

Transcript of Proceedings

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THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

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IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2011

QUEENSLAND FLOODS COMMISSION OF INQUIRY

BRISBANE

..DATE 04/10/2011

..DAY 41

THE COMMISSION RESUMED AT 10.02 A.M.

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COMMISSIONER: Yes, Ms Kefford?

MS KEFFORD: Madam Commissioner, I call John Alexander McLeod.

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JOHN ALEXANDER McLEOD, SWORN AND EXAMINED:

MS KEFFORD: Is your full name John Alexander McLeod?-- It is.

And you're the Safety and Security Manager for the Stamford Plaza hotel?-- That's correct.

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You've provided a statement to the Queensland Floods Commission of Inquiry. Can I ask you to have a look at this document, please? Is that a copy of your statement?-- It is.

I tender that statement.

COMMISSIONER: Exhibit 701.

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ADMITTED AND MARKED "EXHIBIT 701"

MS KEFFORD: Now, could you tell the Commission what your responsibilities and your role are with the Stamford Plaza?-- I'm responsible for the health, safety and security of the hotel guests, the hotel and the staff.

And the Stamford Plaza Hotel is located at 39 Edward Street, Brisbane?-- Correct, it is on the corner of Alice and Edward Street.

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It's a multi-storey luxury hotel built in 1984?-- Correct.

And it was built on the site of the old naval offices?-- That's correct.

Adjacent to the Brisbane River?-- Correct.

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Do you know whether the site flooded during the 1974 floods?-- I believe it did.

And approximately how far is the hotel from the Brisbane River?-- 10 metres.

How does the height of the river generally compare with the height of the hotel buildings?-- Generally it's just

underneath the boardwalk, probably it raises about a metre.

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And in your statement at paragraph 2, you say that the ground floor of the basement is only just above river height. What do you mean by the ground floor of the basement?-- The basement is on two levels. We have a carpark basement and then there's a further basement that drops down a little bit and it's called a loading dock, which is where we receive all our stuff that we need for the hotel. That is just above the river, and the carpark is slightly elevated from the loading dock.

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And you say in your statement that the basement of the building is used for multiple purposes. Is it used for purposes other than just the car parking?-- Yes, it is.

What else is it used for?-- Its offices. All the offices are located down there, all the plant is located down there, your air-conditioning, your boilers, chillers, the laundry, all the equipment, there's an Energex substation down there, staff canteen, all your CCTV footage, your servers.

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And if I could take you to early 2011 at the time of the floods, in paragraph 3 you say you returned to work from your recreation leave at about midday on Tuesday, the 10th of January. Now, Tuesday, was, in fact, the 11th of January, so was it about midday on the 11th, the Tuesday, that you returned to work?-- That's correct.

And why did you return to work at that stage?-- I was called back. They figured the hotel was going to flood.

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When you arrived, were staff making preparations for the flood?-- They were sandbagging the carpark, and the external doors - they were placing plastic and tape around the external doors.

And you tell us at paragraph 3 of your statement that you made some inquiries about possible flood heights. Who did you make the inquiries of?-- I was listening to the radio, plus in our hotel we have the Edward Street metre, the flood metre, where they predict the gauges, and on what they were telling me on the radio compared to what I could see and the metre, I knew we were in trouble.

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What is - can you explain in a bit more detail what the metre is?-- The metre is the - I believe it is the official metre for the - Edward Street, City. It is a flood metre or water level metre, and it has - the readings go up and down with the tide. Whilst it was very hard to try and make any sense - complete sense out of it, I knew that if it was coming up two metres from where it was at the time that we would be inundated with water.

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So, as a result of the information you received, you say in your statement that you estimated that the flood would inundate the basement and the sandbagging would be useless; is that right?-- That's correct.

What advice did you give to senior managers and staff at that time?-- Evacuate all their stuff in the basement, as much as we could get out.

Evacuate in terms of taking-----?-- Taking stock-----

-----articles out of the basement or evacuate people?-- At that stage it was evacuate the articles from the basement, your stock, your photocopiers, your computers, your servers and what-not.

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And did the staff also move the guest cars out of the basement at that time?-- We managed to get them all out, yes.

Where did you move the items to?-- To the third and fourth floor of the hotel.

In terms of obviously the equipment?-- The equipment.

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And in terms of the guest cars?-- Guest cars, we had arrangements to put them at different hotels and also some parking bays up on Spring Hill, I believe.

You weren't able to move everything out, were you?-- No.

What were you unable to move out of the basement?-- We didn't get a lot of - the expensive wine didn't come out, some of the photocopiers and heavier items that required manual handling, sort of special equipment we couldn't get out, a lot of the uniforms, a lot of the tools.

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Now, still on Tuesday the 11th, later that evening Energex cut the power to its substation?-- That's correct.

Did you receive some warning that Energex would take this step before it occurred?-- I received a phone call around 6.20 that evening from someone identifying herself as working for Energex and advising me that they were going to cut the power. I asked when and they said they couldn't tell me at this stage.

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And where was the water level in relation to the basement at the time you received the phone call from Energex?-- It hadn't quite started to come into the basement just then.

At the time that you were told that Energex was going to cut the power, were there guests in the building?-- There were.

Approximately how many?-- 200.

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And were the guests advised that the power would be cut?-- The guests were.

The power was, in fact, cut at about 10 past 10 you tell us in your statement, and was a result of that that the lifts in the building couldn't be used?-- That's correct.

Were the lifts stationed at one of the higher levels of the building when the power was cut?-- They were.

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And later in your statement, you mentioned that a generator, which is on the roof of the building, wasn't able to be used during the January 2011 floods. Why was that?-- The generator was designed to generate the whole building. We had no capability of shutting off floors. So, if we enacted - if we engaged the generator, we would have made the basement live with all the water.

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Have you investigated making modifications to that generator so that floors can be isolated?-- We have, and it's being enacted as we speak.

In paragraph 5 of your statement, you address the inundation of the Stamford Plaza building and you say the river overflowed the boardwalk and started to come into the corridor of the loading dock. What was the next part of the building to be flooded?-- Once it got into the loading dock, it then filled up quite quickly and then went into the carpark and then just steadily rose until it got - until later that next morning when it reached its peak, completely flooded the carpark, the loading dock and all our offices.

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And is the Energex substation in the basement or the - in the carpark level of the basement or the lower loading dock?-- It's in the lower section.

You say that the flood rate increased significantly when the high tide arrived. About when was that?-- To be honest, I'd only be guessing in times. The whole thing was very active and it was early in the morning, probably between 2 and 4, I'm guessing.

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And about what time did you decide to start evacuating guests?-- We had started evacuating guests later that night - earlier that night, but a lot of the guests were business guests. We couldn't get in contact with them. The ones that we could get in contact with, a lot of them said they would go in the morning, even though they knew they had no power, they just had nowhere else to go. I did get some VIPs out. I just said, "No, you're not staying.", and got them out. And then on the morning of the flood we put - I'd run signs up in the corridors and everything because our emergency power by this time had - the lighting had gone out. It was only good for about four hours. And then I just put on staff and we actually - we lit one major fire escape and we brought the staff and their baggage - we brought the guests and their baggage down that main fire escape, the ones that didn't evacuate.

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You mentioned that there were a number of business guests that you weren't able to get in contact with. Is that because at the time they weren't in their rooms?-- That's right.

So, they were scheduled to stay, but weren't actually-----?-- They weren't - some of them weren't in their rooms when we

started, but they subsequently came back to the hotel after they'd finished their meetings and wherever they were throughout the day.

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And when did the flood reach its peak height in the building?-- Wednesday morning.

And what was that peak height?-- It was full - the carpark and the offices was full to the roof and it actually started coming up the internal stairs and reached probably three-quarters of the way up the internal stairs to the ground level of the hotel.

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And the offices that you mentioned, they're the ones that are located in the basement?-- That's correct, and they were all full.

You say in your statement at paragraph 7 that water was drained from the basement. Was it necessary to pump the water out of the basement or is there - was there another means of draining the basement?-- Once the flood - once the water subsided it drained a lot of it, but, no, we pumped for days to get it out of the basement. It was lower than the water.

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And was there much damage to the basement?-- It was destroyed.

Can you explain what type of damage you observed?-- Water tanks were picked up and thrown through - or pushed through metal cage fencing. Massive big fridges were picked up and embedded into walls. Everything was just pushed right back to the end of the hotel. The water was actually coming down the river and everything just got pushed right back to the end of the hotel. Plant and equipment was ripped from the floors. All the foodstuffs were floating, the garbage was floating. It looked like a bomb had hit it.

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And as a result of the flood, how long was the hotel without power?-- Seven weeks.

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During this time, was the hotel letting rooms to guests?-- No, we had no power. We had - we were pretty occupied.

In your statement you say the hotel was up and running around 31 March 2011. What do you mean by "up and running"? Was it-----?-- It was open to a limited amount of floors. We couldn't open all the floors because we were now using several of the floors as office space and storage space as the carpark and the basement was still being reconstructed.

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And in paragraph 8 of your statement, you say that Energex placed a new substation in the basement. When did that happen?-- Finished - completely finished? It would be several months after the floods they replaced - they just put it back exactly where the other one was.

Do you know why they elected to put it back in the basement when the basement had flooded?-- I don't think there's room

for it anywhere else, to be honest. I don't think the building was designed for it to be moved anywhere but there.

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The hotel has relocated some of the assets from the basement to a higher level; is that right?-- That's correct.

And what type of assets has it relocated?-- The servers. We're in the process now of relocating the fire control panel. The generators, as I said before, we're in the process of getting them so we can switch - we can just electrify certain floors and not the whole building at a time, and I've instigated a palletisation program where everything is kept on pallets so we can just use pallet jacks, straight into the lift and get it to a higher floor - get the wine and whatever can be placed on pallets to a higher floor very quickly, instead of trying to carry them in boxes.

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Are there any other measures that you think the hotel or other buildings like it could - any other measures that could be used to minimise damage when basements are flooded?-- I can't speak for other buildings, but for our building we - I can't see how you could do any more than what's done, just because of the way the building is built.

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Now, you've provided us with quite a lot of photos as part of your statement, but if I could take you just to a selection of those?-- Thank you.

I will actually only go to even a small number of the refined bundle that you have been handed. If we could firstly go to page 3 of the smaller bundle and a copy will come up on the screen as well?-- Yes.

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Can you explain to us what's shown in that photograph?-- That's the actual loading dock. You can see as you come down the driveway there's a left-hand turn, almost a 90 degree turn that comes into the loading dock. You can still see the green metal gate that closes the loading dock there.

And the white wall seems to have openings in it. What are they?-- They're vents.

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They're air vents?-- Yes. Behind that white wall is the carpark.

So, they're air vents for the carpark?-- They're air vents.

And if we go over to page 4, where's this photograph taken from?-- That photograph is taken just to the right of the first photograph. Those white vents is a continuation of the photograph we've just discussed. That's a gate that goes into the carpark. This is before the flood had reached its peak. That water tank was subsequently pushed through that gate and the river is located probably three metres from the right-hand side of that water tank.

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Then if we go over to page 11? The water on the street there, is that water that's come up over the bank of the Brisbane

River or-----?-- No, it's not.

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Can you explain where that-----?-- That water is actually sewage.

Sewage?-- That came from - there's a police vehicle in the middle of that photograph. The water actually is also on the other side of that police vehicle, and the water - the sewage actually came from out of that building on that corner there.

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Right. And if we go over to page 15 of the bundle?-- That's the same - that's the gate with - that was in the previous - one of the previous photographs that had been pushed in. This is after the flood had subsided and the water had actually pushed through plus other debris had come through that gate.

And page 16?-- That's the loading dock again from a - looking down at the loading dock. The mud and what-not is - was left behind in the gardens there, and the infrastructure - piece of infrastructure there I believe is an air-conditioning unit for the old naval offices.

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And it got flooded, did it?-- It had water in it, yes.

Thank you. I have no further questions of this witness.

COMMISSIONER: Ms Brasch?

MS BRASCH: No questions, Commissioner.

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MR DUNNING: No, thank you, Commissioner.

MR FLANAGAN: No questions, Commissioner.

MS McLEOD: No questions, thank you.

MS KEFFORD: Could I tender the small bundle of photographs?

COMMISSIONER: They will be Exhibit 702.

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ADMITTED AND MARKED "EXHIBIT 702"

COMMISSIONER: Thank you very much for your time, Mr McLeod. You're excused?-- You're welcome.

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WITNESS EXCUSED

MS MELLIFONT: We're just making inquiries as to whether the next witness has arrived. I can indicate to the Commission that it will be Ian James Whitehead who is the Acting Chief Executive of Stadiums Queensland. I call Ian James Whitehead.

IAN JAMES WHITEHEAD, ON AFFIRMATION, EXAMINED:

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MS MELLIFONT: Good morning, Mr Whitehead. Can you state your full name, please?-- Ian James Whitehead.

Are you the Acting Chief Executive of Stadiums Queensland?-- I was at the time of the statement. The Chief Executive returned from leave yesterday.

So, is your usual role one of General Manager of Operations?-- That's correct.

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And is that the role that you've returned to?-- Yes.

In January of this year, were you in the role of General Manager of Operations?-- No, I wasn't. I was seconded to help prepare for the Commonwealth Games bid proposal, so I've been absent from Stadiums Queensland for a period of 12 months. I returned on the 1st of August.

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Okay. Have you prepared a statement in response to a requirement issued by the Commission?-- I prepared that in conjunction with our General Manager of Assets and Facilities Development, Mr David Spencer.

I'll show you a copy of that statement. Is that a copy of your statement you've prepared?-- That's correct.

I tender a copy of the statement.

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COMMISSIONER: Exhibit 703.

ADMITTED AND MARKED "EXHIBIT 703"

MS MELLIFONT: Can I ask you, Mr Whitehead, to your knowledge, who was the General Manager in January 2011?-- Mr Geoff Baker.

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And who was on the ground at the stadium during the period of the floods?-- Mr David Spencer would have been on the ground in conjunction with Queensland Tennis officials.

From - thank you. Now, to your - I take it you've undertaken inquiries-----?-- Correct.

-----with relevant people at Stadiums Queensland and of records held by Stadiums Queensland in order to answer the requirement?-- Correct.

And did those inquiries reveal that Stadiums Queensland first became involved in the project to build the State Tennis Centre at Tennyson Reach Development - Stadiums Queensland first became involved in 2007?-- That's correct.

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Which was actually after construction had commenced?-- Exactly.

So, prior to that time, so far as you understand, Stadiums Queensland had no role in the Mirvac Group, Queensland Tennis Centre, State Government and Brisbane City Council roles in the development; is that right?-- Stadiums Queensland had no involvement in the selection of the site. Stadiums Queensland was brought in after construction had actually commenced and it was our role to see the development of the facility through to fruition in time for the Brisbane International tournament and we would take ownership of that particular asset at completion of the development of the asset.

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Now, your inquiries have revealed that in the January '11 floods, all of Level 1 of the Pat Rafter Arena building was inundated to a depth of approximately three to four metres to the underside of the Level 2 podium slab?-- That's correct.

So, we're talking about the centre court area?-- Centre court, yes.

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There was also inundation to two of the lower level grass courts and four of the clay courts?-- Yes, that's correct.

Nine of the podium level hard courts?-- Yes.

The carpark?-- The carpark - the eastern carpark, yes.

The grounds maintenance shed and compound?-- Yes.

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The pump shed?-- Yes.

The multipurpose room?-- The multipurpose room was also inundated, yes.

Right. Can you tell me what kind of carpeting is in the multipurpose room?-- Carpeting?

Yes?-- It's just a carpet tile that's put down in the multipurpose room.

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COMMISSIONER: What is the multipurpose room?-- Multipurpose room is just a general purpose room - it is just where players can gather or people can meet as a general, multipurpose area.

MS MELLIFONT: Where is it located?-- The multipurpose room is located on the eastern side of the Pat Rafter Arena on

Level 1.

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Now, within the complex there are flood barriers; is that correct?-- That's correct.

Where are they?-- They're located on the southern side, both areas, one from the eastern side of the facility and one from the western side of the facility to protect the centre court area.

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In paragraph 10 of your statement you state that, "Although the flood barriers were installed prior to the flood, water initially entered the facility by way of backflow from the river via the facility's drainage network before ultimately flowing over the flood barriers." I'd like to ask you some more detail about that. First of all, does this paragraph come from inquiries you've made of others?-- Yes, it does.

So, who did you get the information from for this?-- Through David Spencer, our General Manager of Assets and Facilities Development.

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When you speak of, "Although the flood barriers were installed prior to the flood", is what you're saying there that once there was some notification that the area would flood, somebody went about the process of erecting the flood barriers?-- Exactly.

Can I show you a couple of photographs of what I understand to be the style of the flood gates - flood barriers used in the stadium. I ask you to have a look at those to start with. Before I ask you anything further about it, is that the style used?-- Yes, that is the style used, yes.

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All right. So, in this photograph, which has the flood barriers erected, that's what the flood barriers look like once they're up, I take it?-- That's correct.

And in the other photograph, we can see the area into which the horizontal slats of the flood barrier get inserted in the erection process?-- That's correct, yes.

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And that takes an hour or more?-- I'm not certain of the exact time, but it is a pretty efficient process, being able to bring those beams out and slot those beams into the areas where they're located, yes.

All right. And ultimately they didn't stop the water getting through, I take it, because the water came over the top?-- Water came over the top, yes.

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The Commission has heard some information that as part of the remediation post the January '11 floods the flood gates are being reviewed with a view to addressing the issue of mitigation of future floods. Is that what you understand is happening?-- There was a - there has been some work undertaken to review the effects of the flood. We believe that the stormwater backed up through some of the stormwater drainage facilities. As that water entered we had the flood barriers to the required height, I think it was around 8.6 metres, which was 700 mils above the Q100 flood level. We'd have to review that in regard to any future operation or any revised flood levels that might - might appear to affect the centre.

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All right. So just more detail about that. Has Stadiums Queensland engaged a consultant in order to conduct a review of what caused the particular aspects of flooding at the site?-- We've only had a risk assessment, a risk assessor come through and a flood damage assessor come through to have a look at the damage to the centre at this particular point. We haven't undertaken any detailed investigation in regard to any future activity at the centre at this point.

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All right. So in terms of who has come, who was that?-- It was our - it was our insurance and risk assessor that's come through and had a look through the centre.

All right, and who is your insurer?-- We go through a broker. Marsh are our insurance brokers.

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Okay. So is there any time frame or particular plans in place for review of, say, different types of flood barriers or higher types of flood barriers or other flood mitigation measures?-- We will continue to use the same flood barrier because of the assessment that was undertaken by the insurance underwriters and the recommendations that were made at the time of construction of the facility. The key question is whether they're a sufficient height. That's work that we haven't undertaken at this point.

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Right. Are you going to?-- I believe we will but I haven't seen any evidence of engaging someone at this particular point but it's part of the review process that we'll undertake. Our focus has really been on reestablishing the centre in time for the next tournament in January of next year.

How are we looking?-- We'll get there.

All right. What needs to be done between now and then?-- Well, basically a complete refurbishment of level one with player change rooms. The centre court wasn't impacted upon so centre court will just require a clean up, as will the seats. No major structural damage so it's really about fit-out of the level one. Reestablishment of clay courts and grass courts but they're not required for the tennis tournament, and we're in the process of reestablishing those now.

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All right. Is there a time frame for completion of those courts?-- Well, the clay courts are actually being resurfaced as we speak and the grass courts, remediation's already commenced on that, so time frame for that we will be hopeful late December.

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By December?-- Yep.

Of this year?-- Yes.

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I just want to get a sense of the cost of the property damage. In paragraph 11 you state the property damage at the Queensland Tennis Centre totalled approximately \$6 million, and we see there at paragraphs (a) through (c) you list the damage. So does the \$6 million estimate cover those three things?-- Yes, it does.

Where were the electrical services constructed within the complex?-- The main electrical switchboard was constructed in the eastern car park area, which is next to the Energex easement.

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Was it taken out fairly early in the floods?-- I-----

As in made inoperative?-- It would have been, yes, because that would have been the first area that would have to flooded.

And after the floods how long did it take before the electrical services were back up and running?-- I haven't got that exact detail here but I imagine that would have been the first priority, to get the electrical services up and running, so I would imagine it would have taken a couple of days to get that up and running.

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All right. Who would know that in Stadiums Queensland?-- David Spencer, our general manager assets.

Can I take you to paragraph 17, please. You refer to substantial remediation and reconstruction works are required at the Queensland Tennis Centre following the flood and is expected to cost approximately \$5 million. Is that on top of the 6 million that we see in paragraph 11?-- No, the estimated damage was \$6 million. To rectify the works in the level one area is estimated at \$5 million-----

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Five million of the six?-- That's right.

All right, thank you?-- And so the clay courts and grass courts weren't covered under the insurance.

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And what's the estimate in terms of the cost to fix the clay and grass courts up?-- I'd say roughly around \$400,000.

Okay. And you see at the bottom of paragraph 16 there is costing of approximately 750,000 for the clean up phase?-- Yes.

Is that on top of the 6 million?-- No, that's covered in the 5 million estimation to clean up. So the clean up was covered in the insurance costs for rectification works.

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Okay. So 6 million all in?-- All-up.

At the top of paragraph 14 you state the flood did not have an impact on the structural integrity of any buildings or structures on the site as the facility is constructed on pile foundations. So that's correct, isn't it?-- That's correct.

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So the remediation is in terms you've just discussed but not in terms of structural aspects?-- Correct.

In paragraph 15 you refer to there being cleaning of the court surfaces and testing for biological contaminants. What do those tests reveal?-- I haven't got those details in front of me but it's generally a course to see whether there's any infectious molecules or microbes within the area that may jeopardise someone's health so we would test for those sorts of areas within the - within our normal course of action.

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But were you testing the courts after the floods for those things because the courts had come into contact-----?-- Yes.

-----with the floodwater?-- Yes.

All right. And do you know whether you have results of the tests, even if you don't know what those tests show?-- We would have results of those tests, I'm not aware of the results of those tests, but I would imagine that those tests have indicated it was safe to enter to commence the clean up.

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All right. And who would know the results of those tests?-- Again our general manager of assets facilities development.

Mr Spencer?-- Yes.

Who's doing the rebuilding and remediation work?-- We're working with Mirvac, who are the original construction people of the centre.

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Can I take you to paragraph 20 of your statement in which you state there are no long-term impacts on the site. All damage caused by the 2011 flood events can be rectified. So you're talking about, obviously, the remediation and rectification work by that spend of \$6 million; is that correct?-- Correct.

But in terms of the rectification and remediation will that bring it back to the status quo, and I ask that because I want to know whether if we have a similar flood event in the future are we looking at the same kind of damage?-- If - if we have a - what we've done within the remediation works is we've looked at using different sorts of materials in regard to remediation works. We've looked at how you would line retaining walls and using more impervious materials in regard to the reconstruction work that we're undertaking. So our intent is to minimise the damage should there be a future

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flood event.

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All right. And are there any specific measures in that respect that you are definitely implementing?-- Just in regards to the use of the materials and construction material in regard to that which would minimise the damage in regards to the internal fit-out.

And the remediation and reconstruction work by Mirvac, is that as a new contract with Mirvac or is it off the back of the old contract?-- That's with a new arrangement with Mirvac.

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Paragraph 21 you state that, "no further investigations, reports or advice have been commissioned or received by Stadiums Queensland regarding flood risk effect at the QTC since January 2011," and that's your statement signed the 2nd of September 2011. Has anything changed since you signed your statement in that respect?-- No.

You say, "The consultant team involved with the reconstruction of the centre is considered to have sufficient expertise to ensure that all measures considered prudent to avoid or minimise the effect of future floods will be implemented during the reconstruction". Considered by who to have sufficient expertise?-- Well, the construction team that's overseeing this is people who are experienced in the development of stadiums, so we're working with the Department of Public Works through Project Services, who are the project managers of this particular facility. We've constructed many stadiums in conjunction with those people. Mirvac, as the original construction and building people, have the expertise and the knowledge of the site to be able to do that. We've worked with Marsh, who we've indicated, which are our insurance brokers and the underwriters to review what's happened at the centre, so we believe that those areas of expertise are sufficient to be able to lead the reconstruction.

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And do you know whether any of the personnel involved have specific expertise in flood mitigation?-- Only our insurance brokers and our underwriters who have undertaken, which I attached to my statement, the specific risk management report, the underwriters' report and the preparations of Flood and Emergency Response Plan.

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Okay. Just going to those documents in a moment. There was prepared in October of 2009 a Flood Emergency Response Plan developed with Marsh Proprietary Limited and implemented at the Queensland Tennis Centre in October of 2009; is that correct?-- Correct.

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And what was the trigger for that?-- Well, having located the facility near the Brisbane River there was always potential that a flood event may occur so in preparedness-----

COURT REPORTER: Sorry, would you just move back from the microphone a bit, please?

WITNESS: Sorry. I was told to lean forward, so I apologise. There was a recognition that a flood event could occur, whether that be minor flooding or major flooding, so as part of our management process what we did is - with our insurance brokers and our risk assessors was to review what actions may be necessary to protect the asset and to ensure that the asset was protected and so we engaged with Marsh and our insurance underwriters to prepare a Flood and Emergency Response Plan.

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MS MELLIFONT: All right. Recognition by who and at what point in time?-- Well, recognition by ourselves, Stadiums Queensland, as the owner of the asset and also in conjunction with the builders and managers of the project that should a flood event occur we needed to have a response and an action statement ready to be able to protect that asset.

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Do you know with any more precision the sources of information Stadiums Queensland had to hand in recognising this flood risk which then caused it to get the report from Marsh?-- Well, it was the Brisbane City Council FloodWise Report that was accessed in regard to levels and potential flooding of those areas. That information was taken into consideration. Also our risk assessors, who prepared the underwriting report that was attached to it, have also had experience in working with, you know, flood-related or whether it's fire or electrical, so the whole risk assessment process looked at each detail of how we might prepare for any sorts of emergency at the centre.

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Okay. Can I take you, please, to Exhibit 1, which is an Affiliated FM Risk Report. So who are "Affiliated FM"?-- Affiliated FM are insurance risk assessments and underwriters who provide risk assessment reports to people like Marsh, who are our insurance brokers, who provide that to potential insurers so they can look at what potential risks exist when they're assessing insurance requirements for each particular venue.

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This report is a 2009 report and it's obviously something held internally within Stadiums Queensland?-- Yes.

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Was it provided to any outside bodies, any other departments, any other councils, or was it something purely kept with in-house?-- It's purely a - it's a report that's held within Stadiums Queensland to inform Stadiums Queensland and its brokers and its insurance underwriters of potential risk. I'm not aware if anyone else has access to that information.

Okay. Can I take you to page 2, and in the bottom section of page 2, the first dot point says, "The procedures developed should include the following basic components: a reliable flood warning method". Is there a flood warning method in place?-- The flood warning method is really the venue management team listening to the flood warning reports in regard to what may happen at the centre or what potential floodwaters are coming down the river so that would be something that the venue manager would take into consideration. Then there's PA systems around the area that would alert people to what action may be taken.

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Is there protocol or a manual somewhere about this?-- There's a Flood Emergency Response Plan which details the responsibility of individuals located at the centre and what action they should take and a time frame when they should take that.

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And that's also attached to your statement?-- That's correct.

Anything beyond that or is that the most recent up-----?-- That's the most-----

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That's the most up-to-date version?-- That's the most recent.

Can I take you, please, to Exhibit 2. I'm sorry, it's also part of the same annexure. Page 8 of the Flood Emergency Response Plan. So if we can go down further. Page 9, I think it should be. Eighteen. Page 18 on the entire document. Thank you. We see there a table which has in the third column the parts of the venue which would be impacted by flood if the flood levels in the two left-hand columns are reached. You agree with that?-- Yes.

20

All right. Do you know whether any parts of the State Tennis Centre have been detected to have been built under the expectations set out in this table?-- Not to my knowledge.

Now, are there some sump pumps at the stadium?-- Correct.

Where are they?-- I haven't got the exact detail but they're located - I presume they're in the eastern car park but I won't presume, David Spencer would have the exact detail of where the sump pumps are located.

30

All right. Do you know whether they worked during the flood?-- Yes, they did, they did work during the flood, but at the time that the site was vacated, when the flood levels were rising, electricity to the sump pumps were turned off as a safety precaution so the sump pumps would cease to function.

Do you know whether the centre's looking for either an alternate position for the sump pumps or some method of auxiliary power for pumps so that if electricity is cut in the course of a flood the pumps might still operate?-- The only alternative source of power would be a generator which still needs to be connected in some form so in the event of a flood event it would be very difficult to provide that power source.

40

All right. So to your current knowledge there's no plans at looking at-----?-- Not to my current knowledge.

50

-----changes in the way the sump - where the sump pumps are or how they work?-- Not to my current knowledge.

Thank you, that's the evidence of this witness.

COMMISSIONER: Mr MacSporran?

MR MacSPORRAN: Mr Whitehead's one of mine, Commissioner.

COMMISSIONER: Okay. Stadiums Queensland falls within
your-----

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MR MacSPORRAN: Yes. It does, yes.

MS MELLIFONT: Sorry, I should have tendered those two
photographs.

COMMISSIONER: Exhibit 704.

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ADMITTED AND MARKED "EXHIBIT 704"

MS MELLIFONT: Thank you.

COMMISSIONER: Mr Dunning?

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

MR FLANAGAN: No questions, Commissioner

MR McLEOD: No questions, thank you.

MR MacSPORRAN: I have nothing now, thank you.

MS MELLIFONT: Might Mr Whitehead be excused, please?

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COMMISSIONER: Yes, thanks, Mr Whitehead, you're excused.

WITNESS EXCUSED

MS MELLIFONT: I recall Mr Rory Kelly.

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RORY JOHN KELLY, RECALLED, CONTINUING:

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MS MELLIFONT: Thank you, just have a seat. Mr Kelly, I still want to ask you some questions about Mirvac, the Mirvac development. Now, there are some amendments in respect of the approvals and those amendments were on the 9th of October 2009?-- Yes

10

What were those approvals about?-- I understand the - there was a number of adjustments to the second level and some additional area in the first level-----

Of the tennis centre?-- Of the actual tennis centre. Some of them were facilities, some of them - overall the development was more than a - it was a minor change but it was something that needed a changing of the development approval conditions for.

20

All right. Can you give us a sense of the built - what it meant in terms of the change to the tennis centre?-- Specifically to the first level I understand they included some additional rooms, function room or a general warm-up area, I think it was sort of for the tennis players prior to going out and using the tennis facility. I think there was a slide slight expansion, it seemed to be for some of the toilet facilities or some media rooms off the toilet facilities, as I recall. On the upper level and the next level up there was changes to some of the facilities there. Some covers over a tennis court, it might have been, to provide some more shade structures. There may have been a change to the restaurant. I'd have to go through and look at the application that was made by the consultants, but it was quite specific in relation to what they were wanting to change in each of the areas. I'd have to refer to my statement, sorry.

30

All right. You speak of a warm-up room. Does the term "multipurpose room" come to mind in that respect?-- Well, a multipurpose room could be used for that, yes.

40

All right. Now, in so far as those amendments, that didn't detract from the requirement for the floor level to be Q100 plus 300 mil?-- No.

Is that - that's correct?-- Yeah - yes.

All right. I want to show you, please, an internal Mirvac - sorry, a Mirvac document, which is an e-mail exchange. This is an e-mail of the - just go to the top of the document, please. It's not coming up on the screen quite as it does in hard copy, but you've got a hard copy there in front of you?-- Yes.

50

All right. So it's an e-mail printed by Ben Christiansen to Georgina Madsen from Adam Moore. Can I ask you firstly just to have a look at the addressees in the middle part of the page and tell me whether any of those people are council

employees?-- No.

1

All right?-- If they were the e-mail addresses would be at Brisbane dot Q-L-D dot gov dot A-U so would appear to me that some of them are from Tennis Queensland, Stadiums Queensland and Project Services so-----

All right. Are you aware that a Notice of Defect was issued in respect of the multifunction room requiring, as we see in the lower part of the e-mail, "rectification of the wall to maintain the one in 100 year flood event to the centre court and habitable areas and to clean out the void space of all building debris"?-- No. I don't know what the Notice of Defect was issued in relation to.

10

Are you aware whether or not that multipurpose room was in fact built consistent with the condition that it be Q100 plus 300 mil?-- I now - I - it wasn't built from what I understand on the floor levels that they've given us to be one - Q100.

20

And when did you find that out?-- On the subsequent application when they asked to extend it and change some of the uses in that multifunction room and extend floor area down there and change other facilities as a result of providing additional player facilities down at that lower area and I think at the time the application was also for relocating the media room away from the drug-testing room. There was functional issues down there.

This is at the time of the amendment application which went through on the 9th October '09?-- No, the subsequent application in 2011.

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All right. So up until-----

COMMISSIONER: Sorry, when was it? The subsequent application when?-- There's a - a modification application was lodged to increase the facilities down there and to provide more player comfort facilities and that was lodged in 2011.

40

This year?-- There's another modification to the level - to the facilities down there on the first level.

But this year that was lodged?-- This year.

MS MELLIFONT: What I want to do is take you to the top of that e-mail and see if you know anything of the notion that the multipurpose room was not ever going to be built to the one in 100 flood event. So you have there, "Georgie, we never said the MPR was built to withstand a one in 100 flood event. We even contemplated putting marine-style carpet in there, if you remember." Is this the first you've heard of the notion that there was no contemplation - sorry, no representation that the multipurpose room was built to withstand a one in 100 flood event?-- Yes

50

And is this the first you've heard of the notion that marine-style carpet might be the proper carpet to put in that area?-- Yes.

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So marine-style carpet, that's the stuff you put on boats and jetties?-- Assuming that it can get wet or doesn't need replacing if it does get wet.

Does this surprise - does this - seeing this surprise you given what the conditions are in the approvals for that site?-- When it was brought to my attention in 2011, yes.

10

And what did you do then?-- We asked - we took them through a risk management approach in relation to the Subdivision and Development Guidelines and looked at what the risks were for the use of those facilities, all of those facilities on that ground level that extended, including the workshop, I think there's a workshop down there as well too, and we asked them to address that in relation to what were the risk to the users down there and what - how could they manage those risks because - and whether that should be removed or not. I suppose it was a consideration that council was looking at in relation to those uses.

20

So, in essence, it wasn't built as per the initial approvals. Once it was detected a risk management approach was adopted by the Brisbane City Council to work out where to next?-- Well, that's the - the risk management approach is what we use where it - floor areas don't comply with the flood level requirements under the City Plan, yes.

30

And in the course of undertaking that process was there any discovery by you or the council officers involved of any representations by Mirvac to the council about - in advance of the building about whether the multipurpose room would be to the requisite level?-- Not that I have looked at - when I've looked at the files, no.

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COMMISSIONER: Can I just ask you is this dealt with somewhere in your statement, your discovery in 2011 that that room wasn't built to Q100 level?

MS MELLIFONT: It is.

COMMISSIONER: It is? Where is it?

MS MELLIFONT: It is the second statement, attachment 45.

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WITNESS: It is a supplementary statement to my first statement.

COMMISSIONER: Right. And where?

MS MELLIFONT: I will get that paragraph. Paragraphs 29 and 30.

COMMISSIONER: Thank you.

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MS MELLIFONT: I will take you to the detail of that in just a moment, but can I just see if I have got this right in my head first? Initially, the multipurpose room was approved at Q100 plus 300 mm. There was an increase in the facilities in 2009 but at that point in time council hadn't picked up that the multipurpose room was not Q100 resistant. And then when more facilities were applied for in 2011, that's when council noticed the problem?-- Correct, yes.

30

Okay. If I can take you to paragraph 29 of your supplementary statement, where does that fit into the chronology I've just set out to you?-- Well, the fact that I think condition 59 at the time hadn't changed and that the proposal was inconsistent with our condition. I believe that - I would have to look at condition 59 but I believe it to be the condition that sets the 50 year and 100 year ARI for the site that we talked about yesterday and that it hadn't changed, and I made a point reference that, no, we left those levels the same.

40

Can you assume that's what it does say?-- Yeah, and we would have changed those conditions, or we would have added additional requirements, or gone through a risk assessment if it had have been identified by the consultant lodging the application that that condition needed to change, or those variations had to happen to the conditions package to effect the change that they sought through their modification.

At what point in time would you have done that?-- Well, it would have been - sorry, the point of time we would have done the-----

50

In your answer just then you said "we would have undertaken a risk management", et cetera, et cetera. What timeframe are you speaking about?-- Well, with regard to the application to include those extra levels, we would have done it then at the modification stage, or in this instance we did it when a closer inspection with detailed levels was shown on the plans,

that we went through and realised that they couldn't meet - when we were going through the conditions package and checking it, that they couldn't meet that 100 year ARI with the levels that they've now shown on the plans, the current plans that we subsequently approved.

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So it was at that later stage that it was actually done, correct?-- As part of our checking for the application against the current approval that existed at the time.

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So what were you checking against?-- Whether the conditions were relevant because we had the levels now shown on the plans and it made it clearer that they didn't comply.

Whether the conditions in existence were relevant to the application to amend?-- Yes, and whether we needed to amend those conditions to vary the approval by the addition of the extra floor area on level 1.

I tender that email, please.

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COMMISSIONER: Exhibit 705.

ADMITTED AND MARKED "EXHIBIT 705"

MS MELLIFONT: Can I take you, please, to Exhibit 570? Maybe it is 659. I am after the one with the overlays. Can we, please, zoom in? Thank you. Now, you can see an irregular-shaped area which is marked with blue crossings. That indicates a waterway, correct?-- Yes.

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All right. And that covers part of the Tennyson Reach development site?-- Yes.

Just above it we see by a lighter blue colour, the Brisbane River corridor?-- Yes.

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Okay. Now, you can see that someone's marked a black rectangle on the map. Is that consistent with your knowledge as to where the residential development was placed?-- The buildings - the D, E and F were in there but I don't think they extended into the river.

Right?-- I mean that black box goes into the river. It is more or less in that general area.

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What I will ask you to do, if you can, is to go up to the large screen, and if you are able to point to where buildings E and F are? I will have to ask you, Mr Kelly, when you are up there when you speak, to speak up really loudly?-- Yep. Just for reference there is the tennis centre.

That's the white roof?-- The roofed area there, so the direct spine to the parkland goes here.

Straight north as we look at the map?-- Directly north. From that point to the east, you have building D here. E-----

So the left-hand corner of the rectangle, is that fair? Left-hand border of the rectangle?-- Sorry, that's the right-hand corner here is building F, basically near that pink line or seems to be a pink line just through here. So building F is there, E is along here, and D is just back into here.

10

All right. Now, you say buildings E and F aren't actually in the river?-- No-----

Obviously?-- I hope not.

Can you give an approximation from there as to the high tide of the river, roughly?-- Not from this map, sorry, no.

But your understanding is that either - it was either - building F, which was Softstone, was six metres back from the high water mark?-- Yes, it is likely to be six metres back from the mean spring high water mark, yes.

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So that's well within the Brisbane River corridor?-- That's in the Brisbane River corridor, yes.

Thank you. I will ask you to return to your seat?-- Sorry, I just didn't realise this was on.

30

I also just want to take you to, please, Exhibit 571, and it is annexure D. Now, this is a NearMap photograph of the site in the 2011 floods. So I will ask you to return up to the big screen and just indicate where buildings E and F are?-- Tennis centre site again, central spine, buildings E and F - E and F are just to the right or to the east of that.

Building D?-- Building D is this building here.

So in between the tennis centre and building F. Now, we can see at least part of what's sort of a line of vegetation. Is that roughly where the Brisbane River is?-- That would appear to be the mangroves that exist between the tidal area on the Brisbane River.

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And so the point at which building F is closest to the river is a six metre riparian setback, is that correct?-- It is in the riparian area. It is six metres back from the mean spring high water mark, yes.

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Thank you. I will ask you to return to your seat. I want to take you to an answer you gave me yesterday and just ask for some clarification of it. Transcript 3548, line 1: "Is it reasonable to say that insofar as the council considered relaxation of the 20 metre riparian setback, that that was governed by reference only to non-flooding considerations? So amenity, ecology?" Then you answered, "Well, it wasn't in the conveyance of the river." What do you mean by that?-- Well,

as I understand, it is part of the hydraulic assessment that was raised early on by one of the hydrologists about the conveyance, and that they indicated that the building didn't impact on the conveyance of the Brisbane River.

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Are you talking - when you talk about conveyance in town planning terminology, are you talking about the act of flow path of the Brisbane River?-- I believe that's - yes.

So the buildings in F weren't actually in the active flow path of the Brisbane River?-- Yeah, and Q100.

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At Q100?-- At Q100, I understand.

All right. And from where do you get that understanding?-- From the hydraulic reports that mention that or mention about the conveyance and the location of buildings on the site.

Thank you. I just wanted to finalise my understanding of the hierarchy of planning decisions within the council. Was there anybody above you who ticked off on any of the approvals for the Tennyson Reach development - the five approvals we spoke of yesterday?-- Do you mean by ticked off endorsed them?

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Yes, endorsed them-----?-- Approved them or endorsed the recommendation that we had prepared to the various committees that it went?

Yeah, either, and state which, please?-- Well, reference was made to - from what I recall, my team leader Peter Button at the time would have had some involvement with it in relation to the direction. My manager, Richard Sivell would have had some involvement with what we were doing in the preparation to go to the various council committees. It might have gone to - which is generally just a professional group of officers that included the planning manager, senior staff about various aspects that we would have sought guidance on. I understand it went to what we refer to as Planning Guidance, which is not a delegate authority or body of council but it provides a higher level assessment on the application. We also sought advice because of the change to the preliminary approval overriding the City Plan from the managers or manager of City Planning at the time for their endorsement as part of it. I think that was Michael Papageorgiou, it might have been for the duration of the application, and then ultimately E & C committee.

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Okay. To be clear, you were answering then in respect of the application for the preliminary approval plus the four development permits that we canvassed at the beginning of your evidence yesterday?-- That was the application - the combined application that was made to council that we were asked to consider on, yes.

50

So insofar as there has been formal endorsements by others we would expect to see that recorded in the Brisbane City Council records?-- Yes.

Now, we touched yesterday on the early stage in the history of this matter, that is the prelodgement process. Now, as I understand it from your statements, there were some informal aspects of that and then some formal meetings, is that correct?-- Yes.

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Could I start, please, with the informal aspects? Well, firstly, can you explain the concept as an overview of what the prelodgement process is with the Brisbane City Council?-- The prelodgement process has been set up by Brisbane City Council for some time. It is intended to give people lodging development applications indication of the merits of their application - in principle, that is - and to identify issues that may reduce the processing time of that application, or give them some guidance about what they need to do, whether they need a traffic report, whether they need a hydraulic report, whether they need - they will have other issues that they will need to go to, like State referral agencies, before they come back to us. It gives them an idea of things that we will be looking for in relation to the City Plan for a development application site, and, conversely, it will tell them whether we're likely to support it or not.

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Are there standard operation procedures for the prelodgement process?-- There is standard operating procedures for filling out what a prelodgement should cover. There is a template for prelodgement minutes, which deals with a number of things that we then take out if it is not relevant to the prelodgement process.

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Where do we find those procedures and templates?-- They are on our DA intranet because they are internal. The internet that's available to the public might have the prelodgement form, which is the initiation of the prelodgement process, and some checklists. You know, issues about what council tries to achieve, you know, some guidance about what a prelodgement is, how they can best prepare for a prelodgement. I am talking about the applicant lodging it. Obviously, people still lodge prelodgements only filling in the form, no plans or anything like that. We accept those but obviously those prelodgements take longer to organise as we have got to identify the issues.

40

Specifically in the case of this development at the suggestion of - or the request of Mirvac there were some informal workshops before the formal prelodgement process was embarked on, is that correct?-- I understand from reading the files, yes.

Do you know who was involved in that from council?-- No, I would have to refer to the files. I don't recall I was involved.

50

Is this kind of informal workshop scenario typical for a development of this size?-- The City Plan has a committee consultation policy and part of that, I understand, says maybe you should go and consult with the public before you lodge an application. I think there is a perception if you don't consult with the - do workshops with the residents beforehand,

that it is a fait accompli and that people - "you are just lodging what you want anyway, you didn't even talk to us first." So for large developments like this we encourage people, clients, applicants, future applicants lodging applications to go and consult with community groups in the area.

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All right.

COMMISSIONER: Is that a convenient time for the morning break?

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MS MELLIFONT: It is, thank you.

THE COURT ADJOURNED AT 11.19 A.M.

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THE COMMISSION RESUMED AT 11.38 A.M.

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RORY JOHN KELLY, CONTINUING EXAMINATION:

COMMISSIONER: Yes, Ms Mellifont?

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MS MELLIFONT: Mr Kelly, just before the break, I had asked you about informal workshops and you answered in the context of developers having community consultation as it were. Really what my question is directed at is informal workshops as between Council and the developer. Now, is it normal in developments of this size - or typical of developments of this size for there to be these informal workshops as between Council and the developer?-- In development assessment, no, they tend to - we tend to charge for that service. Pre-lodgement attracts a fee and we charge for our advice. But in other areas - the policy areas of Council - they call them informal workshops because they don't want to use the pre-lodgement term because they don't want to give the sort of advice that is equivalent to a pre-lodgement, and they might work up some designs. So, City Planning might hold them, they'll call them workshops, or they'll call them a whole lot of Charrettes or a whole lot of other things. We tend to stick to pre-lodgments.

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What happened here?-- Sorry?

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There was an informal process here between Mirvac and Brisbane City Council, correct?-- I understand - there seems to have been a workshop and some meetings with the City Planning area, yes.

And in so far as you can discern what actually occurred, is that kind of thing ordinary for developments of this size?-- Yes.

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In your first statement at paragraphs 58 and 59, you state that the file indicates that further meetings took place between Council and Mirvac, and you refer to an E-mail, and then you state, "Notwithstanding the likelihood that further meetings occurred prior to the lodgement of development applications, the files which I have reviewed so far do not contain evidence of them." Why do you say there would have been a likelihood of further meetings?-- Because they assigned - I found in the files they assigned a liaison officer, a Mr James Coutts, and having done that, you would think that he would have had a number of meetings with the State Government as part of the development of this site, and potentially the tenderers applying for that as part of the meeting - as part of his liaison with the future tenderers on that site. I'm making that assumption that if City Planning held those meetings, DA normally wouldn't be advised.

50

But notwithstanding your expectation that there would have

been such meetings, given what you've just said-----?-- Yes. 1

-----there aren't any records on file of them?-- We had a search and we couldn't find any records of them, no.

So, now, there's no means by which we can ascertain what was said at those meetings; do you agree with that?-- Without talking to the officer, no.

Mr Coutts?-- Yes. 10

Is he still with Council?-- No, he works for the State Government.

In which department?-- Major projects.

Of-----?-- The new major projects area. I'm not too sure which department it's in. I'm assuming it's in the planning area. 20

All right. At paragraph 61 of your statement, you state that documents which you have seen show that there must have been discussions involving Council officers and Mirvac's engineering consultants, GHD. Now, to your understanding, GHD was the consultant who prepared reports on flooding for the development application?-- I understood they undertook the hydraulic analysis, yes.

What are the documents you refer to in paragraph 61?-- They refer to the models and seeking models off Council. I would have to go back from that point - 61, RJK 14. At folio 14 - sorry, attachment 14, it refers to, "GHD is contacting you to confirm", which infers to me that someone may have spoken to them previously. Bob Adamson had spoken to them. Bob Adamson was the principal hydraulic engineer at the time with TST. I understand he's no longer with Council. It is not unlikely that GHD, the engineers, talked to our technical specialist directly and without going through the team as such - the Development Assessment Team - in the preparation or ensuring that they get their hydraulic modelling right as part of that. 30 40

All right?-- And I do recall some other statements where they've referred it back to other areas in Council as part of the preparation of some engineering reports, not necessarily the planning-related matters.

Okay. So, in respect of RJK 14, do you accept that the contents of those E-mails show that the focus was on flood conveyance and the impediment caused by buildings being built in the Brisbane River corridor as opposed to flooding of the building?-- Yes. 50

And is it now that - is it the case now that there aren't any records of the discussions which you presume would have occurred?-- I couldn't find any records of those discussions, no.

Would you expect, in the ordinary course of Council's

business, that file notes or records would have been made of those discussions; that is, between a consultant for a would-be development applicant and Council?-- For the engineering matters, yes. Whether they're put on the file is another matter. They might have kept their private conversations - or the conversation - taken a note for that but not put it on the file. 1

So there's no mechanism, so far as you're aware, which mandates/requires that when a Council engineer is having a conversation with an external consultant, that those private notes are then transposed into the formal record?-- No, I understand it's an obligation to try to record, to the best of your ability, telephone conversations. Today we have electronic - we keep electronic records, so you can type it into the computer as you've indicated it and it automatically - you can get it attached onto the file. But for all conversations on the phone, I can't - I encourage my officers to do it because it is the right thing to do, but I can't sit there and make sure they do it for every single one. 10 20

So, there 's no particular requirement in place?-- No, the requirement I understand is under the legislation in governing good record keeping in local government authority.

Can I take you back, please, to paragraph 58? And you refer to RJK 13, which is an E-mail from Mr Kim, program officer, Water Resources, Brisbane City Council, which concludes, "The rest of the flood-related issues are guided by Bob Adamson." First of all, who is Bob Adamson?-- Bob Adamson was the hydrau'c engineer that I just referred to in folio 14 or attachment 14. 30

And, secondly, what were the rest of the flood-related issues, or are we not able now to say given the lack of records?-- No, I think that's - what Bob was talking about is the actual modelling and impact of the development on the flood height regime of the Brisbane River and any localised flooding. This talks about stormwater quality, not quantity. So, I think Bob would have been dealing with quantity, the volume of water in a storm event. What Dennis Kim seems to be talking about in his first dot point is ensuring that the water off the site is not sediment bound or has other contaminants in it that can't be polished before it is discharged into the water course. 40

All right. Just before we move off that, firstly, when you say what it was that Bob Adamson would have been speaking about, is that because of the contents of the E-mails in RJK14 that we just looked at?-- And other E-mails I've read and my understanding of what Bob's role was in TST. 50

Okay. And in so far as what you say Mr Kim would have been referring to as to the rest of the flood-related issues, where is the information that you source your opinion on for that?-- I'm looking at what the dot points are on that attachment 13, and from my knowledge of the City Plan what he's referring to there has more got to do with sustainability matters and water quality matters than hydraulic matters; i.e., the impact of

this site in a Q100 flood event.

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Do you know whether Bob Adamson did consider other flood-related issues?-- From what I understand, Bob Adamson and Andrew Blake, his - another hydraulic engineer there - from the reports on the file, I'd probably ascertain that they considered the impact on the site, the impact upstream, downstream and on adjacent properties associated with this development in a flood event-----

10

I would like you to be as specific as you can about the source of your understanding in that respect?-- Well, from further attachments that I've read as part of my assessment of it, and the hydraulic information that I've been able to extract from the files. They would have looked at earthworks as well, too. They looked at the overall development on site.

All right. So, with time, you'd be able to identify precisely the documents you're speaking of?-- Yes.

20

We'll put that on your list. Now, beyond the issues you've identified as those likely to have been looked at by Bob Adamson, would you have expected him to provide guidance on other flood-related issues?-- Depends on what the issue was. If you're talking about habitable floor levels, he would have made a recommendation. It's likely to be what was in the Floodwise report.

I'm asking you what you would have expected him to have looked at?-- Well, in his role as TST, he provides ultimately advice as to whether the impact of flood on this site is acceptable or not and whether the development meets our current criteria out of the Stormwater Code in Subdivision Development Guidelines with regard to flooding - all those matters that are contained within there.

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And is he operating from a template in respect of those issues, or just from general experience?-- I don't know. I'd say general experience with Bob would have been a key criteria. Whether he has templates or not, I'm not too sure.

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And why do you say general experience would have been the key criteria?-- Because on many occasions I used to ask Bob for what did he think about this and he would provide the advice, and then that would later turn out to be accurate.

All right?-- Without having to go to any reference to any documents, Bob was pretty well aware of - as a lot of the other hydraulic engineers are in that area - because they deal with it on a day-to-day basis, they are able to provide that advice without necessarily always looking up documents and checking things.

50

All right. So, he was the go-to person-----?-- He is one of the go-to people, yes.

-----and he'd keep it all in his head, essentially. You could come to him and ask him something?-- He could give you enough

advice in his head, yes.

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Now, it is correct, isn't it, that the formal pre-lodgement process commenced on 3 October 2005?-- That's the first one they paid for I believe, yes.

Okay. Now, the pre-lodgement process isn't something which your legislation requires you to do; you accept that?-- Yes.

It's a procedure which has been established by Brisbane City Council?-- And other local authorities as well, yes.

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All right. To facilitate some early discussions, correct?-- Yes.

Can I take you, please, to paragraph 65 of your statement? What I gleaned from that paragraph, and tell me if I have it wrong, is that you believe that there were a series of meetings, but you don't recall being involved in them?-- Yes.

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Are there formalised minutes and records in respect of each of the meetings held?-- I couldn't find those minutes. All the minutes I found of the pre-lodgement and are in my statement.

Would you ordinarily expect to find on a Council file formalised minutes of those pre-lodgement meetings?-- Yes, definitely.

Are you able to explain why this file didn't have them?-- No, I'm not able to explain, sorry.

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Did you make any inquiries as to why they weren't there?-- Not with Mr Schwartz directly. I looked at the files. I went through hard copy drives. Maybe he created them but didn't put them on the file electronically. At about this time, Council was trying to go electronic.

Was there any reason you didn't ask Mr Schwartz directly about where these minutes would be?-- No.

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That's something that could still be pursued?-- Yes.

We'll pop that on your list. Now, in these pre-lodgement meetings, would flood risk and flood management be something which would ordinarily be discussed?-- Yes.

In paragraph 67, you state that documents produced from the pre-lodgement meetings are ordinarily provided to the developer. What's the nature of that document?-- It's generally a minute of the meeting or what was discussed and any directions given or any further information that would likely be required were an application to be lodged.

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Is this the same kind of record we've just discussed?-- Yes.

Do you know whether there was a record of that document being given to the developer even if you don't know where the document is?-- No, I have no record of whether the applicant

received minutes of our pre-lodgement meetings.

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Is there any means by which Council tracks what documents have been given to a developer?-- Generally if they're placed on electronic file, it indicates a date that that record was created and the date the record was signed off, i.e., completed from draft to final, and we have that record. Generally now a PDF record, today, is created with a signature on it so we know what actually went out to the applicant, and that's also stored electronically. Back then, nothing seems to have been stored.

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All right. Just creating the PDF file itself won't necessarily indicate it's been sent out, I take it?-- No, but the PDF copy you can create now has a signature on it, and that's taken to mean that that was why it was sent to the applicant. There's an SOP for that about sending those documents out and recording them and keeping them and attaching them in the right location on a file.

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All right. So, there's no modern-day equivalent to the old mail register?-- It is all electronic now. It automatically records when you create the document and when you finalise the document, and soon you'll be able to E-mail from that system as well.

All right. Is this the only occasion when - that you've come across - of not being able to find the minutes of the pre-lodgement meeting?-- I can't recall other cases where I couldn't find a pre-lodgement minute, not the more recent ones that I'm aware of.

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Was it surprising to you not to be able find it on this file?-- Not to find it, if there was as many held as seemed to be, yes.

I think you agree with me there would seem to be no reason for that?-- That I can see, no.

All right. Moving on. Ultimately Mirvac lodged its development application on 16 November 2005, that's correct?-- Yes.

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And as we canvassed yesterday, it included the preliminary approval to override the planning scheme and the four development permits for material change of use, correct?-- Yes.

And that meant that the applications were impact assessable?-- Yes.

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So, in terms of the codes, the Council would - or ought to have regard in assessing this application, that would have included the Filling and Excavation Code?-- Yes.

The Stormwater Management Code?-- Yes.

The Waterways Code?-- Yes.

And the Wetlands Code?-- Yes. Plus additional items.

Well, Council would have had to have called up the Subdivision and Development Guidelines?-- Yes.

Now, we all know by now, I think, that the codes in the City Plan contain performance criteria and acceptable solutions, correct?-- Yes.

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And the codes also include purpose provisions which have to be complied with?-- Yes.

And is it your understanding that even if you get a tick for an acceptable criteria, you still have to comply with purpose?-- The acceptable solution should meet the purpose generally if the code is written correctly.

All right. So, is it the case in the approach taken that if you do get a tick for the acceptable solution, you don't then go to give independent thought to whether the purpose provision is met, it's just assumed?-- For code, yes. For impact, because the type of application is assessed against those provisions in the front part of it, you can take into account the DEOs which form part of the purpose.

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And the DEOs are?-- Desirable Environmental Outcomes, like aims and objectives of the City Plan as well. So, you start at the strategic level and then work back down through the plan.

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All right. So, what's the process? You tick off your acceptable solution?-- You tend to go to the strategic first in this type of application because it was seeking to change the City Plan. So, you'd start from the strategic level and work back and then get to the acceptable solutions at the end.

All right. Tell me if I've got this right: in terms of the strategic level, do you start at Part 2 of Chapter 3 of the City Plan?-- If that's where the strategic provisions are, yes.

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For example, it contains a provision that a proposal does not result in unreasonable risk or hazard on site or to adjoining lands?-- Yes.

So, that's a strategic level consideration. So, you start there, correct?-- Yes.

And then you go to the codes?-- And then you go to the relevant codes.

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Okay?-- For the particular application you're assessing.

Okay. And when you go to the relevant codes, you go first to the acceptable solution?-- Yes.

And if you get a tick on that, that means you get a tick on

your performance criteria?-- To the extent that it is relevant, yes.

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Yes. And then, within this subset of consideration, do you then give independent consideration to the purpose provisions within that code, or do you assume those purpose provisions have been complied with because you get your tick on your acceptable solution?-- Generally that's the way it operates, yes.

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The latter?-- The acceptable solution should be reflecting the purpose of the code.

And that's an assumption upon which you proceed when you assess?-- That's the basis that I understand the plan was created - or that particular code was created. It starts off with a purpose and then look at the performance criteria as a way of meeting purpose, and the acceptable solutions - Council's way, we believe, the performance criteria can be met, and therefore the purpose of the code can be met.

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I really am very much interested in how it happens on the ground rather than the - the legislative purpose in how it was drafted, and I think your answer is that in practice on the ground you get your tick on your acceptable solution, you get your tick on your performance criteria, and you proceed on the assumption that that meets the purpose provision in the code without independent consideration to the purpose provision?-- Yes.

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You mentioned "desired environmental outcomes". So in - as part of assessing an impact-assessable you want to make sure that the development meets the City Plan's desired environmental outcomes?-- Yes.

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And speaking generic - generally, rather, a development may be conditioned so as to mitigate any potential adverse impacts of a development?-- Before conditioning it you want to make sure that it was reasonable that the developer could achieve those requirements so you would - you wouldn't just do it, you would actually - there would be information there to support your conditioning of that that the condition was - had some finality to it, yes.

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Now, I want to move to provide you with some context of what happened on the site in January 2011 so far as the information the Commission has received is concerned. The evidence thus far tends to suggest that the basements of buildings E and F started to flood early on Tuesday, the 11th of January 2011. I'll just show you a photograph out of Exhibit 572. And, Madam Associate, if you can just flick through them so that Mr Kelly can get a sense of the basement flooding. All right. And the information received tends to suggest the basements were completely inundated by the morning of Wednesday the 11th of January. Then at some time on Wednesday the 11th of January waters started to enter the ground floor apartments in building E but the water came through the front, that is the non-river side of the apartments. I'll just show you a photograph. These are some new photographs which haven't been tendered. I'll just hand you a bundle of three. And, for the record, these are photographs received by submitter Mr Millichip. Right. So you see the front photograph?-- Yep.

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Showing how the - building E was inundated. I tender those photographs.

COMMISSIONER: Exhibit 706.

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ADMITTED AND MARKED "EXHIBIT 706"

MS MELLIFONT: And to provide you with the context of the time line of flooding with the State Tennis Centre, the information received tends to indicate that the water initially entered the facility by way of backflow from the river by the

facilities' drainage network and then ultimately the water flowed over the top of flood barriers. Is that consistent with what you know as - in terms of how the development site flooded or is that outside your area of knowledge?-- It's generally outside my area of knowledge other than what I've heard from people who were involved or on - around that site at the time.

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Right. Brisbane City Council staff or other people?-- Council staff and other people making inquiries to council after the flood event had occurred.

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All right. If I can turn now to the assessment process. Including - included within Mirvac's development application there were reports which contained engineering studies on various aspects of the development; correct?-- Yes.

All right. Now, in particular, volume 5.3 of the application dealt with stormwater drainage and volume 6 dealt with flooding and stormwater quality management. Does that accord with your understanding? All right. I'm going to take you-----?-- Sorry, I'm assuming that it does. I was just trying to find the reference-----

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That's all right, I'll take you specifically to a page within it. Madam Associate, it's Exhibit 18 to Mr Kelly's first statement and it is page 316. Mr Kelly, what we might do is give you my folder and you can follow along with me, if that's okay with you?-- It's volume 5. I'll be there in a second, sorry, I've just got volume 4/5, section 5.3 - yes.

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All right, working through it - you'll have to bear with me, I need to take you to some various provisions before I actually get to a question. Now, you'll see that this is appendix G to volume 6, which is the Stormwater Management Code included within Mirvac's development application. Now, on page 1 you'll see that the Stormwater Management Code listed in particular as its first performance criteria that, "The planning of stormwater management system must provide for the integrated management of stormwater in order to minimise flooding and minimise public safety risk". And moving across we see an acceptable solution of 1.1 which provides that, "the development comply with the Subdivision and Development Guidelines". And, finally, in the assessment column we have, "The development will comply with the Subdivision and Development Guidelines acceptable solution A1.8" - one, rather, 1.1, "refer relevant performance criteria below for more detail in respect of flooding, protection of receding waters and use of WSUD". What's "WSUD"?-- Water Sensitive Urban Design. It's - instead of doing concrete pipes necessarily they might put in some water polishing. I think they include it in the road in this instance, so the water coming off the road would go through some form of treatment train or treatment before it was actually discharged into a pipe and then discharged into the river.

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Okay. Now, performance 1 refers us for more detail to the flooding table. So if we go to the flooding table, which is

on page 4, P3. Just there, thank you. Okay. So we are looking at Performance Criteria 3 which says, "Development design must reduce property damage and where applicable ensure public safety by ensuring that the development levels are set above the relevant design flood level or storm surge level," and we have the acceptable solution calling up the council's Subdivision and Development Guidelines. You see that there? And the assessment column states, "the development will comply with the guidelines, sets out the floor levels for the development and refers the reader to volume 5 of the submission". See that there?-- Yes.

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Okay. Now, that assessment column having called up volume 5, I'm going to ask you to have a look at that, please. So under the heading 5.3.1 "Existing Conditions" we have an overview of the stormwater drainage on the site before the development; correct?-- Yes.

And then under the heading 5.3.2 "Proposed Conditions" the report discusses the proposed stormwater drainage solutions for the development. Following that?-- Yes.

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Okay. You will see under the heading "State Tennis Centre", in the first paragraph, that it is recorded, "Piped drainage" - sorry. Yeah, so it's just under the heading "State Tennis Centre" at - halfway through the first paragraph, "Piped drainage within the State Tennis Centre will be designed to cater for a 20 year ARI. In accordance with the State Government design brief Cardno Young have been commissioned to provide detailed drainage design internal to the STC precinct". I've just got three more provisions to take you to - or four, rather. The second paragraph under that heading deals with the eastern catchment of the site and it is recorded that, "because of the development there is a reduction in approximately 60 per cent in comparison with the current flows to this system. As such the current drainage network is sufficient to convey this portion of the site and the adjacent property". Next I wish to draw your attention to paragraph 3, which records, "overland flow drainage, generators on the western catchment of the STC will be collected by the road network and discharged overland to the Brisbane River by a designated overland flow path. The eastern catchment will flow into the natural depression located on the ARI site. Overland flow drainage within STC will be designed to cater for a 50 year ARI in accordance with the State Government design brief". If I could take you, please, to the next heading, "Residential Precinct". We see that, "runoff from the car park areas of the residential component of the development will be collected and treated prior to connection to council-owned infrastructure and subsequently been discharged into the Brisbane River. Buildings E and F will be collected and discharged to the Brisbane River via an existing 375 millimetre diameter outlet. Building E will be constructed over the existing drainage channel located to the north of the site. The drainage channel will be removed and replaced with pipe work located clear of building works and of sufficient capacity to convey drainage from developed site". And, finally, can I take you,

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please, to volume 6 of the development application on page 1. That's at page 354, Mr Kelly. All right. 6.1 in the introduction, you can see there that it opens by saying that, "The impact of river flooding upon the development, example provision of appropriate flood immunity and safe access egress to various elements of the proposed development, is assessed in volume 5". You see that there?-- No, sorry.

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First paragraph?-- Sorry, which paragraph?

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The first paragraph under 6.1?-- "In respect to the Brisbane River flooding...potential" - yes.

Okay. Now, do you agree me that volume 5 does not make any reference at all to flood immunity?-- Not from river flooding, only from overland flow. From the basis of - I'm not a hydraulic engineer and I wouldn't have assessed as a planner this part of it but the calculations that are looking at stormwater drainage, given that flooding can occur from overland flow if it's not picked up and drained off the site properly, would have some impact in relation to some minor flooding on that site.

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All right-----?-- So it doesn't - if it said "river flooding" in the paragraph you referred to, it doesn't seem to, but it deals with one of the functions of flooding that we look at, which is overland flow with stormwater off the site.

Okay. But this 6.1 makes specific reference the impact of river flooding so you'd accept that in so far as it says river flooding is assessed in volume 5, volume 5 does not make any reference to that type of flood immunity; you'd agree with that?-- As an introduction statement no it doesn't appear to, the Brisbane flooding, no.

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Okay. Do you know what that reference is, that is in 6.1, the reference to assessment in volume 5 is intended to refer to?-- I think it's stormwater drainage. Overland flow, picking up the water from the developed areas and making sure it could get out to the river.

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And do you say that merely because there's nothing in volume 5 about river flooding?-- Oh, I say that because I've just briefly looked through 5 and it doesn't seem to address it in any of the subheadings. It talks about stormwater drainage, talks about water and sewerage, it contains calculations based on the catchment size, which I'm assuming is local rainfall in that catchment and having to get dealt with into a watercourse, and it doesn't contain anything - doesn't contain the hydraulic report. It addresses the river flooding that I was familiar from reading the file.

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All right. Do you know whether in the process of the assessment of this application Brisbane City Council picked up that there was this reference to assessment in volume 5 of the impact of river flooding and then did something about that?-- This specific paragraph?

Yes?-- No.

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Ought it have? Ought to it have?-- It's only in the introduction. We would go into what - detailed assessment of that, not just looking at a clause in there and make - form our own opinion in relation to that proposal. We wouldn't rely on a - the first statement in a - in a Flooding and Stormwater Quality Management Plan to rely on the fact that the applicant has said in their first information that they've submitted to council, trying to justify this development, that it would work, we would go off and look at the hydraulic assessment and form an opinion.

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Right-----?-- So someone may have read that and said, "Oh, look, they're" - "you know, they're joking just keep moving on," we wouldn't have raised it back then and said, "No, we want that paragraph changed because it makes a significant difference". What makes a difference is how they've carried their calculation out, what assumptions they've made, what assumptions we've made and whether they're the same as part of the modelling that would have been done as part of this assessment.

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But without the development application containing within it the assessment for impact of river flooding - sorry, the council would need that in the development application, wouldn't it? They'd want to see in the development application an actual statement, as is purported to be in this document, as to the impact of river flooding?-- Yeah, and I don't believe the stormwater would deal with river flooding, it deals with stormwater. River flooding is done in the other hydraulic - it should be a hydraulic assessment and contained within this report albeit 'cause it's a specialised area.

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I want to know whether you have any direct or - direct knowledge or knowledge from records that council went back to the developer and said, "Show us. Show us how it is that you propose to assess the impact of river flooding like you say you do in 6.1 but which you actually don't"?-- There is nothing that I found in relation to just that paragraph in 6.1. Because they had a number of discussions with our hydraulic engineers before they lodged the application they were able to lodge a hydraulic report and I believe Andrew Blake's e-mail on the file, which is one of the other attachments, indicates that his assessment of their flood report, their hydraulic report, was generally acceptable with the exception of a few alterations which were later carried out.

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But surely when you're looking at a development application you'd want it to all be there without having to then go back to all of the earlier discussions and try to work out what all of the earlier stuff is to read together with the development application. It's messy, isn't it?-- Well, that's an introduction. We would look at this whole volume 6 which does later on pick up Brisbane River flood impacts and talks about those and would be used as part of our assessment. We wouldn't - the introduction section is an opinion of their

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engineers, of the applicants', it's not an opinion of council necessarily, and, once again, we go back to the quantitative data that's in here and if we had to run our own models, as we would have done as part of this, against our model, our MIKE-11, to make sure that their assumptions were correct. We wouldn't have taken paragraph - one paragraph out of a large document and said, "No, they've got it wrong."

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Did you do that?-- No we didn't because - well-----

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No, sorry, did you do the----- ?-- We did the assessment.

Did you do the thing that you said you would have done?-- Yes, I believe it was done as part of - the referral of this to the various areas as part of the assessment of the application.

What's your source of that belief?-- The fact that various officers had provided advice, that we've gone back to the applicant for more information on several occasions to get this application right, that the flooding information from the reports that were contained on the file, that are contained within these documents indicate that the applicant was able to demonstrate that flooding could be adequately addressed on this site. That stormwater could be addressed having regard to our standards. That car parking, the building, all the other aspects that we looked at, were satisfactory to council.

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Right. And with time you could identify with precision the documents upon which you would source that information?-- Most of our flooding ones are contained within this document, I understand, that I was able to identify.

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Now, still on 6.1. At the third paragraph, we see that, "the development is to be located on the banks and within a confined floodplain backwater area of the Brisbane River. The development also encroaches into the Brisbane River corridor". Now, earlier today we've discussed how it encroaches into the Brisbane River corridor. Can I ask you, though, what you understand as a town planner to mean by the term "a confined floodplain backwater area"?-- I understand that in this particular site it would appear that when the Brisbane River rose prior to development on this site, when the substation - the Tennyson Power Station was there, that water would rise up and would pond between that building and the railway line, which is an elevated railway line, the Sherwood Graceville line I think it is, and collect there, and that's shown in that earlier document that showed the blue area that was hatched that I indicated was likely where the water would pond, so it would provide an area - a large part of that is on the ARI site, the Animal Research Institute site, and some of it's on the other side, on the southern side of the railway line where, because the pipes under the railway line are of a certain size, given a rain event that ponds there as well too, but the Brisbane River would raise up, water would find the level and there would be a temporary ponding from the river to the back of the site.

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Okay. Thank you. Can I take you, please, to paragraph 81 of your first statement? And in it you state that, "if a development application involved significant flood issues or includes a report on flooding issues the practice of Development Assessment Souths' engineer was to refer this aspect of the development application to engineers in the technical specialist team for assessment and recommendations". Is there an objective criteria by which you can identify significant flood issues or is it what a person subjectively believes to be a significant flood issue?-- Initially there is a checklist for the engineer to go through and have a look at. If it's outside their area of competency, and we're talking about a little development where there's minimal impact, the engineer might be able to deal with it but if it's - they know from experience what they're capable of doing and if not they'll ask. I mean, hydraulic engineers come down and, as I indicated yesterday, regularly meet with the team to see if there's any issues. There's briefings that occur with the hydraulic engineers at engineering forums where our internal engineers talk about issues and - as part of the training process. So apart from the checklist that might elevate it up there, apart from the engineering officer's advice, the DTM might also refer it to there because there's a hydraulic assessment and we will just make that call as part of the orderly processing of an application.

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So the DTM?-- Daily team meeting.

Yes?-- The one where the application is first scoped for the issues. We might say, "No, this is a big development, send it to hydraulics."

All right. I think part of your answer dealt with once there was a decision - once there had been a decision to refer it to the engineers, the engineers might look at a checklist template?-- Uh-huh.

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I think the latter part of your answer, which is really what I was directing my question to-----?-- Sorry.

That's all right, I will just reask it. How do you determine whether you refer it to the specialist engineer as something which involves significant flood issues; that is, is there objective criteria you attach in determining whether it is significant flood issues, or is it something that is simply identified within your team as a subjective consideration that it then gets sent off to the specialist?-- Objectively, if an applicant has submitted a hydraulic assessment, I will ask for that to be assessed by the hydraulic engineer.

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So that's one trigger. Are there others?-- If I'm aware that significant earthworks are occurring or likely to occur, I will send it to - I will talk to the principal engineer generally. If they are not at DTM, if they are not attending that meeting as a planner, and then I will refer it to - we will agree to refer it to a hydraulic engineer and we might even ring a contact within Water Resources and see if they want to have a look at the application.

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What would trigger the latter?-- Where the applicant in their report has indicated that they have spoken to someone in Water Resources and that - to make sure that the proposal that they have lodged or the advice given is consistent with any advice they may have been given.

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Can I take you, please, to paragraph - sorry, still within paragraph 81, so Mr Andrew Blake was the technical specialist who reviewed the Mirvac development application, is that correct?-- He was a hydraulic engineer, yes.

He has authored a memorandum which you have annexed as RJK19 and it is dated 6 January 2006?-- Yes.

Can I take you to that document, please? We see in it, at 1.2, that he has reviewed volume 5, section 5.3, stormwater drainage report by Lambert & Rehbein dated November '05, and at 1.4 his purpose was to ensure the proposal meets the water quantity, flooding and drainage requirements of City Plan and the subdivision development guidelines?-- Yes.

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At 1.5 he has identified the issues as being the proposed road must have Q100 flood immunity, Q50 inundation extents and overland flow easement required and underground drainage

easements required. Do you see those things?-- Yes.

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He makes some comments and recommendations. 2.1, "Proposed road must have Q100 flood immunity, Q50 inundation must be" - sorry, "Q50 inundation extents must be provided for the proposed overland flow paths between the buildings to define the overland flow easement required", and notes that underground drainage easements are required, okay? In that respect he makes recommendations that "additional information is required in respect of the road having Q100 flood immunity and development conditions are required to address the Q50 inundation and the underground drainage easements." That's as you understand it?-- Yep.

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Now, at paragraph 82 of your statement, you state that, "Based on my long experience of reading these kinds of memoranda, the effect of it was to impliedly accept that flooding issues, other than those specifically referred to, had been adequately addressed." Mr Kelly, do I take it by that comment that you take Mr Blake's memo at face value and that if flooding - if a flooding issue is not mentioned, you proceed on the presumption that the flooding issues have been adequately addressed?-- Yes. Based on the development that Andrew Blake saw at the time and based on the fact that if Andrew wasn't happy with any part of that - one part of that that meant he couldn't make a recommendation, he would have asked for further details, as we've seen on other sites, such as Cansdale Street where we went back and did a number of reiterations.

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So you proceed on the presumption that he didn't get anything wrong and that he was vigorous in his approach?-- Yes.

Is there any methodology or practice in place to make sure those presumptions are in fact valid?-- Not that I'm aware of.

How do you know, therefore, whether the methodologies applied by Mr Blake stands scrutiny?-- Well, I haven't, in my experience, ever known Andrew - Mr Blake to take a more risk approach in his assessment of hydraulic matters, and it is very likely that to run the MIKE-11 model that Andrew would have assessed - he would have had discussions with other areas of council, particularly Water Resources that holds the models, and formed the view that - the views that he's indicated in his report.

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Do you adopt this face-value approach to the same type of memoranda written by other authors?-- Not necessarily. This is a - we look at other - flooding tends to be more absolute for council officers, or for planners anyway.

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What does that mean?-- It means there is not a lot of - we don't tend to move off advice about flooding that we would maybe do in relation to on site carparking requirements that an engineer might require or might indicate-----

Why is that?-- -----or architects, architectural design

criteria because it is more subjective.

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I need to understand what you mean by that, that you don't tend to move off from flooding advice that you are given. What does that mean?-- Well, we use Andrew Blake and others in TST, if they indicate it is not meeting current standards, we don't go and do a performance solution because - or seek other alternatives; we go back to the developer and normally say, "No, you will comply with the habitable floor levels." There is no alternative solutions that we'll look at or even consider as part of our response back to the applicants. So we tend to be - it is black and white with regard to flooding. If it floods, if the levels are wrong, you fix them up.

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All right. But take the flip side of that. If Mr Blake says to you, "It is all fine", then that's taken at face value and you move on?-- Yes.

Without further exploration?-- Yes, generally.

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Or, indeed, if he says - if he mentions nothing, from the absence of the mentioning of an issue you assume flooding issues are fine and you move on?-- We might go back and ask him why he didn't have any issues-----

But-----?-- -----and notate that if there was a memo to that effect but generally Andrew will explain - that's a format memo that they use and it tends to have the recommendations. So it just doesn't say everything is fine, it tends to outline a report not dissimilar to that if it is okay. If it is not okay, it tends to have a whole range of issues in there that the applicant needs to go back and fix up.

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But the general approach is if an issue isn't mentioned by Mr Blake, you move on?-- Yes. Sorry, and it is not picked up by other areas of the engineers that are looking at related matters that might impact on it. Say if they were to put landscaping in a waterway corridor and one of the other engineers said, "Hold it, one moment, you might be changing the watercourse", we would then refer it back to Andrew Blake for comment. So this is early in the development assessment process. We might ask Andrew just to have a look at something later on if any of the changes have impacted on his previous advice.

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So if someone happens to pick up a flooding issue not mentioned, then there might be further inquiry, but if no-one happens to pick it up, there won't?-- Or changes are made to the building and people think, or form a view based on their experience or a checklist that they might use for engineering, that this change may impact on drainage, it may impact on the flooding, then we would go back to Andrew Blake and ask him what to do.

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Do you know whether in the assessment of this development application anyone with the requisite specialist expertise independently read the reports contained in volumes 5 and 6 to the development application and gave a view as to their

adequacy?-- No, I don't know that.

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Would you expect that to have occurred-----?-- If-----

-----or are the reports taken on face value in the development application?-- At the time, Andrew Blake, if Bob Addison was around, would have - may have talked to Bob Addison about his findings, his calculations. There are other hydraulic engineers in there and he may have discussed that with them, I am not too sure, but I don't know if that was a case at that instance, but generally the hydraulic engineer's advice is taken on face value.

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All right. So there is a chance somebody looked at it but we can't say whether they did or they didn't?-- Without asking Andrew, yes.

And there is no protocol in place requiring those reports in the development application be checked and independently verified, correct?-- Not from council officers, no.

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Can I take you, please, to paragraph 85? You say that, "It appears from Mr Blake's memo that the impacts of the proposed Tennyson Reach development on floodplain storage and/or flood conveyance were not considered to be problematic by council's hydraulic engineers", and more importantly, "As council's hydraulic engineer had not queried the methodology adopted by Mirvac's consultant engineers, that the correct flood modelling technology had been applied." Do I take from that that you assume correct flood modelling has been applied; you assume that from the absence of query regarding it by the council's hydraulic engineer?-- And - yes, and because they used, from the earlier attachments on the file that occurred during the prelodgement, that they used the same council model or put their assumptions into the same council model that we used for the Brisbane River, which was the MIKE-11.

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Can I take you, please, to paragraph 89? You say, "Having received Andrew Blake's advice, Development Assessments South would have consistently sought to ensure that the issues raised by Andrew Blake were addressed and that the recommendations were made by him were actioned and effected to ensure that the flood immunity level was maintained at the level identified in GHD's report in any subsequent preliminary approval or development permits." What did council - sorry, what did Development Assessments South actually do in that regard?-- Oh, it - condition in relation to the habitable floor level, the DFL.

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So they put in a condition for the DFL-----?-- Yes.

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-----habitable floor level?-- On all the residential buildings and the Tennyson Tennis Centre with regard to the upper level, or level 2, as it appears, and we put - we would have put conditions for the easements for the stormwater drainage, and put in other requirements to lodge more detailed information with regard to stormwater at later in time and for the roads at later in time so they could be consistent with

the advice previously given.

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Okay. So when you say "would have consistently sought to ensure the issues were addressed, recommendations actioned", what you're speaking of is council putting conditions about floor levels and the other conditions you've just mentioned?-- Yes, because it - in Andrew's advice he indicates development conditions are required to address section 2.2 and 2.3, which we believe did in relation to all the residential developments on the site.

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Okay. And that's the extent of what you mean in that paragraph in terms of actions by council?-- Well, yeah, in his comments and the recommendations that he indicated, yes.

Okay. The conditions themselves, though, did not actually refer to the GHD report, did they?-- No.

Why was that?-- Because if there is something else in the report, that generally we don't refer to hydraulic reports unless they're quite clear. We tend to put them into the conditions so you can read the conditions package and you can get the information you need without having to go, "Oops, there is a reference to a report", I then have to go find the report, look up that report, then I have to go back to the condition and find out what it means. So what we tend to do is we take, where we can, the recommendations out of a report and put them in the conditions so you can read the conditions and know what you have to do, then find the right version of the report that might be there, and go back, read that to find out what you have to do to read the condition. It is just a convenience issue.

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Okay. So what in fact happened was that the conditions were drafted and settled so as to call up the subdivision and development guidelines, correct?-- I am assuming that's what normally - the standard conditions are, yes.

I will take you to them. They are at paragraph 27, I think, of your statement. The second statement?-- 32? Oh, my second statement or my first statement?

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Sorry, second statement, paragraph 27. Sorry, we will do it another way, Mr Kelly. I apologise for being so messy about it. Exhibit 32 to your first statement. I will just identify the condition in a moment. Page 876 in the top right-hand corner you will see condition 56A: "By way of one example, the condition was to design and construct all buildings to have the appropriate freeboard in accordance with the council's subdivision and development guidelines."?-- Yep.

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Do you see that's the way in which the conditions have been constructed?-- Uh-huh.

Okay. Now, in light of what you just said, can I suggest to you an alternate way of doing this so as to reflect the proposal in the GHD report would be to lift from the GHD report precisely how the buildings were to be designed and

constructed and lift that terminology and transpose them into the condition? That could have happened?-- It could have happened.

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And does sometimes happen with development approvals?-- Sometimes it does happen with development approvals that we do that, but as this required a subsequent approval and another officer would be looking at it, that this - the condition 56, which is the standard check sheet condition that they put in to meet those requirements of Andrew Blake, or one of them, they would use that because when they came back to do the operational works or the compliance - or the schedule 12, the subsequent application to deal with those specific issues, they would know what that - those terminologies used, not necessarily terminologies used by the consultant.

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So do you say that that would preclude transposing the design and construction parameters from the GHD report into this condition?-- No, but that's a process that the engineers would do. That if this says the same thing as the GHD, because they would be looking at it later on, that they know what this - what is the requirement based on what they look at in their check sheets when these operational works come in to make sure they have covered all the aspects that council would look at. If there was something in that report that was different to the standard requirements, then they might include that in there as well, too. But if there wasn't, then the standard requirements will deal with all those issues at GHD and probably a little bit more and then stick with their standard conditions.

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So what I am suggesting is that is a transposition of the terminology in the GHD report insofar as the building and design construction parameters, that's possible?-- It is possible, yes.

And there is-----?-- But this condition does that plus more and is more readily understandable by council in relation to checking off what they have to look at as part of the engineering, then we do that. We use our standard conditions.

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And you say it is more readily checkable - if that's a word - by the engineers because, what, they are used to working with the development guidelines, and they can go and check things off there?-- Yes, and they can go back into here and know what they are talking about, not another term that's otherwise used that they may make an interpretation for and get it incorrect.

Thank you. In looking at the records for this matter, can you tell me whether you found any documents kept by Mr Blake which outline what he considered when he was looking at this, or his calculations?-- All the documents I was able to find are in my statement, so unless I have included in there and not realised it, no, what I've been able to find was what was - what's in my statement, sorry.

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Would you expect, in the ordinary course of council's

business, that when somebody like Mr Blake was looking at and considering the application, that there would be records kept by him of his calculations and what he looked at?-- Yes.

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I will take you to paragraph 93, please. You state that an information request was sent, and that's Exhibit 21. I think you might have touched on what an information request was when Ms Kefford asked you questions yesterday, but in essence it is something that the council can send when they are assessing a development application?-- Yes. We have, under the IDAS process of the Integrated Planning Act at the time but the current legislation that we have, the information request period is one of the four formal processes that we go through. In this instance, we made the request to the State Government because it was a preliminary approval, and they incorporate it into a combined information request through referral coordination, and that's the information request that we would have - it is incorporated into that document that you will see at attachment 21.

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Can I take you, please, to paragraph 25 of that exhibit? What I suggest to you was that the only flooding issue raised in this information request is that contained within paragraph 25, and that's in respect of the access roads being built at Q50?-- It would appear to be the only one that dealt with flooding or stormwater.

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All right. So how do you identify a flooding issue that requires an information request to be sent?-- Well, it would have been, as I indicated before, Dennis - Andrew Blake may have referred to asking the applicant for additional information, and we would have incorporated that into it. The engineers within the teams might have addressed some stormwater matters if they were dealing with those. In relation to the proposal, there might have been some queries about pipe sizes if they were in an overland flow path. Most of the other issues can be conditioned out. And the other aspect is that when this is provided to us, we then may have more issues that we need to be addressed because they have made changes that have impacted on some of our previous assessments.

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All right, thank you. Would that be a convenient time?

COMMISSIONER: Mmm. 2.30.

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THE COURT ADJOURNED AT 12.59 P.M. TILL 2.30 P.M.

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THE COMMISSION RESUMED AT 2.31 P.M.

COMMISSIONER: Yes, Ms Mellifont?

MS MELLIFONT: I call Mr Timothy Peisker.

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TIMOTHY PEISKER, SWORN AND EXAMINED:

MS MELLIFONT: Can you state your full name, please?--
Timothy Peisker.

And what's your current position within Government?--
Executive Director, Infrastructure, Planning and Development,
Sport and Recreation Services.

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Now, have you prepared a statement in response to a
requirement issue by the Commissioner?-- Yes, I have.

I'm going to show you a hard copy of your statement, together
with annexures, plus a CD copy. Does that appear to be a copy
of your statement together with annexures?-- Yes, it does.

I tender that statement.

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COMMISSIONER: Exhibit 707.

ADMITTED AND MARKED "EXHIBIT 707"

MS MELLIFONT: And have you today seen a document which is a
chronology of positions held by you in the State Government
during the Tennyson development project?-- Yes, I prepared
that document.

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All right. I will show you a copy of that document?-- Mmm.

So, that's the document you prepared?-- Yes.

And its contents are accurate?-- Yes.

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All right. I tender that?-- Thank you.

COMMISSIONER: Exhibit 708.

ADMITTED AND MARKED "EXHIBIT 708"

MS MELLIFONT: Now, so far as you're aware, that document was prepared in consequence of a request made by - or by me so that we could see at what point in time you did various things and what roles - what role you had at that point in time?-- Yes, yes. If I can just point out, my title has changed during that time, but the responsibilities are essentially the same.

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Yes. So, it's safe to say that despite various name changes of the department and the divisions within it, you have held since 2003 what is essentially the same position within the same government entity, as it were?-- Correct.

Which is Sports and Recreation?-- Correct.

Did I tender that?

COMMISSIONER: You've already tendered the chronology.

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MS MELLIFONT: Thank you. So, when did you first become directly involved in the Tennyson Reach development?-- Once I joined Sport and Recreation Queensland in August 2003, pretty much my involvement started from that first week, essentially.

And what was your role then?-- My role was to essentially commence the Tennyson Riverside development project and that involved - our first meeting was with Tennis Queensland to understand the scope of the facilities to fit on the Tennyson power station site. So, to essentially understand the scope of the project and from there put together the framework for the Tennyson project.

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Okay. Now, paragraph 13 of your statement, you say that in September 2002, Tennis Queensland advised the State of the potential to develop a tennis centre precinct on the TPS site. Can I ask you, does that mean prior to your involvement, others were involved in the Tennyson Reach development?-- Correct. It goes - the project goes back to 1999 when the home of tennis was previously at Frew Park, and Tennis Queensland sold that facility and then went looking for a new site for a State Tennis Centre, and people within government were working with Tennis Queensland to look at opportunities, but this specific proposal here in September 2002 was worked up by Tennis Queensland in consultation with Mirvac.

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All right. Now, in preparing your statement, in so far as it contains matters that fall outside the time of your direct involvement or outside your direct knowledge, what sources of information have you used to compile the statement?-- I have based that upon my recollections from my involvement in the project, plus a detailed review of all the files held by our department on the Tennyson project. Our team went through each file individually and I personally read them. So, a mixture of recollections, plus investigations of files, essentially, to compile my statement.

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And in reviewing those records, did the files appear to you to be essentially complete?-- The key - what I've done in my document is attached the key documents to chronologise the project. The project was across pretty much a decade, commencing in 2003, but I've attached the key documents from the files.

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All right. My question is more directed to whether you happened to notice that there seemed to be volumes or periods of time which simply weren't accounted for in the records?-- No, there seemed to be a fairly good dispersion of files across that period. I would, however, say that when we set up the Tennyson project, we had a much more rigorous chronology of recording events and the outcomes of key decisions. So, probably that preparatory period before 2003 there are probably somewhat less files than after 2003, if that makes sense.

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Yes. So, there's been more rigour applied since 2003?-- Significantly more rigour.

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Okay. At paragraph 8 of your statement, you refer to a Connell Wagner report that was commissioned by the Department of Natural Resources to undertake a land use study of the site and the study involved an historical analysis, site assessment opportunities and constraints analysis, option identification and evaluation and community consultation, and then at paragraph 10 you record some findings of the study, in particular, "Use of the site is limited by poor road access, contamination from previous activities required further investigation, drainage was poor and significant fill would be required in the south-eastern area to bring it up to the required flood immunity level for the development." Now, can I take you, please, to Appendix A of the report. This is Attachment 3 to your statement. If I can get you to scroll down through the timeline, please? About two pages down. A bit further, sorry. Keep going. Now, we can see there we've got an entry at 1863, a notation of, "Severe floods ruin corn crops. Other floods in 1863, 1870, 1893 caused damage. The land near the Brisbane River is low-lying and susceptible." You see that notation there?-- Yes.

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That's consistent with what you know of the site?-- Yes.

Can I take you, please, also, to the entry for 1974. "During the Australia Day floods, water gets into many parts of the power station." That, too, is consistent with what you know of the site?-- Yes, that's correct.

Can I take you, please, to the "Tennyson Power House Study, Community Design Workshops Key Findings". So, still within the same document. It's going to be a little bit difficult to find electronically, so I will read you the entry and you can tell me whether it is consistent with your knowledge. At 1.6 under the heading, "Drainage and Flooding", "There's concern about poor drainage on the site and a desire to see a new development take account of this. Queries and concerns about the level of flooding on the site."?-- Yes.

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That's consistent with your knowledge?-- Sure.

And there were some drawings prepared during this consultation; that's correct?-- Yes.

All right. I want to take you to, first of all, a drawing which is attached to that report. There's no particular page identifier, so I might have to hand it up to you. You will see that marked on it is a large area of the site with the suggestion that it is suitable for a wetland or a lake. I'll just hand that up to you?-- Mmm, I can see that, yes.

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All right. And I'll tender that, please.

COMMISSIONER: Exhibit 709.

ADMITTED AND MARKED "EXHIBIT 709"

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MS MELLIFONT: And where you saw that wetland on that rough map, that's in very close proximity to where the development actually occurred; you'd agree with that?-- In part. The west and south-western part of that site is the low-lying part of the site, extending from the river across there. So, the State has always been aware that that part of the site is low-lying, and in particular the south-western corridor of that site, indeed.

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All right. I'll just show you a second drawing that was prepared during the consultation. Now, this is a drawing prepared by a community group, and you will see that they propose another wetland on the site?-- Mmm.

And to the bottom left you will see the notation "flood level" and question mark?-- Mmm.

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And that community group suggestion is consistent with your knowledge of the history of the site?-- Well, I note that is an observation and that's consistent, showing that low-lying area of the site on that site, indeed.

Thank you. I tender that, please.

COMMISSIONER: Exhibit 710.

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ADMITTED AND MARKED "EXHIBIT 710"

MS MELLIFONT: Do you know whether the Connell Wagner report was shown to Tennis Queensland in the time frame that Tennis Queensland was coming up with proposed sites for the new

tennis centre?-- The Connell Wagner report was put into our data room as part of the tender process. So, all parties who did due diligence on the site would have had access to that report.

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So, that's later in time?-- Yeah, that's later in time, but Tennis Queensland, if you look at their September 2002 paper, they very clearly say, I think on page 8, that tennis courts have the ability to sit over easements and low-lying land, and they recognised that site had low-lying land, indeed, and that's when they were formulating their proposal for the site.

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Accepting that, do you know whether or not, though, they had that Connell Wagner report at that time, prior to the time they gave you the September 2002 proposal?-- I don't know that, no.

Do you consider it might have been helpful to Tennis Queensland to have had the benefit of the Connell Wagner report in respect of the site?-- Well, I think it is important to know that Tennis Queensland put a proposal to the state unsolicited for the Tennyson power station site. So, Tennis Queensland, in fact, went and looked at a range of alternative sites in Brisbane for a new tennis centre and their criteria were access to the population in South-East Queensland, good road transport and sufficient space for a new tennis centre. Now, what they looked at was the Boondall Entertainment Centre, the Sleeman Centre, the Boggo Road precinct, the RNA show grounds, the previous home of tennis at Milton, et cetera, and they concluded that the Tennyson power station site was by far the most suitable site for a new tennis centre. So, they themselves did that due diligence and came unsolicited to the state with a proposal to proceed with that tennis centre on that site, essentially. So they had obviously done their own due diligence in forming those views, and that was in partnership with Mirvac Queensland, and, in fact, Tennis Queensland wrote to Mirvac to give them an exclusive mandate to secure and develop that Tennyson power station site. So, they, on their own, were doing those due diligence investigations.

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Accepting that sets out the history as we see it from the documents, having received the unsolicited proposal - that is the September 2002 proposal - do you know whether those within State Government considered, "Look, perhaps we should show them the Connell Wagner report to see whether they still want to make this recommendation against the background of the information contained within that report."?-- Unfortunately I don't know who the unsolicited proposal was made to and I don't know who considered it. That was before I joined sport and recreation Queensland. So, when I joined, the decision had already been made on the site, essentially.

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Okay. So, as far as you can tell from your examination of the records, there's nothing indicates - nothing expressly indicated in the records that the Connell Wagner report went out to Tennis Queensland at any point in time?-- Nothing that I've identified, no.

Thank you. Can I take you, please, to paragraph 16 of your statement? You recall that on 11 June 2002 Tennis Queensland submitted a proposal to the State for the development of a new State tennis headquarters. That's the first part of the unsolicited proposal, I take it?-- That's - yes. I think that's a prelude to the unsolicited proposal. It's the prelude to that unsolicited proposal, indeed.

Yes. And then the statement says, "Through the proposal, Tennis Queensland was seeking assistance with the allocation of a four to five hectare site and capital contribution of \$5 million towards the development." Now, do you know where the 11 June 2002 document is?-- There's a few items in here which I haven't attached because there aren't - we didn't actually find those documents on record, so they would be references to statements in a CBRC submission, for example.

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In a-----?-- In a Cabinet Budget Review Committee submission.

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Okay?-- So, no, I don't know where that specific document is.

Okay, thank you. Can I take you please to paragraph 20 of your statement. Now, in it you refer to Tennis Queensland on 2 September writing to Mirvac Queensland and granting Mirvac a mandate to operate exclusively with Tennis Queensland to secure the Tennyson power station site and proceed with all planning, acquisition and final development for the Tennyson precinct project. Is that the granting of the mandate that you referred to earlier in your evidence this afternoon?-- Yes, that's correct.

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When was the first time that the State learned of a mandate granted by Tennis Queensland to Mirvac?-- My understanding is in that paper of September 2002 which was presented as the unsolicited bid. My understanding is that's the first knowledge of the State, from recorrecting (sic) the records, of that mandate being given.

All right. So, the September 2002 document you just referred to is Exhibit 6 referred to in paragraph 21 of your first statement; is that correct?-- Correct.

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And do the records reflect that the September 2002 proposal was, in fact, received by State Government in September 2002?-- It's on our files, but it doesn't have any covering letter on it, as far as our records show.

And I take it from your answers already given that the state did not have any involvement in the granting of the early mandate between Mirvac and Tennis Queensland?-- That's correct. To my understanding, that's correct.

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It came to the State of the event-----?-- Yes.

-----as it were?-- Yes.

Now, prior to receiving Exhibit 6, which is the September 2002

proposal, had the state itself identified the Tennyson Reach site as a possible site for the location of the State Tennis Centre?-- I don't believe so, but I can't be certain, because I wasn't involved in those deliberations, but there's nothing on file which indicates the State had identified that site, essentially. Most of the investigations had been on other sites.

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Okay. And in respect of that Exhibit 6, it's fair to say that that reflects to the State Government a strong endorsement by Tennis Queensland as - sorry, the strong endorsement by Tennis Queensland of the Tennyson site as being the most suitable site for the State Tennis Centre?-- I think that's very clear. I think the document goes through and talks about each of those sites and their suitability. I think Tennis Queensland quite liked the Boggo Road precinct because of its proximity to the city, but it saw the State as having a different development agenda for that site around a science precinct, rather than a sports facility and residential apartments, and it concludes that none of those other sites are available and suitable and, in fact, the Tennyson site is by far the most preferable site, and that's Tennis Queensland's wording in that document.

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Yes. Can I take you to some parts of that document, Exhibit 6? I might just start with some general questions. It's correct, isn't it, that none of the alternate sites in the proposal were accompanied by a proposal that they could be delivered at no cost to government; do you agree with that?-- I don't know if it goes into that detail, does it? Do you draw that inference from it?

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Perhaps I'll ask you a different question. So far as you're aware, did Tennis Queensland propose any other site which included as part of the proposal a no-cost-to-government aspect?-- Well, Tennis Queensland didn't propose any other sites because they hadn't identified which were suitable at that point in time.

And in so far as any sites were even mentioned by Tennis Queensland to State Government, the only site which was mentioned in the context of a no-cost-to-government was Tennyson; that's correct, isn't it?-- I would assume so. You could draw that inference, I think.

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All right. You're not aware of any - from reviewing the files, you're not aware of any other site put up by Tennis Queensland at any point in time which involved a no-cost-to-government scenario?-- And which was also potentially available and suitable, no.

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Now, can I take you, please, to - so, still within Exhibit 6 - it's page 4 - and the second last paragraph we see the reference that much of the - in the last line of the second last paragraph - much of the site is below the 1974 flood level. Can you tell me whether the records indicate or you know from your own direct knowledge whether this aspect of the site referred to in this document gave the State Government

cause for concern - gave the State Government concern that the site might not be suitable for the State Tennis Centre project?-- I think the State recognised the site had some constraints, and the first one is that it is a fairly narrow, long site. Secondly, it had some transport/access issues which had to be resolved. Thirdly, it had a lot of electricity infrastructure on it and easements, and, fourthly, it has a lot of low-lying land subject to flooding. So, the State knew from day 1 it was a complex site. It was a derelict power station which had sat idle for a long time which the community wanted opened up to the river which had the space for a tennis centre that had some complexities in terms of land site issues and one of which was flooding susceptibility.

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Okay. And in respect of that issue, what - did the State Government have something in mind as to how it would deal with that challenge?-- Well, the State Government was very clear that the Tennyson project is an international standard State Tennis Centre, plus associated development, plus transport and access infrastructure, and the preferred developer would have to get all the approvals for the project - so, local, state and Federal Government approvals - and the State made it very clear at all junctures that the developer would have to get those approvals from Brisbane City Council, which included a material change-of-use development approval. So, that was very much known from the start - that it would require a change of use, including development approval.

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Okay. Can I take you please to paragraph 26 of your statement, and you make clear that the State did not support Tennis Queensland's recommendation to make Tennyson power site available to Tennis Queensland and Mirvac, but rather if it was going to make the land available to the private sector, it would seek to maximise value for money, minimise risk to the state, and secure the best development outcomes for a market-based competitive bid process. Now, when you speak of minimised risks to the state, what risks are you speaking of there?-- I mean, there's a range of risks. There's the timing of the tennis centre being developed, there's the operating risk of who would operate the facilities built - one as a State Tennis Centre, the other is associated development - which could be units, it could be commercial/industrial facilities - so the State was wanting to make sure that once the project was finished, it would be managing assets which were within its purview, so who built what and who bore the risk of those was carefully considered by the State.

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Sorry, when you say the timing of the development is a risk, can you just elaborate on that?-- A key fact in this process was the State wanted to secure major tennis events back to Brisbane and when the process commenced, they were to be Davis Cup tie type events, but during the process Tennis Queensland and Tennis Australia came to the State and said, "We have the opportunity to secure a major men's and women's hard court championship, and that is the women's hard court championship from the Gold Coast at Royal Pines, plus the men's hard court championship from Adelaide. Now, to deliver on securing that

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event, we had to have a tennis centre built by a certain time - by January 2009 - so the completion of that tennis centre was not something that could happen at some future time, it had to happen in a specified time frame. So, one of the risks to the State was given the profile of the Brisbane International - you know, with the likes of Sam Stosur and other people playing - you had to deliver on having that tennis centre ready. In June, the project - that became an important risk to manage, essentially.

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Can I take you to paragraph 27, please. It refers to a letter from Tennis Queensland to the State on the 25th of February 2003 which identified the TPS site as its preferred location for a State tennis centre. Do you know where that letter is?-- My team has done a double search of every file that we have and unfortunately it has not turned up. We did another search on the weekend at the Commission's request and the reference to that is from a Cabinet Budget Review Committee submission and we don't in our files have that letter, unfortunately.

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Okay. Now, at paragraph 28 of your statement you state that, "The State conducted preliminary due diligence on the TPS site which indicated it had adequate space to accommodate a new State tennis centre based on the concept articulated by Tennis Queensland but had a number of site constraints, including low-lying areas which were subject to flooding". Who was involved in this due diligence process?-- That would have been members of Sport and Recreation Queensland at that point in time. That's fairly high level preliminary due diligence-----

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What does it involve?-- Essentially checking the available information on the site-----

Which would be?-- Which would be - it could have been the Connell Wagner report, it could have been information to hand. It wasn't a private fully-commissioned due diligence which came later in the project, and once - once the department commenced the competitive process it did more detailed due diligence at that point in time.

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All right. So when you speak of a high level due diligence you're speaking of a broad generalised due diligence?-- Yes.

So you might look, for example, at, as you said, the Connell Wagner report and anything else you happened to have on file, but in terms of a more detailed due diligence report or analysis that might come later?-- And I could only reiterate that that was before I joined the agency and there aren't a lot of documents about the due diligence taken at that point in time.

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Right. Which is my next question. What documents do exist with respect to that due diligence process?-- I haven't found too many. It's essentially, you know, observations and gathering information on current reports. More of a desk top due diligence than a detailed due diligence.

All right. And so with time would you be able to extract out the documents you have identified as coming out of the due diligence process?-- Look, I - to tell you the truth I don't think there are too many more on that, essentially. We've gone back over the files and looked through that. I could have another look if the Commission wanted me to, certainly, but that was very sort of high level preliminary due diligence and we subsequently engaged Minter Ellison to do a site due diligence. They prepared a proper report with flood studies,

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you know, site plans, site history, the power station, the cultural history, the Aboriginal history, so that was more of a due diligence later on in the process.

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And at what stage of the process was that?-- That was once the expression of interest process had commenced as part of the tender process, essentially.

Is it prior to the expression of interest document going out to tender?-- I'll just check my chronology on that and see if I can tell you. So we got - we got the due diligence on the 25th of November 2003 and we had released, I think, the expressions of interest in October 2003, if I'm correct. Yes. So it would have been - it would have been at the end of the expression of interest but before stage two of the detailed development process.

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Why doesn't the more detailed due diligence request go out and come back before you send out the expression of interest document?-- The expression of interest document is really a pitch at the market for the concept to take on the project. They say, "Here's the Tennyson Power Station site, we're looking for a State tennis centre, plus associated development. We want to know your capabilities," and in the subsequent process there will be much more detailed information available, and we got quite a range of proposals from the market through that expression of interest process.

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And can you assist with what outcomes or views were formed by the State Government in consequence of the due diligence process in so far as it relates to flooding on the site?-- Not specifically, no. Oh, in terms of the detailed due diligence?

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No, the earlier stage, the one referred to at paragraph 28 of your statement?-- No I can't, no.

Can you tell me whether at this early stage the State undertook investigations of other sites?-- The record showed the State was working to identify other sites but there's nothing on file about those investigations or a discovery of another site really.

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And in so far as the file shows that what time period are we speaking about?-- 2001. Sort of 2000, 2001.

Okay, so we don't - we can't say now what sites were investigated in what respect and what views were formed about them; is that right?-- No, there's no document that says, you know, "Here is our summary of the last 12 months of our investigations and here is the outcome of those sites," essentially.

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Okay. So that was 2001, did you say?-- For the investigation of other sites?

Yes?-- 2000, 2001.

Okay. Now, what about after you received the September 2002 proposal from Tennis Queensland, did the State undertake its own investigations of other sites from that point on?-- I don't know that actually, I don't know that. That's before I joined Sport and Recreation Queensland. When I joined pretty much the Tennyson Power Station site had been agreed to as the preferred site for that project.

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All right. So it was settled by the time you were there?-- Correct.

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If I take you to paragraph 35, we see that an expression of interest document was released October of 2003?-- Yes.

All right. Now, that's Exhibit 9. And we can see from its title, it's a "Tennyson Riverside Development invitation for expressions of interest"?-- Mmm-hmm.

Si have we got the right document up there on the screen?-- Yes, that's correct.

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Can I take you, please, to page 3 of the document, under the heading "Government Position"?-- Mmm.

And what we see is the State required that, "the development be delivered fully at the successful proponent's cost and it is not intended that the government will provide any upfront funding contribution to the project". See that there?-- Yes.

All right. Now, that particular aspect, that is that it was to be met - the costs were to be met by the successful proponent, was one of the State's primary and principal concerns about the development; would you agree?-- Correct.

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The aim was to get this State Tennis Centre for Queensland on a no cost basis?-- That was - at the expression of interest process that was one of the State's parameters, indeed.

Okay. What happened to Tennis Queensland's earlier request for \$5 million towards the project?-- There's no real record of what happened between that sort of request and then their unsolicited proposal which came in. That seems to be their next step. They went away, in consultation with Mirvac identified the suitability of that site, recognised they'd need to do more detailed investigations and came forward with that proposal.

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Ultimately in terms of capital contribution cost by the State Government, what was spent for this project to be delivered?-- Well, that's a - I have concentrated my statement on land planning and flooding issues. There's probably five or six years of quite complex arrangements around that so I - I haven't gone into that detail here. What I have said in my statement is that during the process Mirvac requested a \$10 million feasibility/viability contribution from the State, which ultimately was agreed to. When Tennis Queensland changed its requirement for a hard court facility rather than a Davis Cup tie, the State took a decision to keep Mirvac

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whole, which means not to impose that cost upon the developer and the State met additional costs of design changes for the State Tennis Centre, including a roof because that was not at Mirvac's request, that was imposed by the State, which is a variation of the contract.

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Was that about 17 million or are you not able to say?-- There was a package around about that, essentially, in totality.

All right. Excuse me for one second. All right, and we - now go to page 6 of that document, please. Now, it reflects under the heading "Other Requirements" that the successful proponent was required to obtain all required approvals for the project. Is that what you referred to earlier in your evidence-----?-- Yes, that's correct.

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-----as being incumbent on the proponent?-- Yes. Yes.

And page 7 under the heading "The Site" - page 7, thank you - we see a description of the site but you'd agree with me that the description of the site does not contain mention of the flooding difficulties associated with that site; agree with that?-- I would agree with that, yes.

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Was there a reason for not mentioning that in the expression of interest document and, in particular, in this part which describes the site?-- Well, I think, you know, flooding was understood to be something the developer would need to seek approvals for and, you know, we were seeking here to attract market proponents to develop the proposal and we were seeking a prime riverfront development and that's what articulated here, essentially.

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All right. So, in essence, this document was to attract proponents?-- Well, it's to do two things. It's to attract proponents but it's to clearly articulate what we know about the site and who will need to gain what approvals during process.

And in so as risks with the site are concerned, your expectation would be that the developers would find that out for themselves?-- Well, during our stage two we would have full information about, you know, flooding and easements and everything to do with the site and they would do their full - full discovery, and I think the document makes it clear that from a liability and risk perspective that's a matter for the developer and not the State.

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Can I take you to paragraph 37 of your statement, please, which refers to the 10th of November '03 when Sports and Recreation Queensland facilitated a site inspection of the site for parties interested in lodging expressions of interest. You were there?-- Yes, I facilitated that and probably 10 other tours of the site during the process but I was there. I led that inspection, indeed.

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Okay. And do you know whether in the course of this site inspection there was discussion about the flooding propensity of the site or the need - and/or the need for filling?-- We had our probity auditor present at that site inspection. We made a statement on the beginning of it there'd be no discussion about the competitive bid process, it was simply there for the proponents to make their own visual inspections and see the site. So there was no briefing on, you know, flood levels. The previous manager who had been at the centre for 50 years answered plenty of questions about the power station and flooding and topography but pretty much it was a site inspection for proponents to make their own investigations.

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All right. Can I take you, please, to annexure 10 to your statement, which is the file note of this site inspection. And at paragraph 4 we just - we see there that, "Mr Peisker," that's you, "provided"-----?-- Yes.

-----"a brief overview of the tour including information on site hazards". Do you know what that information was?-- The site hazards, I was concerned because while the power station was being gutted there were still some cement pieces sticking up and we had those colourful sort of markers to make sure people didn't slip over. Plus it was quite a wet day so I gave them a briefing on where they couldn't go and where they could go. Plus the lifts were not working so we had to walk up the flights of stairs to the top of the building, so the hazards were all about trip and physical hazards from a health and safety perspective on the day.

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Okay. So is it fair to summarise it in this way, that in terms - there was no proactively-volunteered information about flooding risk by you or the State Government representatives on that day but if somebody asked something of the fellow you've mentioned he'd answer it?-- The State took no steps to make it sort of secret that there were flooding issues associated with the project, the intent-----

I'm not suggesting-----?-- No, no, I know you're not but the intention of that day was simply to make an inspection of the site and there wasn't a briefing about, you know, various aspects of the site or flooding but they were entitled to ask the manager questions if they wanted to.

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All right. So the description I gave you in the question, that's a fair description?-- I'd agree with that.

Paragraph 40, please. Now, you refer to the Tennyson Reach Development Project Office Evaluation Committee-----?-- Mmm.

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-----completing it's evaluation of the expressions of interest on the 25th November 2003. Excuse me. Can you help me out with who the component members of the committee were?-- Sure. Myself as chair, plus two members of my team from Sport and Recreation Queensland, plus we would have been assisted by our specialist advisors. So we engaged Project Services in Department of Public Works as our technical advisors on

landscaping issues, various other issues, so those three parties were the committee and the probity order (sic) would have been part of those processes as well.

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All right. Now, Exhibit 11 is the actual evaluation report and, as I read it, it doesn't make reference to how the various proponents dealt with the issues of flooding and filling on the site. Now, were issues of flooding considered by your committee at this stage, and specifically how proponents would deal with that?-- It was more - I would have to go back and look at that in detail, to tell you the truth. It was more their overall development concept, their capability, their financial wherewithal, their concept for the site. It would not, I don't think, have gone into that detail essentially at that point in time. We were looking for capability and concept at that point.

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Okay. Can I suggest to you that at that point in time the State ought to have been interested to know whether the flooding risk on the site would impact on the suitability of the site to sustain a development which included a state of the art tennis centre plus associated residential development?-- Well, I think, as will witness when we look at the detailed proposal, some of the proponents changed their proposal significantly. Some didn't even build it on the Tennyson Power Station site at the end of the day. Some built it on the ARI site next door and some wanted to build it on the GoPrint site at Woolloongabba, so we probably weren't getting into the detail at that point about, you know, flooding and landfill and height of residential, it really was, you know, "What's the capability of your party? How does" - "What's your general concept for a State tennis centre? What associated development have you chosen? Is it residential, is it commercial, is it more sporting facilities? What's the impact of that on the local community? Are we going to have sporting events here every week or is it much quieter?" That's what the expression of interest was trying to do, to find those parties with capability and a concept to move through to the detailed development proposal section.

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With the benefit of hindsight looking at this now do you think it might have assisted in shaping the future of the project to have a look - have looked at how flooding on the site might have impacted the availability for it to sustain a State tennis centre and a residential development which essentially was to fund the State Tennis Centre?-- Well, with - I mean, we had commenced preliminary discussions with Brisbane City Council to identify with them what their issues for the site were, you know, and they were talking about, you know, density of development, you know, it's subject to flooding, you know, transport access sort of things, we had a general awareness of that, but I think going into more detail in stage one probably wouldn't have served too much at that point in time.

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What-----?-- Certainly an issue for stage two.

But why not? Why wouldn't it have helped to inform stage one? And I ask you that because I wonder whether it would have helped to weed out proponents very early or, in fact, make the State Government rethink entirely whether the site was going to be up to the task?-- Well, I think - I mean, if we were doing that today we'd have a different focus on the flooding issues because of 2011, plus the Flood Commission, but at that point in time, you know, the height of the residential units, the fit on the site, electricity easements probably had more prominence in our mind than flooding issues did, and hence was, you know, "Is this a reasonable concept for the site? Does it fit on the site?" You know, "What's the viability?" They were the things in our mind, and we always recognised that approval for all planning issues would have to be a matter between the developer plus Brisbane City Council. So how much fill you needed, what you did on the boardwalk, we had compensation issues to accommodate for flood conveyance and those types of matters, they were always going to be matters for the detailed development proposal in stage between the developer and the Brisbane City Council, so I can't - I can't see - it would have been nice but I think in retrospect it wouldn't have added too much between selecting between those parties, in my view.

All right. Well, we are interested to see how things like this might happen in the future. So now how would you do it differently?-- Well, I think - I think, you know, there would be a greater understanding between the parties on what is meant by "flood immunity". I think, you know, there's different terminology out there. I think a - you know, reinforcing the fact that developers need to secure those approvals from council, and we already see the government moving to make more flood planning information available. I think in projects of this nature you would see much more information available to parties in making those decisions, and I think they would be considered more in sort of your stage one expression of interest process.

So would you advocate these days for a more extensive consideration of flood risk in stage one of the process?-- I mean, they are my personal views I'm expressing and I should-----

Yes?-- -----just caveat that, and, you know, I think - I think in a major project such as this you would look at more flood information probably in stage one. Whether it helped you select parties or not I'm not sure but there should be more information available, I would think.

All right. Now, going back to what actually happened. You mentioned that in these early stages there had already been some dialogue with the Brisbane City Council?-- There had, yes.

Okay. So you're talking about before the expression of interest went out?-- Yes.

All right. And what was that dialogue so far as is relevant to the site's ability to sustain a tennis centre and residential development vis-a-vis its flood risks?-- Well, it was more general. Out first meeting with council was to say the State is thinking of developing the Tennyson Power Station site, you know, "What are the issues for council?" and they were identifying, you know, flooding issues, transport issues, the local community impacts, et cetera, and, you know, there were subsequent follow-up meetings where we discussed flooding in more detail but always recognising that the developer would have to secure that advice from council. Brisbane City Council, to be fair, made it clear that until they saw a detailed proposal they could not provide specific advice.

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Okay. And can you tell me whether in respect of these early meetings or discussions with council there are records?-- Indeed there are.

Okay. And are they part of the records which have been provided to the Commission thus far, so far as you know?-- They're either provided or available, certainly.

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All right. Well, moving along, after the expression of interest process, or as part of it, Mirvac, Devine and Stockland were shortlisted and invited to prepare detailed design proposals; is that correct?-- Correct. That's correct.

And it was to be a two-stage competitive bid process to be appointed the preferred developer for the Tennyson Reach development?-- Correct.

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And, in short, each of those three proponents had proposed a State tennis centre facility to funded by them with the proceeds from the associated developments?-- Correct.

Okay. And the State released a request for designed development proposals?-- Correct.

It had three components: a request for detailed design proposal, a State Tennis Centre Project Brief, and a development agreement?-- Correct.

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And it was in that document that - in that suite of documents, and in particular the detailed design proposal, that the State Government required detail now addressing flood paths; correct?-- For - yes, that's correct, yes.

And can I take you, please, to Exhibit 13, in particular the State Tennis Centre Project Brief page 54? Under the heading "Earthworks", down the bottom, please. See, "All functional facilities shall be designed within the State Tennis Centre to withstand the adverse impact from storms up to a minimum hundred year flood event or such other event as may be required by relevant acts and codes. An analysis of the site and catchments is to be carried out to justify site development levels to the satisfaction of the State." Now, I think it's clear from the document this relates to the State

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Tennis Centre only and not the associated residential development?-- Correct. That's correct.

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What was the impetus for including that condition?-- I think our State Tennis Project Brief was very comprehensive. We wanted an international standard State tennis centre and we went to immense lengths to make sure the seating specifications, the lighting specifications, et cetera, were clearly articulated, and from a protection perspective to have a desire for it to be above the one in a hundred flood level.

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All right. And in drafting this condition did the State Government have reliance upon expertise opinion as to what was needed?-- The State Government entered into an agreement with Tennis Queensland I think on the 3rd of October 2003 for Tennis Queensland to provide us with specialist technical advice on the functionality of the tennis centre, plus on flooding and other related issues, so we would have - we would have discussed that at length with Tennis Queensland and Tennis Australia during workshops before releasing our documents, essentially.

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Okay. In current practice with proposed developments are there criteria in place to determine what types of conditions need to go in to address flood risk?-- I wouldn't be able to comment on that.

Okay. I'll take you over the page. We can see requirements for stormwater drainage?-- Mmm.

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Now, once again, this is to do with the State Tennis Centre, not the associated residential development?-- Mmm-hmm.

What was the impetus for this condition?-- Simply to ensure appropriate drainage arrangements for the facility.

And was expert evidence or expert opinion relied upon?-- I couldn't tell you the source of that information. It would have been but I couldn't tell you the source.

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All right. And why do you say "it would have been"?-- That's not the sort of information our team will have the technical expertise in, they would refer to a specialist for that sort of advice.

All right?-- It could have come from Project Services or council, potentially.

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Okay. In your review of the file did you observe an expert report, or even a summary of it, from which you suspect this condition was drawn?-- Not that specifically, no. I saw plenty of advice from Tennis Queensland on the flooding issues to the tennis centre but not on the drainage issues.

In terms of the plenty of advice from Tennis Queensland, are they expert advices obtained by Tennis Queensland are handed over to State Government?-- No, probably people in Tennis Queensland and who have a long history with tennis facilities, essentially, their own specialist technical advice.

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Okay. Can I take you, please, to exhibit 14? This is the pro forma development agreement, if I can call it that?-- Yeah.

And this document - sorry, the document ultimately executed by the State and Mirvac was in the same terms as this document?-- Essentially the same terms, unless through that process - I mean, it was negotiated differently.

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Okay. I won't take you to the specific provisions within that document but can I ask you if this is a fair summary of what was the State Government's proposal, as it were, with respect to the development: it was that the State Tennis Centre and the associated residential development would be located on the one site?-- With the exception of the very small part of the ARI site was made available for the Tennyson Power Station site, but, yes, it had to be located there. It couldn't be located elsewhere as well.

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Now, why did the State require that the associated residential development be on the same site?-- Well, the project was for that infrastructure to be delivered collectively to allow the proponent to generate sufficient revenue to pay for the tennis centre. I don't think we ever contemplated that the residential development could be developed elsewhere, but it is an interesting idea.

If you were looking at it now would that be something you'd contemplate?-- Wouldn't have any comments on that, no.

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Okay. Do you also agree it is fair to say that insofar as the project brief was concerned, the would-be proponents were given significant detail about the requirements for the State Tennis Centre as compared to fairly wide licence with respect to the associated residential development?-- Well, the State Tennis Centre is a fit-for-purpose international facility. It has to have 16 hard courts precisely the same surface as your centre court. It has to have certain lighting, it has to have certain nets. It is the first grand slam facility with clay grass and hard court. So we had to be very specific in purchasing that asset from the project. Now, in terms of the associated development, it was more up to the proponent to advocate what type and nature they wanted to have, but it had to be complementary and integrate with the tennis centre, so could not be in noise and in industrial. They had to support each other. Plus they had to secure development approval for

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that project. So there was more - there was guidelines about what was required but the actual nature of that was up to the developer to determine.

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Yes, thank you. Now, the three short-listed proponents came up with detailed design proposals which were received by government, correct?-- Correct.

Mirvac proposed building the State Tennis Centre plus 318 units in six buildings on the Tennyson Power Station site?-- Mmm. Correct.

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But Devine proposed to build a mixed residential development on the Tennyson Power Station site but that the State Tennis Centre be located at the GoPrint site at Woolloongabba?-- Correct.

Stockland proposed 920 dwellings, plus the State Tennis Centre, but with the State Tennis Centre constructed on the Animal Research Institute site which would require the relocation of the Department of Primary Industries and Fisheries?-- Correct.

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Okay. So the Devine and the Stockland proposals were regarded as being nonconforming?-- Correct.

Because neither of them proposed that the State Tennis Centre and the associated development on both be contained within the Tennyson Power Station site and that small section of the ARI you have already mentioned?-- Correct.

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Did either Devine or Stockland in putting this - their proposals to State Government, or in discussing the aftermath of them with State Government, suggest to State Government that the reason they had to do it that way was that there was insufficient safely-developable land on the Tennyson Power Station site to do the State Tennis Centre and sufficiently large residential development?-- I think their proposals bore out they viewed the site to be, you know, a tight fit, and potentially noncommercial for that proposal, and - whereas Mirvac indicated that could occur in its DDP.

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It could occur with?-- Well, in Mirvac's DDP their project is located on the site.

Did the fact that these two other developers - the fact that they indicated to the State Government it is a really tight fit on the Tennyson Power Station, did the State Government then go and rethink that perhaps it is too tight a fit?-- The State Government throughout the process had a very objective and rigorous consideration of the whole process, and, you know, we found ourselves in the position with one compliant bid at the end of the DDP process, and so we sought legal advice on how we would deal with that to make sure that was a viable proposal. So it was indicating to us concerns about site fit, indeed.

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All right. So just coming back to my question, that being

indicated to you, was there consideration given within State Government, "Look, maybe we need to think about - the fact that we've got two developers telling us it is a tight fit, maybe we need to think about, really, Tennyson Power Station site is appropriate for what's being proposed"-- We did. We sought views on whether additional land might be made available from the ARI site with the project, and that was not supported.

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Not supported by?-- Not supported by government because the original term was to construct the project within the Tennyson Power Station site.

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All right. So do I have this correct in saying because the original proposal was the Tennyson Power Station site, that government wasn't prepared to move from that?-- Uh-huh, correct.

And can I just take you to one document in respect of that? I want to take you to a document provided by the State Government to the Commission from the Department of Premier and Cabinet. It is a - they are minutes from the Steering Committee held on the 2nd of December 2004. Now, this is a meeting which you attended. A copy is coming up?-- Correct.

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Okay. Can I take you, please, to page 2 where you see a heading "Report to the Deputy Premier, Treasurer and Minister for Sport", and we see a comment from the Chair, Mr Campbell, "Highlighted the site issues in relation flooding, engineering and site issues, easement issues, and the tight fit requiring the carpark to be located on the ARI site. It may be worth recommending alternative options to the Deputy Premier for the location of the State Tennis Centre. The DP brief should include information on the risk to the State which is highlighted in the report." Now, that's Mr Ted Campbell, the Chair. What was his position?-- I think that's as articulated there-----

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Sorry-----?-- Oh-----

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Is it the Director-General?-- Director-General.
Director-General.

Okay. Then we see a response from - we see a response from Mr Matheson which concludes: "It is not appropriate at this stage for the Steering Committee to be recommending alternative locations." Now, what was Mr Matheson's position - as in job position?-- Executive Director, Sport and Recreation, Queensland.

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And is it your recollection that the reason that Mr Matheson gave as to it not being appropriate to recommend alternatives to the Deputy Premier that which you have just earlier stated in your evidence, which is in essence the government had already committed to the Tennyson Power Station site?-- No, it was more that we had a potentially viable proposal. We wanted to exhaust that before we moved on. At that point in time Mirvac still had a viable proposal on the table, and even

though it had some issues we wanted to exhaust that process. So I recall those discussions and quite regularly within the Steering Committees we would consider issues of risk and options and things. That was not unusual. At this point the committee clearly determined that we wanted to exhaust that proposal before moving forward.

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And is it the case that ultimately the government did not investigate any other possible sites?-- Well, ultimately the government made a small parcel of land available on the ARI site to support the project but continued ahead with the Tennyson Power Station site, that's correct.

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Okay. So you agree with my proposal? You agree with my suggestion - my question to you that you didn't look at other sites?-- Correct. Correct.

Can I take you, please, to page 10 of exhibit 15 to your first statement? And page 10, please. And the second last paragraph we see, "There are other areas where the Mirvac proposal has not yet met the overall project requirements including construction of some project infrastructure", et cetera, et cetera. "There is also concern about the extent to which the State Tennis Centre will have sufficient presence amongst the associated development and consideration will need to be given to the location of signage and artwork." What do you mean by - what is meant by sufficient presence so far as you are concerned?-- Well, to make sure it stood out as a - you know, had amenity and presence, essentially, and was not sort of overshadowed too much by the residential development-----

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Thank you?-- -----is I think what they are getting at there.

Can I take you to page 13 of that document? And we see on the fourth paragraph down, "The analysis indicates that the project would become unviable if 80 two-bedroom units were removed assuming escalation which could occur should BCC not approve the full extent of Mirvac's associated development." So do you agree that what we're seeing here is a concern that Brisbane City Council might not approve the level of residential development, that is 318 units which was being proposed by Mirvac?-- I think it was always accepted in our discussions between, you know, council and the State that they would look carefully at the height of the buildings in terms of an approval.

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All right?-- But at the end of the day they approximated the old power station building and were approved, essentially.

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Where does the notion - sorry, this comment seems to reflect a suggestion or a possibility that 80 of the two-bedroom units might not be able to be approved?-- I think Mirvac's proposal was for a 12-storey building, and I think the power station was about 10 storeys. There was some concern that if Mirvac - if the height of the buildings was reduced, then they would lose some units, which would impact upon the viability of the proposal.

All right, thank you. Can I take you, please, to page 14? One of the key risks to State was "the proposal to construct some of the project infrastructure over easements given the tight fit of the site", and, if I can take you to the next page, the last dot point, "The assumption that the State will help in the approvals process." Are you able to assist me with what gave rise to the observation that there was this assumption?-- In terms of the second part of your question, sorry?

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Yes, in terms of this dot point, the assumption that the State will help in the approvals process?-- Well, Mirvac's detailed development proposal called for a project team to provide advice and information to assist it in securing its approvals, but the State made it very clear that while it would do what it had to do in terms of references for information, et cetera, Mirvac had to get all the approvals, essentially. So the State saw that as a risk of being asked to help but did not help in that process.

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Did not help, okay. So in terms of any agreement to assist Mirvac insofar as the development's approval process, that didn't come until after the development agreement was entered into, is that right?-- Mmm, correct.

I will just show you a document provided by the State Government, which is entitled "State Approvals Team - Tennyson Riverside Development Terms of Reference"?-- Mmm.

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Can I take you, please, to page 3 of that document? And under the heading "Scope"?-- Mmm.

"The development agreement states Mirvac may at any time advise the State of actual or anticipated significant delays in obtaining development approval and request the State provide assistance in facilitating the process." And in the last few lines, "after which the State's representative will take all reasonable steps available to facilitate Mirvac obtaining the development approval by the date for development approval, currently 1 August 2006."?-- Mmm.

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Can you assist me with the nature of the reasonable steps contemplated within this paragraph?-- The Tennyson always had a very tight delivery timeframe, and the State made it clear that if at a certain point in time Mirvac could not deliver it within that timeframe, the State would consider what options it had. Now, in my statement here I've indicated that we got together within government to consider what options we might be able to use. Now, would that be a call-in process or making more information available. At the end of the day they were not pursued. In fact, Mirvac secured development approval on the 15th of November 2006, which was only two weeks after its target date. So the full normal development process went through, Mirvac got development approval from council, and that assistance was not required.

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Do you know if these types of agreements of assistance are

commonplace in State development projects?-- Our main concern when we first met with council was to make sure they had sufficient resources on their behalf to make sure the development approval was handled expeditiously, and in return for that we wanted to make sure that we had resources on our side. So there is an information request to make sure we disseminate that to agencies quickly, to make sure there is a briefing for parties if necessary, just to make sure there is no bog down in a normal sort of approval process.

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Yes, but do you know more generally whether these types of things are in place commonly?-- No, I don't. I don't.

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Can I take you now to paragraph 54 of your statement, please? It refers to correspondence to Mirvac setting out some threshold issues which had arisen out of its DDP. I want to look at attachment A to exhibit TP16. Issue 4, please. It identifies that Mirvac had proposed to construct the centre court, six training courts, carpark and maintenance facilities below the 1:100 year flood level which is inconsistent with the specifications in the project brief, and it reflects as the position Mirvac to commit to redesign its site plan to ensure the six training courts are constructed above the 1:100 year flood level, and that appropriate flood mitigation measures are implemented in the design of the centre court. If I can take you, please, to page 20 of attachment B to Exhibit 16, we see the second row at schedule 2, the issue of flooding raised again. You have, "Mirvac's proposal to construct the centre court", et cetera, "four clay and two grass courts under the AR 100, and the State's position is that the proposal is not acceptable as it would transfer risk to the State to rectify courts and infrastructure damaged by flooding." So is that consistent with what you understand the State's position at the time is, that it wasn't prepared to take on that risk?-- Yes, I should explain this issue. In Mirvac's proposal, they had designed the training courts, so the four clay courts plus the two grass courts, originally to be on the easements, and in consultation with the electricity corporations, they decided that was unacceptable risk. So they were asked to shift their footprint for the design. Now, in doing so, they also proposed that the courts be built at a 1:20, because to achieve a 1:100 you would have to have a suspended slab of cement and your clay courts would be up in the air. Now, Tennis Queensland gave us very clear advice that the playability would be affected up there, plus the wind would potentially blow that clay off the courts. Plus, when you have a Davis Cup tie, your centre court has to be absolutely duplicated by your training courts. It would not be suitable potentially to be training up on the high level and then come down and play your proper match on a sort of low grass court. So this - the terminology in this document here is fairly aggressive from the State's position as we're seeking to maintain the State's position and protect our risks, but through very careful negotiations with Tennis Queensland and Tennis Australia, who agreed very firmly that the courts should be located 1:20, we agreed that was part of the process. So this negotiation process took several months. We had some concessions in some areas and we thought it more

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appropriate to agree for those courts to be at the 1:20. In doing so, the State recognised there was a financial risk to us essentially having them at 1:20 instead of 1:100. So we sought specialist advice, I think from Maunsell, to say what's the cost to us, essentially, of having to remediate these courts in the event of a flood, and they looked at the cost in year one, which I think was about 145,000, plus the present value of the cost in year 20, which was about 197,000, average those two together to come up with 166,000 as the cost of potentially remediating those courts. Now, Mirvac agreed in compensation for the courts being at 1:20 to pay the State upfront 166,000 to put into a sinking fund and, given the flood, that money has become useful obviously. So that - I think it is-----

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Used up, in fact?-- I think it is important to understand that chronology of how we used the expertise from Tennis Queensland and Tennis Australia to have a lower cost because it would have cost 7 million to build that cement slab to have it at a lower level, but the cost to the State had a risk associated with it.

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So things moved on from that document then - significantly?-- Well, through the negotiation process, indeed.

Thank you. At paragraph 58, you state that, "In the negotiations with Mirvac they advised that its sensitivity analysis showed it required a financial contribution from the State of \$10 million to increase the commercial viability of the project." Now, that request for 10 million was still in respect of project parameters from the beginning? That is they were asking for the extra 10 million but nothing had significantly changed from the beginning position?-- Well, they - they provided their financial model which had a deterioration in the property market and, hence, the reduced viability, and that's why they asked for the contribution, but it was still within the concept of those negotiations for their DDP.

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Okay. And given that there was this quite significant change from the initial principal aim of doing this cost free, to the State having to make a significant capital contribution, do you know whether consideration was given at this point in time to rethinking Tennyson as the site, or had things simply gone too far in?-- Well, I think when we received Mirvac's DDP, it had a range of shortcomings, consideration was given then as to whether you should terminate the process or continue, and I think, as we said before, it had the potential to be, you know, revised to a suitable conforming DDP and we wanted to exhaust that process first. So things continued, essentially.

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Right. Can I take you, please, to paragraph 69 of your statement which refers to contact between SRQ and the Department of Primary Industries on 6 September 2005, and it refers to establishing a group with membership drawn from the government agencies. Do you know who it was intended to include within that group?-- That was just the members who would receive referral requests, so Primary Industries and

Fisheries. I can't recall the other ones. That was to help the information request be expedited quickly.

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So this particular area of your statement concerned ecology aspects, the marine plants, as opposed to flood mitigation issues?-- Correct, correct, that's right.

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Excuse me. I'll just be a moment. Can I take you now to paragraph 75, please? Noted there is that, "Mirvac identified the 1st of November '06 as the critical development approval date to ensure delivery of the State Tennis Centre by the" - sorry, yeah, full stop?-- Mmm.

Can I take you then to paragraph 91, which states that, "On the 9th of June, CBRC" - that's the Cabinet Budget Review Committee-----?-- Correct.

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-----"approved implementation of design changes to the State Tennis Centre aimed at repositioning the State Tennis Centre to attract and host international hard court tennis championships." Do we know where the document is for that?-- The CBRC submission, do you mean, sorry?

Yes, or the approval that's referred to there?-- Yeah, we would have a copy of that on our records.

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Okay. Now, because of these changes proposed, Mirvac was required to submit an amended development application?-- That's correct.

And that created a tight window within which Mirvac needed to obtain the approval?-- It created a tight window for Mirvac to deliver the project. The variation to the Council approval was not significant, it was just a roof addition, essentially, so the design changes created more of a timing/delivery process for Mirvac, yes.

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And you've already mentioned in evidence the State's concerns in terms of meeting timeframes and the potential to, for example, exercise calling powers if you needed to?-- Mmm.

And nothing had to be done in that respect, correct?-- Mmm, correct.

But they were in contemplation because of the very significant concern for the State Government to have this tennis centre up and running for that Brisbane International in January '09?-- They were fairly briefly considered. There was not extensive discussion, but it was noted as a potential option should it be needed, essentially.

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But the reason for having to discuss it was the State Government needed that centre built by January '09?-- Correct.

Can I take you to paragraph 85 of your statement? "Under the development agreement" - so, that's the development agreement between State and Mirvac - "the State established a project control group for the Tennyson Reach development to provide a forum for interaction between the State, Mirvac and other parties." Do you know whether the State regularly establishes project control groups for its developments?-- It does, yes, absolutely.

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All right. And the purpose of them?-- Is to provide an oversight of the contracts and the delivery of the project, to provide an interaction with the developer to make sure any issues are addressed quickly and correctly.

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You have noted that in respect of this particular project control group, a log was maintained of issues?-- That's common practice.

All right. So there is records of the meetings and activities of that project control group for the Tennyson Reach Development in existence?-- Correct.

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And they're part of the documents you've located in the course of your looking at the records?-- No, because they would be held by the Department of Public Works, essentially, because the State appointed the State's representative to administer the contracts, and that person would have oversights a lot of those activities. So, some may be with our department, some may be with the Department of Public Works.

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All right. So, you don't necessarily get a copy of all of it?-- No, correct.

And, in the general sense, for these project control groups, do you know whether they can be actively involved in assisting developers obtain approvals for development applications?-- They would be providing advice to Mirvac on amendments and issues associated with approvals; yes, they would provide information.

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Okay. And in terms of the type assistance given, is it any more proactive than, for example, responding to further information requests from Council?-- No, I don't believe so.

Paragraph 97, please? You refer to meetings conducted with Brisbane City Council about the project on dates in 2004 and one date in 2005. Do you know where the records of those meetings are?-- Ah, most of those would have minutes of those meetings on our files, I would assume.

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Okay. Do you know from your own recollection what conversations were had with Council about mitigating flood risk as part of this development in those meetings?-- Ah, generally they started by identifying flood as an issue, and they were talking about issues of fill and were making it very clear that until they had a detailed proposal, they couldn't provide any detailed advice, and then that would have been between Mirvac and Council for the detailed information. It was more making sure that proponents had a pre-lodgement assessment opportunity to present their proposal to Council and for Council to provide feedback on that to assist with us understanding their development proposals.

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All right. And do you know whether there were any meetings between the State and Brisbane City Council after the development applications were lodged by Mirvac?-- I don't - I'm not aware of that, no.

Is it something that in order to answer the question, you'd prefer to check your records?-- I'm happy to. I'm happy to check the records.

Okay. I want to take you to a briefing note headed BN11407.03. It's undated. Do you know when this briefing note was produced? All I can give by way of assistance is that - well, nothing, I'm afraid, sorry?-- Sorry, should I respond?

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Yes, please?-- Yeah, I can only say that it was before the 29th of August 2003, because my name is not on it, and I do know that some consideration was given to the RNA show grounds as a potential site.

And I suppose we can date it between the 9th of July 2003, which is The Courier-Mail article referred to and when you started?-- Yes, some time in that window.

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If we go to the second last paragraph, we can see that-----?-- On page 1 or 2, sorry?

Page 1?-- Page 1.

The 2003 RNA Master Plan has - sorry, I'll give you the context. The heading was, "Proposed State Tennis Centre and the RNA Show Ground Redevelopment Proposal", which seems to contemplate an idea that the State Tennis Centre might be placed on the RNA show grounds. Now, if we go to the second last paragraph, we see the 2003 RNA Master Plan was not reviewed by Sports and Recreation, Queensland; "However, based on media reports, the tennis component appears not to be an acceptable alternative to the State Tennis Centre which is proposed for the Tennyson Reach development.", the reasons for which are there set out, in particular, "The centre may require at least 22 Courts and the RNA proposal suggests 14." "The 2001 RNA proposal requires displacement of the Fortitude Valley Primary School." "The RNA proposal seeks a government capital expenditure contribution." And, "Tennis Queensland has stated its preferred location for a State Tennis Centre is the Tennyson Power House site." Do you know if the RNA Master Plan was actually looked at rather than simply relying on media reports?-- No, I don't, unfortunately.

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Do you know whether any consideration was given to negotiating or even inquiring about whether it was possible to increase the number of Courts from 14 to 20 on the RNA site?-- My only recollection is a brief discussion that the RNA site was unsuitable, but I don't remember the details or the consequences.

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Do you know if the 2003 Master Plan did involve displacing the Fortitude Valley Primary School?-- No, I don't.

Was Tennis Queensland asked by Sports and Recreation Queensland about the RNA site?-- I don't know.

And do you know if any other analysis of the RNA site was conducted by State Government?-- No, I don't.

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Can I take you to a document from the Department of Premier and Cabinet? This is an E-mail from Mr Graham Marshall dated the 23rd of June 2003 to Mr Paul Nelson of the State Facilities Management Unit?-- Mmm.

Now, can I just ask you to have a look at the header to the E-mail and tell me whether any of those people are Sports and Recreation - or were Sports and Recreation Queensland staff to your knowledge?-- I think Paul Nelson may have been.

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Okay. You'll see in the first paragraph Mr Marshall has written - sorry, we've just got the wrong document. We'll give you another one. I think I can read it into the record while it is being found electronically. "After reading the attached briefing note, I believe that a number of significant issues require further investigation and analysis before the briefing note should be presented to the Steering Committee for consideration." I'll show you the relevant briefing note to put that into context. It is attached to the document. You will see the subject is Tennyson Power Station Redevelopment, and then I'll take you to the final page. "Sports and Recreation Queensland proceed to negotiate" - sorry, this is the recommendation - "Sports and Recreation Queensland proceed to negotiate acquisition of the TPS site from Enertrade and NRM with an aim to finalise terms and financial implications for CBRC consideration in conjunction with draft Expression of Interest documents prior to their release. Enertrade, that's essentially the entity that owned the site?-- Correct.

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And NRM is Natural Resources and Mines, is it?-- Correct.

I just want to take you back to paragraph 2 of the E-mail where Mr Marshall sets out some concerns. He says at paragraph 2, "There are a number of difficult site issues which need to be examined in further detail before it can be determined whether a State Tennis Centre can even be located on the Tennyson site, including 50 per cent of the site being flood prone and the existence of underground power cables and associated easements. In addition, BCC restrictions and requirements regarding development of the site are also unknown at this stage. It is also unknown whether development of a State Tennis Centre on this site is even a viable proposition from a commercial perspective." Now, my first question is in the course of reviewing the files, did you see this E-mail?-- No, I didn't, no.

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Okay. So, I gather, then, you won't be able to assist as to whether investigations were undertaken in direct response to Mr Marshall's concerns?-- Well, I think I'd observe that the issues he's raised are the flooding to 50 per cent of the site and the easements and the unknown Brisbane City Council approvals, and there's nothing untoward there that we didn't know through our due diligence and didn't come to the fore in the project. So, while Graham is proffering his view and he

was a member of our committee as we moved forward, there's nothing there which is foreign to our due diligence and understanding of the site.

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Thank you. I have no further questions. Sorry, I tender that document. Apparently I haven't tendered some of the others.

COMMISSIONER: Exhibit 711.

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ADMITTED AND MARKED "EXHIBIT 711"

MS MELLIFONT: Can I now formally please tender Briefing Note 11407.03?

COMMISSIONER: Exhibit 712.

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ADMITTED AND MARKED "EXHIBIT 712"

MS MELLIFONT: State Approvals Team, Tennyson Riverside Development, Terms of Reference.

COMMISSIONER: Exhibit 713.

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ADMITTED AND MARKED "EXHIBIT 713"

MS MELLIFONT: The Tennyson Riverside Development Steering Committee meeting minutes of 4 February 2005.

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COMMISSIONER: Exhibit 714.

ADMITTED AND MARKED "EXHIBIT 714"

MS MELLIFONT: Thank you.

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COMMISSIONER: Mr Dunning?

MS MELLIFONT: While Mr MacSporran asks his questions, I'll find the file exhibit to tender, if that's all right.

COMMISSIONER: Mr Dunning?

MR DUNNING: We have no questions, thanks, Commissioner.

COMMISSIONER: Ms McLeod?

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

MR MacSPORRAN: Thank you. A couple of matters, Mr Peisker. Firstly, you were asked some questions about whether or not Tennis Queensland should have been shown the Connell Wagner report to alert them to the nature of the - or the flood-prone nature of the site when they were interested in that as the site of the State Tennis Centre. You've said, I think, that in your view, in your dealings with them, Tennis Queensland were well aware of the flood-prone nature of the site?-- Correct. Indeed.

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Attachment 4, I think, of your - I beg your pardon, attachment 6 of your statement, Exhibit 6, is the Tennis Queensland proposal to the State?-- Correct.

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Could I take you to that please? We'll go to the first page, or the cover sheet of it firstly, if we could, Exhibit 6?-- Mmm.

This is the Tennis Queensland proposal, is it not?-- Correct, it is.

We see at the bottom it is September 2002?-- Correct.

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This was what you've referred to as the unsolicited proposal to the State?-- It is.

If we can go to page 84, please? We see towards the bottom of that page there's subheading (d), "The Concept", and in the second last paragraph, I think Ms Mellifont directed you to this statement: "The site contains the Powerlink substation on the southern boundary and much of the site is below the 1974 flood level." So, this is Tennis Queensland's own proposal?-- Correct.

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The next paragraph, second sentence, we have notably, "Tennis courts have the advantage of being able to be built over easements and below the Q100 flood line, thereby maximising site utilisation area and avoiding costly land filling and remediation."?-- Correct.

Does that indicate to you that they seem to be well aware of the flood-prone nature of the site they were dealing with?-- It does indeed.

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And indeed your dealings with them thereafter confirmed to you that they were, in fact, well aware of the site constraints?-- They provided technical advice on flooding issues and were well aware of that circumstance, certainly.

Now, despite the fact that as early as September 2002 Tennis Queensland were, as it were, indicating a preference for the

ability to build the Courts at below Q100 line, the State's response was that they had to, in fact, build it at the Q100 line initially?-- That's correct.

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And you've indicated as much in paragraph 47 of your statement; is that so - that's the brief from the State, indicating the requirement that all functional facilities be designed within the State Tennis Centre site to withstand the adverse impact from storms up to a minimum 100-year flood level, et cetera?-- Correct, yes.

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Now you've told us - you've gone on to explain why that changed after negotiations per se with Tennis Queensland?-- Mmm.

And so that the Courts - the training Courts in particular were built at the 1 in 120 year level?-- Correct, they were.

Can I take you to a set of minutes which I don't think have been tendered yet. They're the minutes of the 2nd of December 2004 of the Steering Committee.

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MS MELLIFONT: I can indicate that I did tender them but by the wrong description, so I described them as the minutes of February 2005, which is in the header, but they actually relate to the meeting in December '04.

MR MacSPORRAN: All right. Thank you. Well, can we look at that exhibit which is-----

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COMMISSIONER: 714.

MR MacSPORRAN: Thank you, Commissioner. 714. You were shown, I think, page 2 in particular, which had the comment from the Chairman, Mr Campbell, the second last paragraph?-- Mmm.

Highlighting site issues in relation to flooding, engineering and so on. "It may be worth recommending alternative options to the Deputy Premier", and so on. Do you recall that?-- Yes, I do.

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Can I take you to the next page, page 3, where the second entry from CM, which is Mr Matheson-----?-- That's correct.

-----"If the State is unable to move forward with Mirvac, the State may consider alternative options, however this should not occur until the forward strategy is complete and until it is clear a STC cannot be delivered on the Tennyson site."?-- That's correct.

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I think that's what you actually told us earlier in evidence?-- Yes.

And that's what Mr Matheson's view at the same meeting was; is that so?-- His view was that that should be exhausted before alternatives are considered, that's correct.

That's all I have, thank you, Commissioner.

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COMMISSIONER: Thank you.

MS MELLIFONT: Nothing further, thank you. Might this witness be excused, please?

COMMISSIONER: Yes, thank you very much for your time?-- Thank you, Commissioner.

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You're excused.

WITNESS EXCUSED

COMMISSIONER: We'll adjourn until 10 o'clock tomorrow morning.

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THE COMMISSION ADJOURNED AT 4.23 P.M. TILL 10 A.M. THE FOLLOWING DAY

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