided to within DERM?-- It would have been with the regional office.

And a particular person in that regional office you were dealing with?-- No, I couldn't say.

All right. Just going back to annexure 7.3 in your statement. You were talking about the comments provided by the Department, its recommendations. Do you recall that?-- Yes.

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Do you have that document again? It's page 2 of the e-mail, I think, of the attachments? It's the one Mr Callaghan took you to earlier?-- Yes.

And the third dot point is the one you referred to, I think?-- That's correct.

10

And correct me if I am wrong, the point you were making there was that DERM had a view as to - and made a recommendation, as to what the flow rate - particular flow rate should be; is that so?-- Yes.

And did you say that the company ultimately accepted that position?-- That's correct.

So I wasn't sure what point you wanted to make about this e-mail. DERM made a recommendation, you accepted it?-- That's correct.

20

That's how the process works; is it not?-- Yes, that's correct.

So it was healthy debate between DERM and the company about the flow rate that should be applied in this instance?-- Yes, there was certainly a negotiation but the - we were really of the opinion that the TEP did not provide enough relief to address the circumstances of Hail Creek, Hail Creek Mine.

30

So I think you've acknowledged, certainly in evidence if not in your statement, that you understand the tension between DERM's role in protecting the environment and dealing with your company and fostering a good relationship such that your company's able to continue to prosper in this industry?-- That's correct.

And you understand that DERM has constraints imposed upon it by its role in regulating and enforcing the Environmental Protection Act?-- That's correct.

40

And your concern is whether those constraints adequately allow enough leeway for your company and other companies in the industry to continue to operate profitably?-- That's correct.

And part of a negotiation process concerning the new conditions is seeking to address those issues?-- That's correct.

50

And you would concede, I'm assuming, that DERM has been reasonably flexible in those negotiations and recognising your difficulties?-- Yes, yes, I would be happy to acknowledge that.

And you'd also acknowledge, no doubt, that DERM's been under extreme pressure to process the great number of applications

that were made after - immediately after these flood events
earlier this year?-- Or in fact during - during the flood
events-----

1

Yes?-- -----and, yes, I make that acknowledgment in my
statement.

Yes. And I think another acknowledgment you make is that your
company in hindsight could have benefitted by earlier contact
with DERM and meaningful negotiations?-- Yes, I make that
statement.

10

Thank you.

MS McLEOD: No questions, thank you

MR CALLAGHAN: I've just got one further question concerning
the preparedness for last wet season. Are you able to say
anything about the corporate awareness as a result of
information from any source, be it the Bureau of Meteorology,
DERM or The Courier-Mail, are you able to say anything about
the company's awareness that the wet season was going to be
worse than usual?-- Not - not with any great authority. We -
we were not - the company was not in possession of any
specific advice in relation to weather forecasting. That is
something that we are now doing. I - I'm of the belief that
it was not until December that the mine believed that there
might be a significant wet season coming on, and that may well
account for its responses to DERM that we've just heard about
but that's really all I can comment on.

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30

All right. Look, thank you. I've got no further questions.
May the witness be excused?

COMMISSIONER: Yes. Thanks, Mr Ritchie, you're excused?--
Thank you.

40

WITNESS EXCUSED

MR CALLAGHAN: I call Mark Heaton.

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MARK DAVID HEATON, SWORN AND EXAMINED:

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MR CALLAGHAN: Could you tell the Commission your full name, please?-- Mark David Heaton.

Mr Heaton, you're the general manager of Open Cut Operations of Anglo American Metallurgical Coal; is that correct?-- That's correct.

10

And you've prepared a statement and provided some information to the Commission, in fact two statements, one dated 6 September and one 15 September of this year; is that correct?-- That's correct.

And there's also a folder of documents relating to Moranbah North Mine and a folder relating to Dawson Mine, which I will tender on CD. I have a copy for the witness and for the Commission. So perhaps if I tender the two statements first.

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COMMISSIONER: Exhibit 606.

ADMITTED AND MARKED EXHIBIT 606"

MR CALLAGHAN: And then the folder of documents relating to the mines as stated.

30

COMMISSIONER: 607.

ADMITTED AND MARKED "EXHIBIT 607"

MR CALLAGHAN: Mr Heaton, you've been present in Court whilst Mr Ritchie gave evidence by telephone; is that right?-- That's correct.

40

And you heard his general comments at the start of his evidence about the use of water at mine sites and the disposal of water at mine sites?-- Yes, I did.

You're in general agreement with everything he said?-- Yes.

50

Can I go directly then to the question of Environmental Authority provisions, and do you have the Moranbah North folder in front of you?-- Yeah.

And if I can take you to tab one. Is that the water management part of the Environmental Authority which is applicable to the Moranbah North mine, or at least was during the last wet season?-- Yeah, looks to me, yes.

And it sets out the circumstances in which Anglo American might release water, including mine-affected water, into the Isaac River; is that right?-- Correct.

1

The Isaac River being the only waterway near the mine?-- That's my understanding, yeah.

Can I take you to a couple of aspects of that authority. Firstly, table 2, which is on the second page of the document, I think. Down the bottom there's pagination. It's page 7 of 55. That's probably the second set of documents you have in front of you. Do you have that?-- Yep.

10

There are set out the release limits on contaminants, including the prescribed electrical conductivity; is that right?-- That's right, yes.

And happily we have a brand new set of W3s and W4s to deal with. At table 4 on that document, which is on page 10 of 55, that sets out the flow in the Isaac River which must be at least 5 cubic metres per second during a release of mine-affected water?-- Yes.

20

And condition W9 provides that the contaminant release flow must not be more than 20 per cent of the flow in the Isaac River. You agree with that?-- Yep.

Can I just ask you before I go on: does the Environmental Authority effect the release of more water from the site? Water from water-supply dams, for example?-- Clean water?

30

Yeah?-- I believe it does, yes.

All right. So it covers all release of all water?-- Yes.

Can I take you then to your first statement, that is the one 6 September, and to tab 42 - question 2 in your first statement, or the answer to the topic two, if you like. You say that the Environmental Authority conditions after the inclusion of the Fitzroy Model conditions were more prohibitive than the earlier ones; is that right?-- That's correct, yes.

40

And perhaps if you can do it by reference to the documents that I've taken you to but if you can't can you at least explain how they were more prohibitive?-- My understanding is they effectively, as I've put in my submission, effectively represented zero discharge.

And it may be if there's zero discharge that it's not relevant but was there an electrical conductivity release limit or was that not relevant because there was no-----?-- Yeah, it's not relevant. It's a zero discharge.

50

Likewise the flow limit is not relevant because of no discharge? All right. After those Fitzroy Model conditions were incorporated into the environmental authorities did Anglo American attempt any negotiation about them with the

Department of Environment and Resource Management?-- I'm not sure if we did directly but definitely through the QRC-----

1

I see?-- -----there was discussions, yes.

All right. Was there any result of those negotiations?-- Obviously recently there has been.

Post-flood?-- Post-flood, but prior to that I'm not sure.

10

How is the question of environmental harm as a result of the release of mine-affected water, how is that monitored?-- Currently?

Well, historically first and now currently?-- With the nil discharge there isn't any discharge-----

So there was nothing to monitor?-- -----so there's - theoretically there's nothing to monitor, there's no discharge.

20

All right. What about currently?-- Well, currently it's still nil discharge unless you have a TEP in place and then there's conditions in the TAP - TEP regarding monitoring.

I see, all right. Well, is it your perception that the changes brought about by the adoption of the Fitzroy Model conditions meant that the Anglo American mines had more water on site at the start of the wet season than they did before those conditions were incorporated?-- Yeah, definitely.

30

Okay?-- We weren't able to release water post those new conditions.

All right. Can I turn then just to the topic of flood preparedness, and this might conveniently be addressed by referring to your second statement, and page 1 of that. You say there that there were meetings between the mining industry and DERM throughout 2010?-- Correct.

40

Did you attend any of those meetings?-- No, I didn't.

Sorry, but you have to put that in the context of something that happened before you arrived. What was discussed at those meetings?-- I'm not sure of the exact detail, as I said I wasn't present, but I believe it was about the-----

Can I put it this way: are you aware as to whether the industry raised the concern that the Environmental Authority conditions would require or would mean that there was an accumulation of water-----?-- Yes, that was discussed with them.

50

And are you aware in general terms even of DERM's response to those concerns?-- No.

Okay. Now, I can take you to your statement but you would be aware that you've said that the three month prediction window of the Southern Oscillation Index means that - or meant that there was not sufficient time to implement engineering solutions to water management issues?-- Yeah, that's correct.

1

Can I ask you what I just asked Mr Ritchie, when - what was the state of corporate awareness or when were you aware of, if you were aware of, predictions about an above-average wet season?-- Yeah, from memory we were - when the Bureau, you know, released those forecasts about three months before, we were aware that it was going to be a very wet year-----

10

Yes?-- -----and we started to put, you know, appropriate measures in place to deal with that.

What are you talking about there?-- It's mainly about ensuring that pumps and - when - nil discharge, it's mainly about ensuring that pumps and pipelines and so forth are in place.

20

All right. When you talk about engineering solutions which weren't possible because of the insufficient time what sort of engineering solutions are you talking about there?-- It can be about procuring additional pipelines or pumps, being able to put in, as an example, desal-type plants to clean water and so forth.

That's quite an infrastructure project, I suppose, something like a desalination plant?-- Yeah, quite expensive and they take a lot of time-----

30

All right. They'd be, presumably though, an effective solution to the problem of mine-affected water? Perhaps not cost-effective but-----?-- Yeah.

-----those engineering solutions would be highly effective?-- Yeah, but there's a limit to the volume you can treat.

Right?-- You know, there's a reasonable limit but they do - you can desalt water but there's a limit to how much you can actually do.

40

I see. And the sorts of volumes that we're talking about here render it impractical, do they, or not?-- No, we're currently looking at doing it now.

Okay?-- We're still actually in the process of working on that right now but for the Capcoal complex, for example, where we've got in the order of, I think, 15 gig too much water, we're talking about, from memory, a couple of gig a year, so it's not going to clear it out quickly.

50

No, I follow. So, sorry, desalination plants are one engineering solution. What are others?-- Engineering solutions, really, it's about being able to pump your water around quick enough, get it out of areas that are starting to fill up, activity pits, pump it into inactive pits. So you need significant pumps and pipes.

1

So you're just moving it around, though, you're not actually disposing of it?-- No. You need to have sufficient storage. So if you have got storage you can move it around, [indistinct] solutions allow you to do that, but once you are near full you just get to the stage where you've got nowhere to pump it anyway.

10

Right. What about evaporation techniques, are they an option?-- Yeah, we do some of that as well, sort of, water destruction units and so forth but, again, the volumes aren't significant, in terms of when you're talking about gigalitres of water to get rid of, they're not significant.

20

Okay. So is that why we're talking about, in effect, this only other option of releasing it into waterways?-- That's correct, yes.

Okay. Was Anglo American engaged with DERM in any other sort of flood preparedness activities in advance of the wet season just gone?-- I'm not sure. I know, like, we talked about they were definitely with, working with QRC in the negotiations regarding the conditions, but I'm not sure if there's anything additional to that or not.

30

Okay. That was QRC as far as you know?-- Yes.

What steps, if any, did Angelo American take in order to deal with the accumulation of water in advance of the wet season last year?-- Well, it was mainly getting pumps and pipelines in place and pumping out pits that were close by so we would get water in there quickly when the wet season came. So we've got storages a fair way away that we can only pump at a certain flow rate and so getting the water from close to the activity pits as far away as we could so we had storage close by.

40

Okay. So, again, just pumping it into another pit, is that an inactive pit?-- That's correct.

I follow. All right. We understand that dams at mines are expected to have a certain level of free board at the start of the wet season; is that right?-- That's correct, yes.

50

Did the Anglo American dams have sufficient free board at the start of the wet season?-- I think across the board we were probably in reasonably good condition, maybe some were a little bit high, but they would be probably close to their limit in terms of free board, but probably enough for a normal wet season that we would have thought we would have been okay.

Does DERM have any role in monitoring or doing anything about

the amount of free bored you retain?-- I think they may get involved in the approvals of some dams and may be up front right at the start, but I'm not really sure. I think they may have some involvement in that.

1

All right. Well, one thing that Anglo American was involved in was an application for an emergency direction, and could I take you to tab 2 in the Moranbah North folder. Is this the Anglo American application for an emergency direction under section 468 of the Environmental Protection Act?-- Yes, I think so. It looks like it, yep.

10

And it says, "Dear Rebecca" but to whom is it actually addressed?-- I'm not sure.

There's no title or anything given to Rebecca, that's all?-- Yeah.

Again, I mean, we have the letter, do we know whether that was sent as an attachment to an email or how it was dispatched?-- I could find out.

20

Okay. We might follow up with that?-- I'm sure we've got it on record.

Do you know if it was surrounded by or preceded by other communications?-- No, I'm not sure.

Anyway, can I take you to your second statement and to your answer to question 3, or proposition 3 in that?-- Yep.

30

The points to be made being that there was significant rain that had been falling in previous weeks?-- Yes.

80 millimetres overnight at dams in danger of spilling. Tell me, which dams were in danger of spilling?-- I know there was one at Moranbah, and then we also had at least one I'm aware of at Capcoal that got up very high that was at risk.

In danger of failing?-- I'm not sure if it was in danger of failing, but it was in danger of getting to its, you know, practical limit.

40

Where dams, were any other dams - in your statement you talk about a situation with the potential for dam failures, which dams do you have in mind there?-- I'm not sure. Like I said, the Moranbah one.

Okay?-- And I know there was one at Capcoal, they were getting close to their limit, which is when we start to get a bit concerned and want to address it.

50

All right. In any case, DERM responded to this request for an emergency direction very quickly?-- Yes.

On the same day, in fact?-- Yep.

And at tab 3 in the Moranbah North folder I think there's

DERM's response, it's also dated 20 December. Did you, in fact, receive it on the same day? I think you just answered that you did?-- I'm assume we did. I'm not sure.

1

Do you know if this was the extent of the communications? Did there have to be any phone discussion or any further negotiation?-- Yeah, I couldn't say. I mean, I imagine there would have been phone discussions as well.

And you were able to commence discharge of water in accordance with the direction straight away, I take it?-- Yes.

10

And did that in fact happen?-- I believe so, yes.

The safety of dams was brought under control fairly quickly?-- Yep.

Ultimately the emergency direction was superseded by a TEP?-- A TEP.

20

Well, you've described the response as rapid and appreciated; is that right?-- Yes, correct.

Presumably you would say this was an example of something that from your point of view worked very well?-- Yeah, we thought it worked very well.

Okay. And you'd follow the same procedures in the event that another emergency direction was necessary?-- Yes.

30

All right. You've seen the applications and decisions made by DERM regarding transitional environmental programs, and you heard the questions I asked Mr Ritchie about this. As far as you know, does anyone else see the contents of the applications apart from yourself and DERM?-- No, not as far as I know.

And are you confident that you know the sorts of information that DERM requires before it can make a decision?-- I'm confident that people within my business know that, yeah.

40

You, corporately or you collectively?-- Corporately, yeah.

Yeah, okay. What about the DERM TEP template, do you have anything to say about that?-- No, no, I'm not aware of it.

Okay. What about this issue I raised with Mr Ritchie as to whether applications for TEPs are dealt by different DERM officers in different ways, in other words, is the response in your experience or your company's experience consistent?-- I must say I haven't heard any specific examples but, you know, you do hear at times, you do hear that, you know, there's certain DERM officers you can deal with who will be very constructive and others that won't be, but I think that's the way things work in general.

50

Sure. You can't give a specific example of that?-- I haven't got any specific examples of that.

No, all right. Can I take you to tab 4 in the Moranbah North witness folder, just an example of a TEP application, and to page 12 at section 4.5 under the heading Discharge Management. There are different options there for the discharge of excess water from the site; is that right?-- Yes. Yep.

The one that I was interested in is diluting with imported raw of water. Can I ask why that is considered environmentally and socially unacceptable?-- I am not sure.

10

You can't think of any reason why that would be so?-- I don't know.

No, okay. Can I take you to the other folder you have there, the Dawson mine folder, to tab 3 of that one. That's another draft TEP. Can I take you to section 1.2.1 concerning the Hillview dam. In the second paragraph it says that there were both controlled and uncontrolled releases from that dam. What were the uncontrolled releases which occurred from that dam?-- I'm not sure.

20

All right. You might be able to find out?-- Yeah, I can find that out, yeah.

Presumably the controlled releases were in accordance with the Environmental Authority; would that be right?-- Yeah, yes.

At the end of that paragraph it says that a controlled, or that the controlled discharge was undertaken after being given verbal permission from a DERM officer. Do you have any knowledge of that?-- No.

30

How would Anglo American go about seeking verbal permission from a DERM officer to do something like that?-- How would they go about getting it?

Yes, is that a process that happens regularly, or is that part of the TEP process? I'm just wondering why you'd get verbal permission from DERM to do something?-- No, I wouldn't. I mean, not for anything significant, no.

40

I beg your pardon?-- If it's a significant issue it would be in writing.

Yeah. It talks about a controlled discharge. Anyway, you're not able to shed any light on that for us?-- No.

All right. If you go back to your first statement, question 7, page 4 and 5, you set out the timeline of the process of applying for a TEP for Dawson North mine; is that right?-- That's right, yes.

50

You originally applied on the 4th of January, rejected. Reapplied 14 January, accepted 17 February?-- Yes.

Do you know the reason for that delay?-- I'm not sure. I mean, there would have been a reason but I'm not sure what it

is.

1

All right. Can we just scroll down a bit. Thanks. You've said that on the 31st - DERM approved a TEP with unworkable conditions contrary to discussions held on the 31st of January; is that right?-- Yep.

Was something agreed with DERM on the 31st of January which was ultimately not reflected in the TEP?-- Yeah, that's the information that I've got in the summary, yeah.

10

Okay. Do you know anything more about it?-- No. Again, I could find out, but that's information I was given.

All right. We might follow that up. Just excuse me for a moment. Just excuse me one more moment.

Madam Commissioner, I think some of the questions which I had probably involve a degree of specificity which this witness may not be equipped to deal with. We might revisit this topic either in writing or with another witness at another time. I don't want to take away Mr MacSporran's right to cross-examine but I'm sure we can accommodate any queries he has if - or at a later stage, if need be, but I don't have any further questions for the time being.

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COMMISSIONER: Cross-examination now, Mr MacSporran, and are you content with that idea that there may be more in writing or there may be another witness?

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MS McLEOD: I'd be more content if there was another witness to deal with these matters because they have been raised, the statement has been tendered. I raised some concerns with my learned friend earlier about whether I would be in a position to cross-examine at all today on this topic because the DERM case is based upon a requirement to at least two witnesses, Andrew Brier and a gentleman called Laurence, the requirement was issued on the 13th of September and it's returnable on Monday the 26th. So our case hasn't yet been collated into statement form, so I am necessarily on the run, as it were, to deal with these topics.

40

COMMISSIONER: All right. We will try and work around it with either the opportunity to ask questions in writing or perhaps further cross-examination with this witness or someone else but, anyway, if you go as far as you can.

MR MacSPORRAN: Certainly. I won't be long, if I can do it now.

50

COMMISSIONER: Certainly.

MR MacSPORRAN: Thank you.

MS McLEOD: Can I indicate before Mr MacSporran starts that we don't have any questions for the witness and I seek to be excused.

COMMISSIONER: Yes. Thanks Ms Macleod.

1

MS McLEOD: Thank you.

COMMISSIONER: Yes, Mr MacSporran.

MR MacSPORRAN: Mr Heaton, you would agree, I take it, that the way this system works is the mine owner has a responsibility to have a waste water management system in place that prevents environmental harm?-- Yes.

10

In a summary form?-- Yes.

And DERM is the regulator of that system?-- Yes.

And there's naturally an intention between DERM and the owners of the mine to get the balance between those two requirements, both important, right?-- Yes.

20

And DERM, would you agree, has been sympathetic to the mine in terms of its need to continue as full a production as it can to make as much profit as it can for its shareholders?-- Yeah, there's been examples of that, for sure.

Now the concern the company has, and has always had, is that in particular the model conditions which came in, in 2009, are, the company thinks, to onerous; is that so?-- That's correct, yes.

30

But you'd acknowledge also, I take it, that it is possible for the, under this system, for the company to make an application to amend those conditions at any time?-- Yes.

And you understand also, I take it, that in doing so DERM would be receptive providing the company could provide scientific evidence to show that the proposed amended conditions did not cause environmental harm?-- Yes, that's my understanding, yep.

40

Has that ever been done by the company?-- We've actually started looking at that for that exact reason, that DERM responded back to us that, "You have to be able to prove scientifically that there's no harm".

Yes?-- And, you know, that's not a simple process.

No, it's a very complicated?-- Very complicated and-----

50

Not to mention expensive?-- Well, it is complicated and it takes a lot of time and we have been working on that and we're still working on that.

But up until recently the company has made no such application to amend based on the scientific evidence about lack of environmental harm?-- We have been collecting scientific evidence, so we had the conversation with DERM and they

basically said what you've just said.

1

Yes. And you've accepted the advice and you've gone ahead to start amassing or collecting scientific evidence to prove your case?-- Yes.

And you'd acknowledge it's an entirely appropriate way to go about the exercise, that is, scientifically based to show no environmental harm?-- Well, to meet DERM'S requirements, yes.

10

Yes, and you'd agree that that requirement by DERM is entirely appropriate in those circumstances?-- Not necessarily, no.

Well, the object of an efficient waste water management system is to prevent environmental harm?-- That's correct.

DERM is saying you aren't allowed to release into the environment if it is going to harm the environment?-- Yes.

And they are saying to you, you can release providing you can show with scientific that it is not going to harm the environment?-- Yes.

20

So DERM'S response is entirely appropriate; isn't it?-- Yeah, well, the issue becomes about collecting that scientific data and proving to certain people that that's the case.

And the companies think that's too onerous and too expensive?-- I don't think it's about expense, I think it is about trying to actually do it and get it done.

30

Anyway, you are in the process of doing it?-- We are in the process of doing it, yes.

All right. Can I take you quickly to your table at - your pages aren't numbered. The table summarising the Dawson North TEP, I think it is page 3 of your statement?-- Yes.

You set out that-----?-- Which submission is that, I'm sorry?

40

I'm sorry. I think it's the first statement?-- 6th of September?

Yes, yes?-- Yes.

It is page 4 actually of your first statement?-- Yep.

The detail you have in that table, I take it you didn't personally check the records to-----?-- No.

50

You had someone-----?-- No, we have had our environmental team put that together, yes.

Okay. Can I suggest to you globally for a start the dates aren't necessarily accurate?-- Okay.

I don't suppose you can comment yourself personally?-- No. I can check them.

They can be checked?-- Yes.

The source documents are available?-- Yes, of course.

All right. Is this the case: That the Dawson Central and Dawson North TEPs were combined ultimately and submitted on the 7th of February, the both of them that is?-- Yes. Yes, I believe so, yep.

10

That was approved with conditions on the 17th of February?-- Yes.

And the conditions were as per the application by the company with the exception of the flow rate figure, that was the only condition that wasn't in accordance with the application originally provided by the company?-- Yes.

And the - what the company wanted was a flow rate in the creek of ten cubic metres per second and DERM granted it at 18 rather than 10?-- Yeah.

20

Were you given a reason why there was a change in that condition from the application your company had made?-- I'm not sure, I can't answer that.

You don't know the reasons behind that?-- No, I don't.

Okay. But you are able to confirm, are you, that was the only condition that was different to the one you applied for?-- I could confirm. I can't now, but I can do that.

30

You can with the documents?-- Yes, sure.

All right. Now is it the case that the company had difficulty meeting the conditions in terms of pumping out the water because there was a lack of capacity to pump in the company? You lacked some infrastructure by way of pumps?-- I think - at Dawson, yes.

40

Yes, Dawson?-- We did at the time.

How did that come about that you had insufficient pumping capability to meet the requirements?-- I think we had just an excess of water in every pit.

But if you had more pumps you could have pumped out more water?-- Yeah.

In accordance with the conditions that had been approved?-- Yeah, and our storage capacity is all up one end of the mine and it takes an enormous amount of pumps to get the water there.

50

All right. Now, in any event, you have had subsequent meetings as recently as August this year between DERM and associated agencies?-- Yes.

And you've made it known, have you, or the company has made it known that you have had good support from DERM in this whole exercise?-- Yeah. The information I have got has been very constructive, yes.

1

That indicates good support from DERM through this process?-- That's what I understand, yeah.

And that DERM has provided you with an ability to discharge water but you'd like to have that process formalised to become more flexible and quicker, is that a fair summary of the stage we have reached?-- Yeah. I think there's a few other issues besides that but they're probably the big ones, yes.

10

All right. Commissioner, that's probably as far as I can go. I just reserve my right on the basis we discussed earlier and can I indicate my preference for a witness coming back to be asked questions, whether it be this gentleman or someone else, if that's possible, in the nature of the allegation.

20

COMMISSIONER: Yes, I understand that.

MR CALLAGHAN: I can indicate if the State wishes to identify - I mean, I dare say we will be serving another requirement on the company and if anything - if you want us to incorporate anything in that requirement to address specific concerns we would certainly welcome that.

MR MacSPORRAN: We can certainly look into that and see what we can provide.

30

COMMISSIONER: That would be good. Thank you.

MR CALLAGHAN: We did have another witness but-----

MR MacSPORRAN: Could we indicate, if it is helpful, that we have no questions of Mr Kadletz.

COMMISSIONER: Did anyone else, do you know?

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MR CALLAGHAN: I don't think there's anyone left.

MR MacSPORRAN: If they did, they've gone.

MR CALLAGHAN: Is he here?

COMMISSIONER: Anyway, should we excuse poor Mr Heaton now?

MR CALLAGHAN: Yes. I'm sorry.

50

COMMISSIONER: Thank you, Mr Heaton, you are excused.

WITNESS EXCUSED

COMMISSIONER: What do you want to do about Mr Kadletz? 1

MR CALLAGHAN: I am happy to press on if the Commission is, but he's a locally based employee, I gather, so there wouldn't be a great deal of dislocation-----

COMMISSIONER: If it turns out that nobody has any questions anyway, do you want to call him?

MR CALLAGHAN: Yes, there are some matters that I do want to address with him. 10

COMMISSIONER: Where is Mr Kadletz from?

MR CALLAGHAN: DEEDI.

MR MacSPORRAN: He is local but as your program changes, of course, it is going to harder and harder to fit people coming back in. 20

COMMISSIONER: That is true, but if he is a fairly quick witness it may not be too disastrous.

MR CALLAGHAN: I can't promise to be too quick but I'm happy to-----

COMMISSIONER: No, I'm suggesting that if he's a fairly quick witness it may not be too disastrous to put him on another day? Get him in then. 30

MR CALLAGHAN: Yes, all right.

COMMISSIONER: I'm just reluctant to do this to the reporters two days running.

MR CALLAGHAN: I know.

COMMISSIONER: Maybe if we all look suitable abject and you are really quick with him. 40

MR CALLAGHAN: I call Oscar Kadletz.

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OSCAR KADLETZ, SWORN AND EXAMINED:

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MR CALLAGHAN: Your name is Oscar Kadletz?-- That's correct.

You are the Abandoned Mines Coordinator at the Department of Employment and Economic Development and Innovation?-- Yes.

You provided a statement dated 20 September which contains ten annexures?-- Yes.

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Yes. I tender that statement.

COMMISSIONER: Exhibit 608.

ADMITTED AND MARKED "EXHIBIT 608"

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MR CALLAGHAN: I also tender a folder of documents relating to the Mount Oxide Mine including briefing notes and photos. I tender that on a CD and there is a copy for the witness.

COMMISSIONER: Exhibit 609.

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ADMITTED AND MARKED "EXHIBIT 609"

MR CALLAGHAN: Mr Kadletz, you administer the Abandoned Mines Land Program?-- That's correct.

How many abandoned mines are there in Queensland?-- There's many thousands of them, actually, ranging from very small ones to the largest of all which is Mount Morgan.

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And does the abandoned mines - what do you do at the program?-- We address what we've assessed are the highest risk sites under the program and, given the resources that are available to us, and in that we focus on the sites that have significant risk to public health and safety primarily.

Well, the Commission has asked for a statement about the Mount Oxide Mine which is on a cattle property called Chidna?-- Chidna, C-H-I-D-N-A.

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It's north of Mount Isa, anyway?-- Yes.

And for some time now there's been an iridescent blue colour in the creeks on that property; is that correct?-- That's right.

At paragraph 26 of your statement you note that there's a blue

discoloration of the creeks for approximately 1 to 2 kilometres downstream from the mine?-- Yes, that's right.

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I'll show you some photos which are in the folder that you have at tab 3, 4, 5 and 6. Those photos depict waterways of the site during the wet season; is that correct?-- That's right. Towards the tail end of the wet season as the streams slow down and stop flowing.

All right. I tender those photos. They are part of the exhibit already tendered, thank you.

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COMMISSIONER: I wouldn't mind seeing them at this point.

MR CALLAGHAN: We have copies, yes.

COMMISSIONER: I think they're coming up. It is blue. Thank you.

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MR CALLAGHAN: There's been no mining at that site since the early 1990s; is that correct?-- Yes, that's correct.

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What was mined there before that?-- Copper.

There's currently an exploration permit granted over the land, but there's no company with responsibility for the mine; is that correct?-- That's correct. The company that created the disturbance, the big disturbance on the site, left - left the site in the 1990s and the mining lease it operated under has ceased. The current exploration permit is not related to that previous mining lease.

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I see. Paragraph 16 of your statement you refer to an expert panel formed by the Department. When was that panel formed?-- It was formed in 2010.

This issue of blue precipitate in the creeks has been around for a while. Is there any reason why the panel was only formed that recently?-- We - we began a review of the environmental management of the contamination downstream after the landholder had raised it, brought it to our attention and also to the media's attention in 2009, and from that point on we've been working to understand the mechanisms that produce that contamination, they're quite complex, and to address those mechanisms to minimise the downstream pollution.

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COMMISSIONER: Who was the miner that left it in that state?-- The past miner?

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Mmm?-- They're - the mine changed company a few times, but Adelaide Brighton Steamship is one of them.

MR CALLAGHAN: You refer to the landowner or the landholder, that's Mr Spreadborough?-- Brussy Spreadborough, yes.

All right. In paragraphs 11 through to 14 you discuss the manner in which the minerals find their way into the waterways. The main source of contamination is the stockpiles of waste; is that true?-- No, it's one of the sources. There's also the mine pit and there's a link between the mine pit and other aquifers that are in the area. We are trying to understand that and it seems from our latest hydrological advice that they're interlinked which makes the relative contributions hard to ascertain. So, we have got a number of sources.

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Is this something that Mr Spreadborough's indicated that the mine pit leaks when it gets to a certain level?-- Yep.

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The so-called pincushioning effect of the various holes which have been drilled around the place over the years, I suppose; is that right?-- That's one of his theories. We are assessing that. We don't have enough information at this point in time to confirm it or deny it.

Anyway, it does seem that one of the sources is the collection of stockpiles of waste?-- Yes, that's right.

How long have they been there?-- They have been there since the mining - in - I think it was the '80s it started, the major - major development of the open cut pit.

Well, can I take you to annexure 3 of your statement, which contains some notes or minutes of an expert panel meeting on the 26th of July this year? There's a note about HDPE covers installed on stockpiles to reduce infiltration?-- Yes.

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We are fond of acronyms at the Commission but HDPE is a new one. What's that stand for?-- Sorry, high density polyethylene. It's black plastic basically.

Okay. They were installed in 2010; is that right?-- That's right, later half of 2010.

Are they a long-term option?-- No, they're not, they're a medium term option. We set the tender for their installation and supply at being a five year life.

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I see. Their installation wasn't part of any special preparedness for the last wet season, that was just part of the ongoing maintenance of the site; is that right?-- That's right, yes.

You have already indicated that there might be various sources of the contamination. Can I take you to tab 2 of your witness folder, and that is a briefing note to the Director-General of DERM from the 11th of February this year. Down the bottom there's a heading, "Current Issues." Five dot points up from that it says, "DD carried out a million dollars of remediation and in stream clean-up works in 2009."; is that right?-- That's right.

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Did that result in any improvements?-- Yes, it did.

What was involved that clean-up work?-- The clean-up work involved two aspects basically, it involved moving stockpiles which were within the stream itself and it also involved cleaning up blue copper precipitates out of the stream for about two K downstream.

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There's a proposal also there that DERM is progressing a proposal to remove all contaminated material from the site in 2011; is that right? It's two dot points up from the heading, "Current Issues."?-- We've looked at a number of issues. This dot point is probably a bit unclear, it relates to the stockpiles, and we're looking at what sort of options we can have - we can apply to basically stop the contamination arising from stockpiles. There's two major ways that will occur. One is by having stockpiles removed off site, maybe to another mine site where they can be reprocessed. It's pretty a low probability that one. Or the other one is we will have to move them to some other location and probably encapsulate them. We're still looking at what best practice technology there is around to do a good job of that. There's no really good answers in the world as far as I know at this point in

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time.

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Is it accurate to say that there's an attempt in progress to remove contaminated material from the site this year?-- This year we are scoping a tender for removal or relocation/encapsulation, I am not sure what wording we use, to have the stockpiles no longer provide any - any contaminated seepage in a new location.

Annexure 3 to your statement, on page 4 of that we can see the notes about the wildlife that might be affected by the contamination, various forms of wildlife from purple neck rock wallabies through to aquatic life which is said to have the least resistance to contamination; is that right?-- Yes, some - some wildlife such as fish are quite sensitive to copper.

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On page 8 there's a discussion of the steps to be taken to identify species which are dying and there's a note to perform library research on the impacts to wallabies and management of birds. Is that something that your department is doing?-- We're doing that in - in association with the Department of Environment and Resource Management, their wildlife people, because they're the experts at this, and I have just written - just worked with my manager in northern region to provide a work scope to DERM to progress that.

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Again, the question has to be asked if the issue has been around for a long time why only now are the risks to wildlife being reviewed?-- We have - we have a number of sites in northern region and across Queensland that we're addressing and we apply our funding and other resources to the sites that are deemed the highest priority at the time.

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And there are other sites which have been of more concern?-- For example Mt Morgan.

Can I ask you, perhaps by taking you to paragraph 23, you say there, "DD's activities are not regulated by any environmental program."?-- That's right. This is relating to Mt Oxide you are talking about?

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Yes. Does DD manage the site in accordance with any regulation or-----?-- There's no - no regulation to the site as it's managed at the moment. Abandoned mines, I suppose, are in a grey area that is not directly addressed by - by a lot of the environment protection legislation, which is related more to having a regulation of an industry, for example, mining. Well, the mining that did have an environmental authority when it was going on has ceased, so that environmental authority has also ceased and is no longer appropriate to the rehabilitation work that we're doing on the site.

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Which leaves you, does it, in something of a vacuum, but presumably you adopt some sort of standards or principles?-- The way we address that vacuum is two-fold. In the first instance, we work closely with DERM to make sure that they're

aware of what we're planning and have comment on it and happy with the direction we're taking, and the second aspect is that we've convened the expert panel, which has expertise from a broad range of people on the issues that we know exist at the site to again provide broad input into how - to discover what the issues are, how to manage them, both in the short term and in the long-term.

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You have actually just anticipated probably the next half dozen questions, which I am sure will make everyone happy, but what sorts of expectations do they - does DERM relate to you about the environmental management of Mt Oxide?-- Their expectation is that we improve the site and the - minimise the downstream contamination as soon as practicable. They're aware that we're doing it within the context of the environmental - sorry, the Abandoned Mine Land Program, which is the State-wide program, and has other sites which also must be considered in prioritisation, and also that we have limited resources to do our work in this manner.

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Does that mean that there's no timeline set for you as an acknowledgement of your limited resources?-- There's no timeline set to finally fixing the problem, partly because we don't know how to do that completely. The complexity issues mean that it may not be feasible, that part of the - part of the problem is natural. So, we have got to look at that as well. Each year we get together with DERM - as a matter of fact several times a year - we get together with DERM and we discuss our an annual work program and our work program into the future and we have a conversation about the pace at which the work is going and, I guess, DERM is asking questions to satisfy itself that we're doing as much as we can.

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But there are options if they hypothetically - and I am not suggesting this - but if hypothetically they weren't satisfied, there wouldn't be much they can do, I take it, because you're in that grey area?-- We're in that grey area, but there's nothing to stop them from collaborating with us to put a submission up to Cabinet, for example, for extra funding.

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I suppose - I'm sorry, I didn't mean to interrupt you and I suppose nothing they can do within any regulatory framework?-- Not that-----

No?-- No.

And there would be no private mine owner who was in such a position, would there?-- No.

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And so is that the case of abandoned mines across Queensland, that they're effectively self-regulated by you?-- Yes, in collaboration with DERM, and in saying that, we recognise the current environmental standards and we aim to work towards meeting them wherever we can.

Are any abandoned mines owned privately of the many that there are?-- I believe there are a few, yes. The majority are also

on private land.

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Yes. And just can I ask you, were any - in respect of the ones which are DD's responsibility, were there any special measures taken in relation to any of them in the lead-up to the wet season just past?-- I am just thinking, not - not in relation to Mt Oxide because of the way the weather is there. You basically can't do anything on the site so you use the dry season to do whatever you can and the rehabilitation works that you achieve during the dry season then have to withstand the upcoming wet season. For a lot of our sites, that is the case. I guess the only one where it might be slightly different is Mt Morgan where we have ongoing people on site and they actively help to manage the day-to-day circumstances.

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And all of that information was helpful, thank you, but to come back to my question, is it the case that any special measures were taken in - at any abandoned mine as a consequence of the warning that this was going to be a more severe than usual wet season?-- Not really, because what we - the way we work is we - we aim to have our on-ground works finished by the start of the wet season, because we just can't work under the wet conditions, so we're out of there, and the only discussions we had, I believe, at some point was, "Yes, it's going to be a wet year. Yes, we have got to hurry to finish the work."

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But just in the course of-----?-- In the course of the normal program, yes.

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Yes. Okay. All right. Thank you.

COMMISSIONER: Did you have any questions?

MR MacSPORRAN: No, thank you, your Honour.

COMMISSIONER: Thanks very much, Mr Kadletz. You are excused.

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WITNESS EXCUSED

COMMISSIONER: We don't require a transcript tonight, I take it?

MR CALLAGHAN: No, we don't.

COMMISSIONER: I don't know if that's any help, but thank you. We will adjourn.

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THE COMMISSION ADJOURNED AT 5.03 P.M. TILL MONDAY,
26 SEPTEMBER 2011