

# Transcript of Proceedings

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THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

MR PHILLIP CUMMINS, Deputy Commissioner

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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 06/10/2011

..DAY 43

THE COMMISSION RESUMED AT 10.03 A.M.

COMMISSIONER: We might have some extra appearances this morning, I think.

MS MELLIFONT: Yes, we do.

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MR MYERS: Madam Commissioner, is it convenient for me to announce an appearance? My name is Myers and I appear with Mr Houston on behalf of Mirvac Limited, and our interest, so far, at least, is confined to the evidence of Mr Draffen, who is, I believe, the first witness this morning.

COMMISSIONER: Thanks, Mr Myers. Mr Ambrose, you're appearing for?

MR AMBROSE: Madam Commissioner, I appear for Ensham Resources and Mr Westerhuis, instructed by Clayton Utz, and also for CS Energy and Mr Campbell, instructed by Clayton Utz.

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COMMISSIONER: Thank you.

MS MELLIFONT: I appear with Mr O'Brien this morning. The first witness is Mr Draffen. I call Brett Draffen.

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BRETT DRAFFEN, SWORN AND EXAMINED:

MS MELLIFONT: Good morning, Mr Draffen?-- Good morning.

Could you state your full name, please?-- Brett Draffen.

And are you the Chief Executive Officer, Development of Mirvac Limited since July 2008?-- Yes, I am.

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Is your role to oversee Mirvac's Development Division?-- Yes, that's correct.

Is the core business of that division the creation and delivery of medium to high-end residential apartments, prime infill housing, large master planned communities and commercial projects?-- Yes, correct.

Have you provided a statement in response to a requirement issued by the Commissioner on 19 August 2011?-- Yes. First statement.

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I show you that statement. Can I just indicate for the record, Madam Commissioner, that Ms White, in Corrs Chambers Westgarth indicates to me that a phone number has inadvertently been written on the front page after its execution ought to be ignored.

COMMISSIONER: Can it also be scrubbed out? Is it going to bother anybody?

MS MELLIFONT: It won't bother anybody.

COMMISSIONER: All right.

MS MELLIFONT: Thank you. Is that your statement you provided?-- Yes, it is.

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Is the information contained within that statement correct?-- It is to the best of my knowledge, yes.

I tender that statement.

COMMISSIONER: That's-----

MS MELLIFONT: Have you also provided a second statement-----

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COMMISSIONER: Hold up. I have just got to find my exhibit list, which has done a strange disappearance.

MS MELLIFONT: Sorry.

COMMISSIONER: Exhibit 739 is the statement.

ADMITTED AND MARKED "EXHIBIT 739"

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MS MELLIFONT: Thank you. Have you prepared a supplementary statement in response to a requirement issued by the Commissioner on 9th September 2011? Have you prepared a supplementary statement?-- Yes, dated 19th of August.

A supplementary statement signed on the 26th of September 2011?-- I think I handed the other one back, that's all. Yes.

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That's all right. So you should have with you, Mr Draffen, I will leave that with you, a copy of your first statement?-- Yes.

You are now being shown the original of the supplementary statement. Is that your supplementary statement?-- It is.

Is it true and correct to the best of your knowledge?-- Yes.

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I tender that statement.

COMMISSIONER: Exhibit 740.

ADMITTED AND MARKED "EXHIBIT 740"

MS MELLIFONT: Mr Draffen, can you take up your first statement, please, and turn to page 10? Paragraph 71 you deal with some attendances by Mirvac at the Tennyson Reach site on 11 January 2011, and in subparagraph (a) you refer to the flood mitigation steps that were being taken by Cambridge Building Management Services and the body corporate. Do you know what those mitigation steps were?-- I am not aware of the actual specifics but certainly I would imagine they would have involved basically undertaking various steps to mitigate potential damage to those buildings at the time.

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Right. Can you assist me with the name of somebody who would have direct knowledge of the flood mitigation steps that were being taken at that time?-- Certainly the representatives from CMS management, the strata body, the body corporate manager, and in conjunction with some of the Mirvac staff who had provided some help to them and advice in terms of potential things that should have been done or could have been done to mitigate potential risk as the floodwaters rose.

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Do you know the names of the Mirva staff or is that something you could find out given time?-- Yeah. I mean, I would know some of them, but obviously there would be more in terms of - I could give you a complete list.

In terms of who you know now, can you give us those names, please?-- Yeah, Georgina Madsen, who was the Senior Development Manager at the time was certainly involved, and also Cameron Kirkwood, who was a Senior Project Engineer with Mirvac.

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All right. I want to ask you a similar question in respect to paragraph 72 where you refer to discussions about mitigation works that could be taken to prepare the Tennyson site for the flood. Can you assist with any further direct knowledge as to what those mitigation works were or, alternatively, the names of the Mirvac staff that can assist us in that respect?-- Certainly I couldn't provide anymore detail than is in my statement. That does list the two names that I previously provided were the main Mirvac interface with the body corporate.

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So we ask the same people you just referred to, thank you. Can I take you, please, to page 11 of your statement? Subparagraph (c) you state that "Ms Madsen also made calls to Mr Lynch and Mr Leslie that afternoon and evening to relay information reported in the media", then you say, "to assist them in their mitigation measures on site." What do you mean by that?-- As I understand through the media there was various media reports that was talking about, you know, how the Brisbane River obviously was increasing in terms of its level, and they were probably taking that information into account in terms of looking at the possible potential impacts in terms of the Tennyson project.

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All right. Can I take you to paragraph (e), please? Now, you refer to there being conversations in the late afternoon of 11 January regarding water on the floor of the basement of the Tennyson site. Do you know how much water as there at that point in time?-- I don't know an exact figure, no.

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Do you know who was there and made direct observations of it?-- Again, Ms Madsen, Mr Kirkwood I think were in attendance, so would have the best knowledge of that.

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Do they work within Mirvac Queensland?-- They do, yes.

In what particular branch?-- In the Queensland Development office.

Now, you say also in that paragraph, "At that stage it was not apparent whether the water was floodwater or from another source, most likely a backing up of the stormwater system." Now, I take it that sentence went in based on information provided to you by Mr Kirkwood and Ms Madsen?-- Yes.

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Okay. What did they tell you in that respect?-- There was obviously some water in the basement, which was prior to - with the flood level rising, it having breached the high levels in terms of the basement getting inundated, and-----

So we're talking about a stage where the flood levels are less than eight metres?-- Correct.

In terms of them not knowing where the water came from, did they give you any description of what the water looked like; was it clean, was it muddy?-- Not any specific description, but I understand the estimate at the time was that it was a backing up from the stormwater system. So would be stormwater related water, I would imagine.

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Was any opinion expressed to you as to why they thought it was from stormwater?-- I think at the time there may have been a plumbing contractor in attendance as well at or around that time, and that was some initial input given by the contractor at the time as to a possibility.

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Do you know who the plumbing contractor was?-- Off the top of my head, I'm - I think it was a representative from Tacoma.

Was Tacoma engaged by Mirvac or by the body corporate?-- I think at the time it would have been a contractor that Mirvac had asked to attend to site.

Can I take you, please, to paragraph (h) on the same page where you speak about concerns that "rising water near the essential services area in upper basement level 1 might become electrified, and the body corporate agreed to cut pipes around the drains which were backing up near those essential services." Are you able to tell us where the water went to once the pipes were cut?-- In terms of - once the pipes were cut, that would have stopped further ingress of water into the basement from the stormwater system external. So the

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remaining water, you know, within the basement would have rested within the basement level 2.

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But where did it divert to? It couldn't get into the basement anymore, so where did it divert to?-- It would be just held outside of the basement. So no - it couldn't further enter.

COMMISSIONER: I don't have any picture of this site, so if you have got stormwater which isn't then being piped into the basement, where is it going? What's around?-- What would happen is there is various drainage systems and stormwater systems external to the basement of the building and they were backing up and then forcing water back up those pipes into the basement. So they cut those pipes so that no further water could come in through that source.

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But is your external drain system coping then, or what's happening?-- No, it is not coping because external pressure is actually pushing water in the reverse direction than it is normally designed to flow.

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With what consequence?-- It had started to back up so that water - the system was designed to take water out of the basement.

Mmm?-- The pressure externally was pushing water back into the basement.

Okay. But you've now got this system where your external drainage system isn't coping. What's happening to the water; that's all I'm asking?-- It is effectively starting to pool external to the site.

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And what's external to the site? Where is it going?-- Around the landscape areas around the building in areas that are designed as temporary flood storage, basically, in the event of a flood.

Can you give me more picture of how that is designed as temporary flood storage? How do they do it?-- It is typical - in the case of this development, there are areas that are designed to handle temporary flood waters, in terms of an overground flow, and they are designed - they are lower areas that effectively act - the level of water builds up, there is like a mini reservoir, effectively, in terms of those floodwaters, so the level progressively builds up in a defined catchment area.

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Presumably they were overwhelmed in this, were they?-- Certainly they were inundated. I am not sure - I am not an expert in terms of how they ultimately performed to the original assessment of those areas.

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All right. Thanks for that. Yes, Ms Mellifont?

MS MELLIFONT: If I can take you to paragraph 74(c). At this point in time in your statement you are referring to some discussions on the 12th of January 2011 in respect of the

potential damage which was incurred as a result of the flood. What was discussed at that point in time in that respect?-- This conversation relates to, I guess, a greater Mirvac impact from the flood. Our Queensland head office was impacted by floodwaters such that the basement levels in that building were flooded, so you couldn't get access to our head office building. Equally-----

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Where is your head office building?-- In Southbank.

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Right?-- At the time was in Southbank, it is now in Adelaide Street. We also are a manager of hotels as part of the Mirvac Group operations. We had the Sebel suites that also had inundation to the basement area as well, so we were looking at damage there. We had a development in Tennyson, obviously, that was - had potential impact. Even though we weren't necessarily on site anymore, we'd completed the two buildings in terms of development works, but we obviously had an interest in unsold stock there, and we had a sales office that was open, and we also had a project in Newstead, which is located along the Brisbane River. So we were looking at potential impacts across all those sites.

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All right. The Commission has seen photographs or aerial pictures of where Softstone and Lushington is on the site. Where is the sales office located?-- It is located back towards - on the western side of the site almost on the other side of the tennis facility.

All right. So quite a distance away from Softstone and Lushington?-- Yeah.

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Over the page, please, at subparagraph (f), you say that "the discussion included one about the likelihood of the floodwater entering the ground floor apartments at Tennyson." What was discussed in that respect?-- At this time, as I recall, the level of the Brisbane River was continuing to increase. At that point it hadn't actually inundated the ground floor apartments at Tennyson but we believed, based on media reports that we were getting and our expectation of, you know, floodwaters continuing to increase, that there was a possibility that the floodwaters would ultimately enter into those ground floor apartments.

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Who was on the ground on the 12th of January at the Tennyson Reach development site from Mirvac?-- I understand that Ms Madsen was in attendance for a period of time. And that was the primary Mirvac contact.

Can I take you to paragraph 78, please? So we're still speaking about the events of the 12th of January, and you state that, "Later that day Mr Wallace briefed me on the rising flood levels at Tennyson and that at some point during that day Mirvac had advised CMS representatives"-----

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COMMISSIONER: "Was advised by".

MS MELLIFONT: Sorry, "was advised by CMS representatives it

was becoming increasingly likely that floodwaters would enter the ground floor." Do you know when that was?-- I don't know a specific time, no, but all I can say is, yes, later that day. 1

And in terms of the brief given to you by Mr Wallace at that point in time, did he say anything about the rising flood levels beyond what you've set out in paragraph 78?-- No, basically it was - he was continuing to see an increase in those levels and that was the response. 10

Paragraph 82(a), please, this is the 14th of January 2011 at 9 a.m., and you set out that Ms Madsen and Mr Kirkwood had visited the site. Now, particularly at 82(a), so the site was covered in mud and silt. Are you able to say whether that was the entire site, or which parts of it?-- Well, I did attend site subsequently a number of days later, and from what I saw at that time it was - you know, it wasn't the whole site. Basically, certainly around Softstone and Lushington, the landscaping area around those areas was covered in sludge and silt, but as you move further back up site, those areas weren't impacted. 20

Right. I just want to take you back briefly to your description before about when the water had been cut - sorry, when the drains had been cut and where the water was then directed. Can I take you to Exhibit 628, please, Madam Associate, annexure D. This is an aerial photograph of the site. We'll zoom in. Can we zoom in on the residential component of it as much as possible? Can you point - Mr Draffen I will ask you to go up to the big screen - and bear in mind there is no microphone up there, so anything you say we will need to hear loud and clear - and I will ask you to start by pointing out the entry to the basement?-- It is around this area here. 30

COMMISSIONER: Can you describe that?-- Sorry.

Or can somebody describe it so we've got it for the record? You've got the two blocks. You seem to be showing the lower of the two?-- Yeah. Basically there is a combined basement under both of these buildings. So Softstone, Lushington and Farringford, and there is an entry to the basement in this location here. 40

I just want to try and get a record of the location on paper. So in other words, about halfway down the lower building?-- On that image it is a little bit hard to tell because-----

MS MELLIFONT: So about halfway between buildings E and F which we know is-----?-- We could certainly supply you with a drawing that exactly locates the entrance on a plan. 50

But just for the time being, it is about halfway between buildings E and F, which we know is Softstone and Lushington?-- Yep.

Are you able to give a general indication of where the drains



were cut?-- No, I'm not.

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And you were speaking before about the temporary floodplain storage type areas?-- Yes.

Can you indicate where they are on the map?-- As I understand it, areas through here.

So I will have to describe this for the record, please, Mr Draffen. You are speaking of the left-hand side of the photograph at about halfway down?-- Yes.

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And where else?-- And then around the Softstone and Lushington buildings flowing back out into the carpark areas around the State Tennis Centre.

So the surrounding areas of the building and then down through the centre of the photograph to the bottom?-- Correct, correct.

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Thank you. You can return to your seat, please. Do you know to what extent the Farringford building was inundated?-- Farringford shared a basement with the Softstone and Lushington buildings, and therefore its basement was inundated. However, its ground floor apartments were not.

Now, in respect of the eight ground floor apartments in Softstone and Lushington which were inundated, why did Mirvac take the decision to restore those conditions?-- Really, two-fold: (1) obviously we had observed, like the rest of Australia, the events and felt a certain level of compassion and a corporate need to contribute to that rectification. In the case of Mirvac, we felt it was more appropriate to focus our contribution in terms of specific opportunities that impacted on our customers rather than make a more general donation. So that was certainly one element. The second element was that, as you would appreciate, we had a number of unsold apartments still in those buildings, in terms of future sale, and we took the view that in order to maximise the potential to sell those apartments in the future, it was best to rectify those buildings as quickly as possible and return them to a normal state of play. So it was a combination of those two.

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Can I ask you, please, about the location of essential services in the basement? Now, it was a design feature in this development that the essential services were in fact in the basement, correct?-- Correct.

And those basements were significantly inundated during the floods taking out those essential services for a significant period of time. Do you agree with that?-- In this case, that's correct, yes.

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Now, you say at paragraph 101 of your statement that you understand that the Brisbane City Council guidelines with respect to flooding which were in place at the time Mirvac obtained its building approval did not set out - sorry, did

not set any requirements for the location of essential services, and at 102 that the location of the essential services on level 1 of the basement carpark was approved as part of the building approvals issued by CERTIS. Now, accepting those statements as correct, my question is did Mirvac at any stage, in coming up with the design of this development, give consideration to putting the essential services somewhere else apart from the basement?-- I am not obviously familiar with the detailed analysis we did in terms of the conceptualisation and design development process on this project. However, I will say that-----

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Sorry, can I just interrupt you there? Who would be?-- The development team would have gone through an interactive process with both internal staff and our own consultants.

And who headed up that team?-- It would have been headed up at the time - obviously the CEO in our Queensland office was a Mr Chris Freeman, and then there would have been certain development directors, and construction directors, and other members of the team who would have looked at those various options.

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All right?-- It is fair to say, though, it is a fairly normal standard to locate these sorts of facilities in basement-type locations. There are a number of constraints around these facilities in terms of having to get access to these areas in the event of a failure or a replacement required, so quite often you end up with a scenario where this is the most logical location for these services, either in a basement location or at a ground floor-type location. In this instance, the basement was deemed the appropriate position.

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Would you accept most logical provided waterproofing is in place?-- Sorry?

Sorry, that the basement is the most logical place to put it - and I am paraphrasing what you said - would you accept the rider to that is provided it is waterproofed?-- Well, that was the basis that it was approved, because it had those controls.

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COMMISSIONER: "Waterproofed" was the word?-- Sorry, it was - the facilities were constructed on the basis that there was a point of egress for water that had to be achieved which was in excess of the requirement. So the point of entry into that basement area was approximately eight metres-----

MS MELLIFONT: Yes. And when you speak-----?-- -----in terms of its design.

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Sorry to interrupt. When you speak about the point of egress being set at a standard - you deal with this in paragraph 17 of your second statement, so we will turn to that now, please. So you state that both of the basements filled with water, and the lowest point of the walls and ramps surrounding the basement entrance is at RL eight metres. The entrance ramp to the basement is at RL 9.14 metres. "So with the water rising

to at least 9.05 metres as noted above, the basements were fully under water." Now, is it your understanding that Q100 was 7.9 metres?-- Yes.

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Okay. And so when you say that the lowest point of egress was above the level-----?-- Q100.

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I can't recall your precise words?-- Yeah.

You're speaking about building it at eight metres which is above 7.9 metres?-- Correct.

Okay. And from Mirvac's perspective in the designed development of the basement and the lowest point of egress was the pure fact that it came over 7.9 metres sufficient for Mirvac's purposes in designing the basement?-- The basement criteria was that eight metre level and, yes, so effectively the 7.9 is a control and we had a design that exceeded that control.

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Right. So, provided Mirvac had a design which exceeded the control as set by Brisbane City Council, that was good enough?-- As is normal, yes, that's correct.

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Now, it does seem, though, that the basement flooded well before it had reached eight metres; you'd agree with that?-- Yeah, some water had entered the basement, yes, correct.

I just want to show you a photograph which is annexed to the statement of Ms Savage. While we find it for the screen, we will hand you up a copy. I will ask you to look through those, annexure B to the statement of Ms Savage, which is Exhibit 572. We have got that up on the screen now, Mr Draffen. You will see there's water coming from the ceiling. Has Mirvac carried out any investigations as to how this early flooding of the basement occurred?-- Yes, post the flood events we have commissioned an investigation into just how the building performed in the event of, you know, the serious floods that happened. That investigation is currently underway and we are yet to receive the full findings of that investigation. Equally I understand that the body corporate have commissioned their own investigation into that as well. That investigation is still underway, and I imagine once those two reports are finalised we will meet with the body corporate and discuss, number one, the findings of those reports and any appropriate mitigation issues that may or may not be required based on those findings.

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Who have Mirvac engaged for that investigation?-- Off the top of my head, I'm not aware of the company. I can find out if you like, but it is a third party expert in that light.

And do you know who the body corporate's engaged?-- I don't, no.

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Can I show you, please, Exhibit 572, annexure A? Now, this is a letter from Tennyson Reach Reality, the building and property managers, to the owners and residents, and if I can ask you to accept for the purposes of my questioning that this was provided to the owners and residents on the 11th of January 2011?-- Yep.

If you looked at the second paragraph which reads, "The Tennyson Reach buildings have been designed to prevent water inundation to the basement levels up to an 8.4 metre tide.", have you seen this letter before?-- No, I haven't.

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Right. Do you know whether Mirvac provided any information to the Tennyson Reach-----?-- I'm not aware of any.

Sorry, I better finish the question, to the Tennyson Reach Reality Building and Property Managers by which they were informed that the buildings were designed to prevent water inundation to the basement levels up to an 8.4 metre tide?-- I am unaware of any information we would have provided. Certainly as I understand the 8.4 level relates to habitable floor levels, i.e., for example, the ground floor apartments in terms of a control. It doesn't relate to the basement.

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So, in the context of a lowest point of egress of eight metres into the basement, that figure doesn't make any sense to you?-- No, it doesn't.

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I am now going to take you, please, to a document provided by Mirvac in response to a requirement headed, "Tennyson Reach Flood Recovery Report." In particular, I want to take you to a draft report from Beavis & Cochrane Hydraulic Services. I want to take you, please, to the second page which refers to a constant static head and then it says, "The system under the static head by reports developed leaks to fittings with rubber joint rings." Insofar as you are currently aware, does that description fit with your understanding of the potential cause of flooding - early flooding into the basement?-- As I said, really the ultimate outcome will be the subject of the finalisation of that report. As I'm currently aware, I have no further information than this draft report.

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I will tender that document.

COMMISSIONER: Exhibit 741.

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ADMITTED AND MARKED "EXHIBIT 741"

MS MELLIFONT: Given the experience of Mirvac in this development and that the basement did flood - would have flooded even if it had reached eight metres-----?-- It did reach eight metres, yes.

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Yes. Sorry, would have flooded even if there weren't an earlier cause of flooding to the basement is better expressed, do you know whether Mirvac is looking at different designs in the future with respect to the location of central services?-- I guess my comment in that regard would be that we always look at the location of those sort of facilities on a case by case basis, responding to the individual controls that are in place and the input from our consultant teams. You know, with the

absolute benefit of hindsight and assuming no change to the controls, we may or may not look at a location in terms of moving those rooms up higher. However, in that event, we would have lost a number of apartments in doing so, and that possibly could have impacted on the financial metrics obviously. So, we would certainly look at all of those options on a case by case basis, but I don't think you can necessarily make a judgment on a uniform basis that you would - you wouldn't locate those facilities in a basement.

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Do you expect that the key determinate will still be compliance with whatever the relevant city council control is?-- Sorry?

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Do you expect that the key determinate in deciding whether and what to put in a basement will still be whatever the relevant city council says is the control?-- Certainly that will be an important part in terms of designing to the controls. Equally, it will be in terms of us taking expert advice from our consultants in relation to interpreting those controls.

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And if the consultant says it - if the consultant says what you need is - what you need in order to afford protection to your essential services is more than simple compliance with the city council control, is that something you factor in?-- Absolutely. We would look at it on a risk basis and if we had an expert advising us that we needed to build in addition or exceeding a standard, then that's something we would take into account-----

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Did that-----?-- -----in terms of our design.

Did that happen here?-- As far as I'm aware, we built to the control.

Right. But apart from that, no particular additional suggestions by the consultant for measures exceeding the control?-- Not to my knowledge.

Now, are you familiar with there being an access road which runs from the Animal Research Institute site which connects with Fairfield Road?-- I am.

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Do you know how high it was built?-- I'm not aware of the exact level. However, I understand a portion of it - a portion of that road was built to the Q100 level and a portion was built, I think, to the Q50 level. The requirement for egress away from the site requires, you know, one egress point away from the site at the Q100 level. In this case, the site has two egress points.

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And do you know why some was built to Q100 and some was built to Q50?-- I'm not aware of the - of all the facts, but I understand part of it related to the loss of flood storage area on the site. In the event that you built the road up even higher, you would lose additional flood level storage, and the fact that we already had - you know, a portion of the road that allowed egress to the other side of the site which

was built to the Q100 level.

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Who within Mirvac has direct specialist knowledge on this particular issue?-- We would rely on external consultants in this regard.

Yes, all right, but who within Mirvac would have looked at what the external consultants did? I want to know who to ask my question to?-- Well, our design team including design team, development team representatives, our construction team, would have worked with our third party consultants to form that view.

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So, within Mirvac who are the heads of those relevant sections?-- At the time or now?

At the time?-- We would have had at the time a development director who is Matthew Wallace, we would have had a construction director who was Anne Moore, and we would have had our various representatives from HPA now called Mirvac Design who were looking at design elements of that, but primarily they would have been in this case in terms of a road responding to input from our external consultant with the civil engineer.

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COMMISSIONER: What was HPA that you mentioned?-- HPA is the in-house architectural business within the Mirvac development business. It used to be called HPA. A number of years ago we changed that name to Mirvac Design.

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Okay.

MS MELLIFONT: Now, I want to take you back to the beginning?-- Right.

Is it your understanding that Tennis Queensland and Mirvac in September of 2002 presented to State Government an unsolicited proposal to construct a State Tennis Centre and associated residential development to fund that State Tennis Centre at the Tennyson Reach development?-- Yes, that's my understanding.

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At that period of time, what role did Chris Freeman have at Tennis Queensland, to your knowledge?-- I understand he was a board member.

And what role at that time did he have at Mirvac?-- He was the CEO development for the Queensland office.

Who first came up with the idea?-- It would have been - in terms of the concept are you talking?

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Yes, in terms of the concept. Specifically I want to know whether there was any suggestion - whether there was any invitation to start with by State Government or whether it was purely Tennis Queensland and Mirvac coming up with the suggestion and bringing it to State Government?-- Yeah, certainly at that stage there was no involvement with the

State Government. It was purely primarily the Mirvac acquisition team identifying a potential opportunity and then, you know, trying to forward that opportunity in terms of its approach. 1

Right. I want to take you to the September 2002 proposal, which is Exhibit 6 to Mr Peisker's statement, which is Exhibit 707, I think. Okay. Can I take you, please, to the fifth page in - sorry, the sixth page in? You will see that there are a number of sites for the State Tennis Centre listed and then ultimately reference to Tennyson Power Station site. You will see the last dot point there, it says, "Based on assumptions contained in the concept outlined below, the project can be delivered at no cost to government.", and, to shortly summarise, the proposal - the concept outlined below was the State Tennis Centre, plus a high grade residential accommodation. You'd accept that's a fair summary of what the proposal was?-- Yes. 10

At that point in time when Mirvac and Tennis Queensland were proposing this to State Government on a no cost basis, what regard had been taken into account of the limitations posed to the site by virtue of it being on a flood plain insofar as what it was you have to build in order to make it no cost?-- At that stage it would have been a very conceptual review with limited consultant input and basically preparing a concept plan that - and an indicative cost which would allow of a feasibility study to be established that would give you a first cut pass of the potential financial returns and whether they could possibly fund the construction of the tennis centre. So, very embryonic at this stage. 20

All right. I would like to get a little bit more specific, if I can, about it. You are offering this on a no cost basis, so are we to take it from that that Mirvac had come up with some costings which indicated to it that it could construct the State Tennis Centre at no cost and get enough residential apartments on that site, given its constraints, taking into account flooding, had it done that?-- Based on known information at the time and, as I say, a concept plan only, then, yes. 30 40

What's the known information at the time?-- Well, we would have had some initial discussions with our consultants in terms of, you know, early investigations, but they would have been used to form the first review of that concept plan. Obviously it would have taken a lot more work to build that process up to the point where you - we were comfortable with the financial offering. 50

So, what sort of consultant are you speaking of?-- We would have had town planning advice, you know, stormwater and related flood water specific input, we would have been using some costing knowledge from our internal construction division based on the early concept design and from our knowledge of previous developments approximately, you know, costs on a rate per square metre basis of the cost of those buildings to build, and making various assumptions around those costs and



what the revenue points in future to prepare a first cut feasibility study.

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Do I take it that there would have been a high level of confidence by Mirvac to put this kind of no cost proposal to State Government that it could actually deliver on it?-- I think at that stage I don't think it would be appropriate to say it would a high level of confidence, it was certainly the basis that we believed based on achieving the number of apartments in our proposed concept, that we believed there was a strong probability that we could create a viable project that would ultimately allow the funding of the tennis centre as part of that offering.

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So, some confidence but not high confidence?-- Correct.

I want to pop that near map photo back on the screen, please. Exhibit 628, just so we can orient yourselves, the Softstone and Lushington buildings which we see in the top of the photograph, they were built within the river corridor; correct?-- They were built - yes, six metres away from the high water mark.

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So, within the river corridor?-- As I say, they were built within six metres of the high water mark.

All right. I don't mean to be unfair to you, "river corridor" is a terminology used within the Brisbane City Council planning scheme?-- Yep.

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And we have had evidence from Brisbane City Council that they were placed within the Brisbane River corridor. Okay. Is that a term you are specifically familiar with?-- Not specifically in relation to the formal meaning, but I understand what you are saying.

So, you're more confident - in term of its location, you knew it was six metres back from the high water mark?-- Correct.

And you know that for those buildings to be able to be placed there, that required a relaxation from a 20 metre setback rule?-- I understand there was a general requirement for a 20 metre setback, but I equally understand that it was a - there was opportunity for a merit based argument around the location, the physical location, and as you see in the - it's a bit hard to see there - but the idea originally was that on the basis of the location of all the individual buildings there was an average setback of approximately 37 metres to that - to that high water mark. So, there was a merit based argument that was ultimately accepted and approved in terms of the location of those various buildings.

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So, a merit based argument based on averaging do I understand your evidence?-- Well, there was - the average of all those buildings in terms of a setback I think was 37 metres, but there was various arguments around retention of ecology, views, aesthetics, all those sorts of things that came into that merit based assessment in terms of approving ultimately

those buildings in that location.

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Is it your understanding that in terms of that merit based assessment, flooding wasn't a discussion point but, rather, it was things like ecology and amenity as you have mentioned?-- From my understanding I think the primary driver was more to those - you know, aesthetic and ecological related issues in addition to impacts around flooding.

Why do you say - what's the basis of your understanding that it did relate to impacts around flooding?-- Just a general - I haven't read the specific provisions of that control, but that's my general understanding.

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Who within Mirvac were having the specific dealings with Brisbane City Council about where to put these two buildings, Softstone and Lushington?-- Again in this regard we would have been working with our consultant, our town planning consultant particularly, and also our consultant in terms of some of the stormwater and ecological aspects, so primarily a town planning consultant and a - I think it was GHT, another consultant, who would have been informing us in terms of those discussions, and they would have been the main coordination points for discussions with Brisbane City Council and other parties as required.

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Why did Mirvac propose to have these buildings, Softstone and Lushington, so close to the river?-- As you would be aware that there was a requirement to have enough apartments on the site in order to fund the tennis centre. Equally in terms of the specific location of those buildings, there's actually a power line easement that runs behind the Softstone and Lushington buildings such that there was basically a corridor where those buildings could be placed, and if you tried to push them any further back up the site that wouldn't be possible because of that - the power line location.

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So, is it fair to say that the proposed location of these buildings was related to getting enough apartments on the site for it to be commercially viable?-- That was one aspect, yes.

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And can you tell me when was the first point in time Mirvac realised that in order to get enough apartments on the site to make it commercially viable it would have to go that close to the river?-- It was, as I understand it, always part of our original concept. We believed that that location was appropriate based on the controls and the advice we were receiving from our consultants.

Even as early as September 2002; is that right?-- As I understand it, yes.

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I just want to put to you a chronology and tell me if I have got anything wrong, please. When Mirvac put in an expression of interest to government - so this is when the project went out to market?-- This is the formal EOI process you are talking?

Yes, the expression of interest process. Mirvac's proposal was it would deliver the State Tennis Centre at no cost to government on the basis that it would build 318 apartments over six buildings; does that sound correct? Now, subsequently in early of May 2005 Mirvac went back to government and said that in order to do it, that is in order to do the project, it would need a \$10 million capital contribution. So, is that as you understand the chronology?-- Approximately, yes.

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All right. So, why was the \$10 million capital contribution needed?-- I think it was just based on further information known at the time in terms of costs and likely revenue points.

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Did it have-----?-- And probably related-----

Was the need for the \$10 million related in any way to challenges presented at that site because of flooding issues?-- I'm not aware. I am not able to answer the question, I don't have knowledge.

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Okay. Who can within Mirvac?-- Some of our internal development members, say Chris Freeman, Matthew Wallace would be able to give you some input in that regard.

All right. Then by the 20th of May the proposal was to build another 65 apartments on the 318 and that was necessary to make it commercially viable. Who would have direct knowledge as to why that was necessary to make it commercially viable?-- Again, the Mirvac representatives I have just mentioned.

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Now, as I understand it, in addition to the 10 million capital contribution that I have just spoken of, State Government had to put in 17.5 million because of some amendments they had made to the State Tennis Centre, in particular putting a roof over it?-- Yep.

So, that brings us to 27 and a half million. Are you aware of any other capital contribution made by State Government towards the State Tennis Centre project?-- I'm not.

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All right. Is there anybody else within Mirvac who would have that - have that knowledge, or are you confident you have got that knowledge?-- Certainly I have undertaken obviously discussions and investigations. You would need to ask those representatives I have mentioned for that specific information.

Mr Draffen, can I take you, please, to paragraphs 40 of your first statement, 40 and following of your first statement? Now, if I can just tell you what the requirement asked of you and it was to comment on all substantive decisions made by Mirvac, its board, senior executives, regarding the Tennyson Reach development with respect to flood risk. Have you in preparing your statement undertaken a thorough search of the records and made thorough inquiries in answering that particular requirement?-- To the best of my knowledge and, as I understand it, some in excess of 200,000 documents were

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provided to the Inquiry as part of that.

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But in terms of your account in your statement, which is what the requirement asked you to do, is to address this in your own words, have you set out everything you could?-- Based on my investigations, yes.

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All right. Now, at paragraph 41 you speak about the conditions which were imposed on the development with respect to flood. And, in short, we're talking about the council's requirement that it be the 7.9 metres plus 500 mil for a habitable floor level plus 300 mil for a non-habitable floor level. That's a short synopsis; correct? And then at paragraph 43 you say that, "Mirvac complied with the requirements of the Q100 flood level of 7.9 metres which had been advised by council at the time in respect of the site throughout the development process." So tell me if this fairly summarises Mirvac's approach to the issue of flooding on the site and in terms of building design and construction. Provided it met the Brisbane City Council controls with respect to the Q100 flood level Mirvac was prepared to go ahead with the development?-- Provided it met the minimum standards under the controls and the advice provided from our expert consultants, yes.

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I want to show you a photograph of what the site looked like in the 1974 floods, which is annexed to Mr Dunworth's statement, annexure D. You've probably seen similar 1974 flood shots, this is probably the clearest we've got. All right. Now, prior to Mirvac filing its applications with council in 2005 Mirvac was aware of the level of flooding in 1974 of the site; correct?-- We would have had that historical data, yes.

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You were also aware - "you" meaning Mirvac as a collective - that in order to get the apartments in on the site you'd have to build pretty close to the river, that is 6 metres; correct?-- That was part of our concept, yes.

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And as time progressed it became apparent that the no cost proposal was not going to be commercially-viable in order to get the number of apartments on the site you needed to get within its constraints; correct?-- Based on changes to specification and various cost input, yes.

Can I ask you this: did Mirvac ever go back to State Government and say, "Maybe we need to think about a different site because what we have to do in order to do it on this site is going to mean we've got two apartment buildings very, very close to the river which presents very significant flood risks to it"?-- No, because obviously at the time we had - our design was responding to controls that were in place, so from our perspective, you know, the concept was perfectly viable.

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Because you'd - because it would comply with council controls and therefore be able to be approved by council?-- And based on advice from our expert consultants as well.

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COMMISSIONER: Did you have independent advice that said there is nothing to worry about? In other words, there is no flood risk with these buildings or no significant flood risk?-- Well, that was exactly the reason we engaged third party experts in terms of giving us that advice but obviously the image you see on the screen is an image back in 1974 and obviously pre the construction of the Wivenhoe Dam so the

controls that we were responding to were based on, as I understand it, modelling with the benefit of the dam having been constructed and therefore those levels were appropriate.

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I was just trying to work out whether this is a reliance on what the City Council tells you or whether this is a reliance on what your own experts tell you?-- It's a little bit of a combination of both. Clearly we don't have the expertise to do, you know, whole of precinct flood-modelling in terms of what drives those controls in terms of the Q100 and likewise we rely on the input from our consultants in terms of, you know, assessing our development in light of those controls. So to the best of our knowledge we did everything we could as part of our due diligence at the time with all known information in terms of what was an appropriate concept.

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MS MELLIFONT: Your understanding is, correct me if I am wrong, that the development went ahead in compliance with the conditions imposed with respect to flooding?-- Correct.

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Okay. I want to show you an e-mail, please, from the Brisbane City Council to Stadiums Queensland on the 2nd of September 2011. And if we - can we go further down, please, Madam Associate? Sorry, that's not - all right, Mr Kelly's second statement, please, annexure 45. This speaks about non-compliance with condition 59. I'll give you an opportunity to have a look at it. Can you tell me, once you've done that, whether you've ever seen this before?-- In terms of this specific no I haven't seen, no.

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So the document says, "It's come to our attention that the existing floor levels in the Tennyson do not require with the Q50 and Q100 levels required in condition 9," and I'll interpose that that probably should read condition "59", "of the approval." Is this the first you've heard of there being non-compliance with condition 59?-- I'm aware that there is a - perhaps an inconsistency in terms of condition 59 wording and also the approved plans that were approved in relation to these aspects, so - and, as I understand it, that is an amendment that's currently being assessed by Brisbane City Council.

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All right. Can you help me out with what you say the inconsistency is?-- Well, I think the condition may talk to a requirement whereas the plans that were agreed with the State in relation to those - those facilities and also were consistent with our plans that were lodged and approved perhaps don't line up specifically with the wording. ie some of those areas were in fact approved by the State as less than the Q100 level in relation to the non-habitable multifunction rooms and some of the courts and related areas.

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Right. Now, who within Mirvac has direct and specific knowledge about this particular issue?-- Again it would be similar members of the project team that I mentioned.

So Mr Wallace and Mr - I've forgotten, sorry?-- It would include a number of our members. Adam Moore, who is our

construction director, Mr Wallace and Mr Freeman at the time as well.

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All right. So do I take it that Mirvac don't accept that there as been non-compliance with one of the conditions?-- Correct.

And that's currently still being worked out as between Mirvac and Brisbane City Council?-- Yes. And, in fact, as we understand - you know, as - we were given instructions by the State in terms of their requirements, they accepted those plans and, in fact, we made a contribution in terms of costs to reflect that some of those areas were below the Q100 in their design such that, you know, there was money to put in a sinking fund if future works were required.

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COMMISSIONER: Was that just to clean off tennis courts that were flooded or-----?-- Pardon?

Was that just to clean off tennis costs-----?-- Yes-----

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-----that were flooded?-- -----correct. Correct.

MS MELLIFONT: Well, before we move off this I'll just show you a couple more documents to see if you can assist me with any more detail. The first is an e-mail dated the 5th of November 2010 from Peter Hockley, from the Department of Works, to Mirvac, in which he notes - in which he stated, "Please be advised that during an inspection of the level one multifunction room and store two yesterday morning it was observed that the block wall between store two and the multifunction room is not continuous to the precast wall panels on grid Y18," and if I could take you to the associated plan with that e-mail you will see marked in red that the inspector has written, "Not constructed as shown". And then the next step in the chronology, before I get you to answer anything, is an e-mail dated the 5th of November 2010 from Adam Moore, who is described as "Construction Director Development Queensland", who wrote, "We never said the multipurpose room was built to a standard one in 100 flood event. We even contemplated putting marine-style carpet in there, if you remember." What do you know about the proposal to put - sorry, what do you know about Mirvac's position that the multipurpose room was never to build - never built to withstand a one in 100 flood event?-- That was always our position, and in fact the State had agreed, based on their discussions, as I understand, with the end user, in terms of Tennis Queensland, that those facilities weren't required to be built to a Q100 level. As I understand it, the original requirement in terms of the early days of working up the concept did have a Q100 requirement and that was subsequently amended as part of the design development process. So from our perspective it was always our instructions from the State, who were the clients in relation to the tennis centre, that that design level was appropriate.

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And what communication was had with the Brisbane City Council in this respect?-- In terms of specific discussion I'm not aware but certainly-----

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Who would be?-- Again the Mirvac personnel that I referred to previously.

And do you know who within Brisbane City Council they were dealing with or do we need to ask the person-----?-- You would need to ask those people.

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Now, there were some further changes made to the State Tennis Centre in around about October '09, related to some additional player facilities. We've heard from Mr Kelly from the Brisbane City Council that the as constructed plans following approval of those amendments weren't lodged with them. Do you know about that?-- No, I don't.

Do you know whether Mirvac lodged the As Cons with Brisbane City Council?-- I would - well, I would be aware that the As Cons would have been certified by our private certifier and I assume that they would have been lodged but I don't have specific knowledge on that matter.

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So who do I ask about that within Mirvac?-- Again those same personnel would be able to advise you, Matt Wallace.

Can I ask you with respect to selling units at Tennyson Reach whether any of the sales materials included any reference to the project being a joint State Government initiative or measure?-- Certainly the material would have had reference to the fact of the tennis centre. I'm not specifically aware of the actual wording in the document.

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And who would be?-- Again those representatives previously mentioned.

Thank you, I have no further questions.

COMMISSIONER: Mr MacSporran?

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MR MacSPORRAN: I have nothing, thank you.

COMMISSIONER: Mr Dunning.

MR DUNNING: Mr Draffen, my name is "Dunning" and I appear on behalf of the Brisbane City Council. Can I ask you, please, just a couple of brief questions. Essentially when Mirvac is considering a development site like Tennyson, or any other, at its most basic you identify the market for your product and prospective sites; agreed?-- Correct.

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And in the, I think to use your expression, embryonic stage many sites will be considered and no more than brief consideration is given to them and they're discarded; agreed?-- In the normal course, yes.



Yes, because people experienced in development will do a sort of first pass assessment to see if it makes sense to even expend the sums to look at developing that site; agreed?-- Yeah. I mean, it would be normal for us to look at approximately 10 sites or 10 potential opportunities to do one actual opportunity, yes.

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Yes. And right at that stage risk is one of the key drivers to the decision YOU will ultimately make, won't it; agree?-- Risk is obviously assessed right along the process, but, yes, risk around certain variables, absolutely.

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All right. And those variables range, obviously, from fluctuations in the strength of the market, flooding, in a case like this, planning requirements, all - a whole range of things; agree?-- Correct.

Right. Now, the process itself is an expensive one to bring to market a development like Tennyson, or something of that scale; agreed?-- Yes.

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All right. And if we move briefly from the embryonic stage, so after you've done a first pass and thought, "Well, this might be a site that's got something going for it," there will be considerable money to be spent potentially only to arrive at a decision not to proceed any further; agreed?-- Correct.

Right, thank you. And, again, a good deal of that expenditure will be directed towards the assessment of the risk as it presents itself to Mirvac; agreed?-- Yes.

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All right, thank you. Now, one of the risks that was apparent at all times to Mirvac in relation to this site was the risk of riverine flooding; agreed?-- We were certainly aware of the controls in terms of that we needed to design around and obviously we sought third party expert opinion from our consultants in regard to that, yes.

Certainly, but even before you get to that stage you would have realised just looking at the site it was a site where one of the matters that you would have to address yourself to is the risk of flooding?-- Correct.

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Thank you. Now, the risk of flooding on a site like this obviously represents a risk to your shareholder funds; agreed?-- Ultimately, yes.

And your borrowed funds?-- All part of the same thing, yes.

And your reputation in the marketplace?-- Correct.

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All right. But there's more, isn't there, to just the risk that came to pass here and that is after a number of the units have been sold a project like this takes some years from when you are committed to the site to when you're ultimately selling the product; agreed?-- Agreed.

And you will have expended hundreds of millions of dollars along the way; correct?-- That is normal part of the development process, yes.

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Yes. And the reality is if this flood had occurred a year before or two years before the risks associated with it would have been entirely borne by Mirvac. That would have been just a commercial consequence; agreed?-- On the assumption that, yeah, if you're talking about a prior period where we were already the owner-----

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Yes?-- -----then yes.

Yes. So there will be that period of, you know, years where you will be committed to owning the site, you will have started working on it, and if the flood arrives then, the risk of that is a risk that will be borne by Mirvac; agree?-- Agreed.

Right. Now, it's for that risk that you are, in effect, for that period exposed to exactly the sorts of risks that your customers will ultimately be exposed to; agreed?-- I'd suggest that we're - you know, some of those risks are similar, some are different.

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Right. But it's against those sorts of risks that you would be looking to take, for example, your third party advice on flooding?-- Absolutely.

Right, thank you. Now, that's in fact what happened here from the outset. You went away and obtained advice from leaders in the field external to Mirvac and external to the Brisbane City Council in relation to the flood risks on that site?-- Yes, we engaged experts in that regard and equally we responded to the controls that were in place at the time.

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That's right. And you arrived at a proposal, ultimately approved, that you understood managed those risks to a tolerable level?-- Yes.

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Yes. Mr Draffen, thank you for your attention to my questions. Thank you, Commissioner.

COMMISSIONER: Ms McLeod?

MS McLEOD: I have no questions, thank you.

COMMISSIONER: Mr Myers?

MR MYERS: I have no questions. May the witness be excused?

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COMMISSIONER: You had nothing further, Ms Mellifont?

MS MELLIFONT: I have nothing further, thank you.

COMMISSIONER: You're excused, thank you, Mr Draffen?-- Thank you.

WITNESS EXCUSED

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COMMISSIONER: Would that be a convenient time to take the morning break? We will come back at 25 to.

THE COMMISSION ADJOURNED AT 11.20 A.M.

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THE COMMISSION RESUMED AT 11.36 A.M.

COMMISSIONER: Yes, Mr Callaghan?

MR CALLAGHAN: I call Peter Harmer.

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PETER JEFFREY HARMER SWORN AND EXAMINED:

MR CALLAGHAN: Would you tell the Commission your full name and occupation, please?-- My full name is Peter Jeffrey Harmer, and I am the Chief Executive of CGU.

Mr Harmer, you have prepared a statement for the purposes of the Commission. That has been tendered and is Exhibit 716. You have a copy of your statement-----?-- I do.

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-----and annexures there in the witness-box, do you - with you, do you?-- I do.

Can we begin with the so-called triage process adopted by CGU. As we understand it from the materials, this was introduced due to customer feedback following the floods in Coffs Harbour, is that right?-- That's my understanding.

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And the feedback was, I take it, that customers wanted to know, sooner rather than later, whether their policy covered the event which led to damage?-- Yes.

Did any of the feedback, though, go so far as to say that people who thought they were covered did not want individual assessment of their situations so long as they got a quick answer?-- I can't answer that. I only joined the company in November of last year.

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Well, at some stage you must have reviewed the reasons why this process was adopted?-- When the weather events of December/January began to accumulate across the east coast of Australia, I met with our claims manager and asked him to describe for me how we were going to manage the resourcing constraints that these events would create, both internal and external resources, claims lodgement people, claims consultants, internal assessors, external assessors, and ultimately independent hydrologists. That was when he described to me the feedback that we'd had and the fact that a process had been devised using satellite imagery, area hydrology reports, and answers to a question set that had been designed by a hydrologist to help our claims consultants determine if the loss was covered under the policy or not.

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So you are not in a position to tell us what regard, if any, was had to the value that customers placed on having an

individual assessment?-- Well, I am not, but I would assume that that was taken into account when the process was designed. Again, it was in response to customer feedback.

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Whether it was taken into account, it was nonetheless the case that as at January 2011 it was no part of the process to ensure that an assessor be offered to customers who disagreed with what they were told in this triage process, was it?-- No, that's not correct. My understanding is that if a customer disagreed with the determination as delivered by the process, an assessment was offered.

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Was it part of the process to ensure that an assessment was offered-----?-- I can't answer that.

-----in those circumstances?-- I can't answer that.

COMMISSIONER: Can I just ask you, though, if a customer didn't disagree - in other words, if the customer isn't sufficiently informed and educated to take on the person who is telling them that they are not covered, what happens then? Are they given any advice about the possibility of getting an assessor?-- We - my understanding is that as part of our scripts with our customers, we advise them of their option to have an on-site assessment. In the case of Ms Doyle, when I went to visit Ms Doyle what became clear to me was that either she hadn't heard, or it hadn't registered, or we hadn't been effective enough in communicating that option to Ms Doyle, which is why I then went back to the office and had the - asked our claims manager to rewrite the scripts and to conduct further training immediately to make sure that our customers - sorry, our claims consultants proactively offered on-site assessments if the customer was in any way dissatisfied with the determination.

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But that wasn't what I was asking you - and I must say Ms Doyle didn't strike me as falling into the uneducated or uninformed group - people who simply weren't assertive enough to indicate that they disagreed with the immediate conclusion that they weren't covered, was anything communicated to them about the existence of a process where an assessor might actually go out?-- Yes, my understanding is they were offered an assessment. Our learning through the Doyle case was that we needed to be more effective in our communication.

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Prior to that that hadn't happened?-- Yes, it had. That's my understanding. It was offered to customers.

So it was standard procedure if someone rang up and said, "My house has been inundated", and the person on the other end of the line, the consultant, or whatever you want to call them, concluded that they weren't covered, they would nonetheless be told that an assessor could come out and look at the property?-- That is my understanding, Commissioner, but I understand James Merchant is the next witness and he is probably in a better position to answer that than I am.

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If that was the case, what then changed after the Doyle

case?-- The learning out of the Doyle case was that people in times of trauma don't always absorb the information that's being conveyed. So we needed to be much more explicit, much slower and more careful in the communication of the customer's options at that stage. So the scripts were rewritten to reflect that need, and training was undertaken at the time.

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Thank you. Mr Callaghan?

MR CALLAGHAN: Well, in response to the Doyle case, as I understand it from your materials, you say that you provided the claims staff with further training to ensure that assessments were offered to customers. What was the training?-- Well, it was in the delivery of the scripts. So, again, to the specifics of the training, that's a question probably best directed to Mr Merchant.

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Do you know, though, whether it was in fact training or just a delivery of a new script?-- Well, it was training.

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And do you know whether there was anything involved in that other than the delivery of a new script?-- No. Again, that's a question best directed to Mr Merchant.

This was done, what, at the earliest about mid-February, was it?-- Correct.

Your statutory declaration to the Commission was provided in response to a requirement from the Commission, is that correct?-- Yes.

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The requirement, I think, is annexure 1 to your statement, is that right?-- Yes.

If I can take you to paragraph 7 of the requirement, which refers to point 30 above?-- Counsel, I am sorry, what I have here is - my annexure 1 is in fact the letter from the Commission to Ms Hayley.

Yes, and do you have eight pages following that?-- Yes.

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And that includes a summary of information which was available to the Commission at the time?-- Mmm.

And a series of questions?-- Which-----

Followed by a series of questions beginning on page 6?-- Page 6. Yes.

And question 7 on page 7, which refers back to point 30 in the summary - point 30 being a media statement - reference to a media statement which spoke to this change as to how the claims assessment process was communicated to customers?-- Uh-huh.

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Are we talking about the same thing here?-- We are.

That we were talking about a moment ago?-- Yes, we are.

And you answer the questions posed in paragraph 7 on page 7 substantially in paragraphs 25 to 28 of your statutory declaration, is that correct?-- Yes.

But not, I'd suggest, in answer to the last question in paragraph 7; that is to say, "What was the process at that time by which an individual site assessment would be triggered?" Can you describe that for us now? What was the actual process by which an individual site assessment-----?--  
My understanding is that on completion of the determination, if the determination was that the loss was caused by flood, at that stage the customer was clearly offered the option of a site assessment.

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Sorry, I am sorry, can you repeat that?-- My understanding is that at the completion of the process, if the determination was that the loss had been caused by flood and therefore was not covered by our policy, the customer was then advised quite clearly of the option they had of a site assessment.

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And it would only be, obviously, if that option was taken up that a site assessment would be ordered, would that be right?-- That's my understanding. We did have some cases, of course, where site assessments were completed without request because we felt the information warranted it.

The period immediately following the Brisbane floods was no doubt a difficult and demanding time for your company?-- It was.

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Your staff were no doubt placed under extreme pressure?-- They were. We were very proud of the way they responded.

You, of course, were concerned for their welfare?-- Certainly.

You were and are protective of them, particularly if you perceive they're being treated or portrayed unfairly?-- Of course.

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And I take it that, to some extent at least, you did have that perception about the publicity which attached or was attracted by the complaints of Sally Anne Doyle?-- Neither the article nor the proposed protest were of significant concern, save for the fact - and I discussed this with Ms Doyle at her premises on the 14th - that I wanted to make sure that the protest itself did not endanger any of our staff entering or leaving the building. She gave me an assurance that would not be the case. In fact, she confirmed that they had care packages for our staff. I took her at her word. The only time I became significantly concerned was when I had feedback that three staff members en route to Brisbane Airport on paying the taxi driver with a CGU credit card were then abused by the taxi driver. That was the only time I can recall being somewhat concerned about the safety of our staff.

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I suppose what I'm inquiring about is why is it that you, as

CEO, got involved personally in the matter involving Ms Doyle?-- I travelled to Brisbane on the Monday morning, Monday the 14th. I had planned a two-day visit. The first day was largely to be spent with our staff making sure that I had a good understanding of what they were going through, what their morale was like, make sure they were properly resourced. The second day I had planned to visit Toowoomba, which I ultimately did. The events that occurred in Toowoomba had quite different characteristics to those in the Brisbane and Ipswich area and I wanted to get a firsthand understanding of the topography of Toowoomba, and, again, make sure that the intermediaries, the brokers that we dealt with up there were being properly serviced by CGU staff.

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COMMISSIONER: None of that seemed to address why you got involved in the Doyle's case?-- My apologies.

Unless I missed something?-- My apologies. While I was in Brisbane in the early morning I became aware - I knew about the newspaper article, The Courier-Mail article I think at least the day before, or it might have even been the Friday - Ben Bessell, our Claims Manager at the time, and Joe Doyle, our Senior Manager Corporate Affairs, had planned to visit Ms Doyle that morning, and I elected to go along for the trip, I wanted to get a firsthand understanding from a customer who was clearly aggrieved as to what had gone wrong in our process, what the issues were, and what we could do to address them.

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MR CALLAGHAN: So it was principally out of concern for the customer?-- Certainly.

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As you say, you did meet with Ms Doyle on the 14th of February, is that right?-- Correct.

You addressed that from paragraphs 10 onwards in your statement. You point out at paragraph 10 there was a slip in the date of the requirement-----?-- Counsel, can I just be clear that I certainly did have a care for Ms Doyle but the purpose of the visit was broader than just Ms Doyle, it was for customers generally to understand what we could learn more generally.

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All right?-- 10.

10 and following?-- Yeah.

And I suppose specifically furthermore in paragraphs 16 and 17, there is your version of conversations which you respond to certain things which have been said by Ms Doyle. Can I put this to you as a broad proposition without going through it: that you each have different impressions of that which was said on this occasion, but you are not so very far apart; it is a question of emphasis?-- I think that's fair.

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And we've heard from Ms Doyle that as far as she was concerned, all was pleasant and amiable on that date? You'd agree with that?-- Absolutely.



That brings us to the 22nd and your account of the events of that date, 22nd of February. Now, in that letter or requirement, you were asked - and this is on page 7 at point 5 or paragraph 5 "to provide CGU's account of the telephone call with Ms Doyle on 22 February 2011 including details of any aspect of that account with which you did not agree." Can I just explain something: the account that had been given to you at that time was the account which appeared earlier on in that same document, is that right?-- I am sorry, I don't understand.

10

The account of what Ms Doyle said occurred on the 22nd -----?-- Yes.

-----so far as you knew it-----?-- Yes.

-----at the time you did your statement was the account which was summarised in the earlier part of the document?-- Yes, that was my first learning-----

20

The same document?-- -----of her recollection.

And what I would indicate is that if we looked back at point 29, paragraph 29 on page 4 of that same document, that's the essence of the conversation as it was summarised to you at that time?-- Yes.

What I am pointing out for everyone's benefit, not just yours, I suppose, is that you were not there asked to respond, for example, to the recorded perception of Ms Doyle about the tone of your comments?-- Correct.

30

You are aware that since you've seen this summary you have seen a statement from her?-- I have.

Where she's made certain comments about the tone of-----?-- Change of tone.

-----voice that you used. You weren't responding to that when you did your statutory declaration?-- No.

40

You hadn't been made aware of it?-- Not to my knowledge, no.

I am just pointing out that anyone who reads your statement should, in fairness, read it in conjunction with what you've been told about what you were responding to. You would accept that?-- Yes.

Having said that, you were, as I've just pointed out, asked to include any details of any aspect of the account you had been given with which you did not agree. You accept that?-- Yes.

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And the account which you had been given did include that statement by - or did include the fact that Ms Doyle had said that at the end of the conversation you had with her, you had stated, "I have copies of the tapes of conversations you have had with CGU staff and I have listened to them. I know you

have misled the media." You knew that you were required to respond to that particular aspect of Ms Doyle's evidence?-- Yes.

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And you've done that at paragraphs 21 and following of your statutory declaration, is that right?-- Yes.

Are you satisfied that that represents your full response to the material as you knew it to be at the time?-- Yes. The conversation - we had phoned each other a number of times that day trying to reach one another. I note that Ms Doyle can't recall if it was - the final call was made by me or her and neither can I. We did manage to catch up. We had four demands from the delegation of the protest group that we had met with in our offices the week earlier on the - yeah, the week earlier. One of the demands was around acknowledging that our process was illegal, which we couldn't accede to-----

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I am just going to ask you to pause for a moment because I'd just like to make sure we do this in sequence. The question was directed to the completeness and accuracy of your statement, and I asked you whether you were satisfied - or words to the effect of whether you were satisfied that it was a complete account of the conversation that you had with Ms Doyle on that date?-- It is not a word-for-word transcript of that conversation, no.

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No?-- But does it reasonably reflect the conversation, my recollection of the conversation, yes.

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After Ms Doyle gave evidence yesterday, CGU put out a media release. I take it you would have authorised that?-- Yes.

And the media release is recorded as saying that CGU had outlined its account of its conversations with Ms Doyle "in a detailed statement provided to the Inquiry which confirms that all communications between CGU and Ms Doyle were courteous, professional and made in good faith." You are aware of that?-- Yes.

40

Is the detailed statement to which you refer, or to which that press release refers, the statement which we have before us?-- My statement.

Yeah?-- Yes.

Were you at this time, that is on the 22nd of February during your conversation with Ms Doyle, concerned that any aspect of CGU's position had in fact been misrepresented in the media?-- I can't say misrepresented. My concern was that there was a lot of emotion, quite naturally, amongst the community. I was very concerned that public opinion and debate to be fully informed, and I felt that The Courier-Mail article did not convey the true position, in the sense that we - Ms Doyle's claim had not been denied, certainly not at that stage, and in fact we had requested further information via her tenant, who was the only eye witness to the events that took place with the stormwater and the flooding.

50

So to come back to my question, it was The Courier-Mail article - in terms of any aspect of CGU's position, it was The Courier-Mail article which was in your mind?-- Certainly that was one of the articles. I think there may well have been other articles reporting on the protest itself, but I can't recall now.

And what precisely - and you alluded to this a moment ago, I think - but could you just articulate for us precisely what your concern was with that article or with-----?-- I think the general reporting at the time tended to pick up certain facts but perhaps not all facts, thereby giving the public an opportunity of engaging in a balanced debate. I felt that in the case of Ms Doyle, what was missing was the fact that we had not denied her claim and we had repeatedly requested details of her tenant from her so that we could actually conduct a site assessment and establish the eye witness's firsthand account of what had actually happened.

10

Did you - or were you concerned that Ms Doyle had contributed to the lack of fairness in the reporting?-- In the report - in the newspaper article?

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In the media articles, yes?-- Look, quite possibly. I know that the press will report the facts as they see relevant to the story, but between Ms Doyle and The Courier-Mail, I felt that a balanced position hadn't been established.

Had not been established? Well, did you express that in the conversation with Ms Doyle?-- Yes, I did.

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Did you at any stage use the words "misleading" or "misled"?--  
No. I'm quite sure I did not. In my dealings with - Ms Doyle  
had been very assertive, quite strident, but always courteous  
and always respectful, and it was - in all my engagements with  
her I clearly wanted to keep the relationship balanced so we  
could have a sensible and logical dialogue, not at any point  
did I want to inflame the situation.

1

Well, keeping the relationship balanced was obviously  
important given your status as CEO and hers as a customer?--  
Absolutely.

10

You say in paragraph 21.1 that you told Ms Doyle you would be  
making a media release?-- Correct.

Did you offer to "walk her through it", or words to that  
effect?-- Yes, I did. I felt out of courtesy we should make  
sure that she had a clear understanding of what our position  
was in relation to the demands that the protest delegation  
made upon us.

20

And did you, in effect, tell her that none of her requests  
would be agreed to?-- What I said to her is that we had taken  
on her feedback, we had adjusted our process and implemented  
additional training to make sure that the primary concern that  
she'd outlined was addressed. The request to acknowledge that  
our claims process was illegal was denied. The request to  
make a public apology for the failings of our process was also  
denied. It did not take into account the very many other  
satisfied customers with our process. The request for \$10,000  
compensation for customers who felt aggrieved by a process was  
also denied, and the request for CGU to make ex gratia  
payments for losses that was not covered by the policy was  
also denied. We did look at the prospect of trying to put  
together some kind of hardship fund. I know that in  
Ms Doyle's testimony she was concerned about the length of  
time that it took for us to get back. We did commit to get  
back within the week and we did.

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Was this discussed with her?-- No, it was not discussed.

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I am only concerned with the content of the conversations at  
the moment. And in that regard can I ask you is what's  
recorded in paragraph 21.3 the extent of the conversation you  
had with Ms Doyle about call recordings?-- Yes, that's right.

That is to say that you had call recordings and they could be  
checked if needed?-- That was in response to her disputation  
that, in fact, we had not denied the claim, firstly, and,  
secondly, that we were still waiting on details of the tenant  
at that time to be able to conduct further assessments. When  
she disputed that I said to her, "Well, look, it will be a  
matter of fact, we will be able to check the call recordings  
to determine whether or not that was said."

50

It was something you could do in the future-----?-- Correct.

-----if need be?-- Correct.

And that was the extent of any reference to call recordings?--  
That's right.

Can I ask you to look at a letter you wrote to Ms Doyle, dated  
1 March 2010, which is in attachment 4 to Ms Doyle's  
statement, which I think was 715?-- Counsel, I'm sorry, do  
you have a page number?

I will give you some assistance. Do you have that letter?--  
I do.

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Can I take you to the second paragraph of that letter where  
you speak to the conversation of the 22nd of February and you  
say this, "When we last spoke by phone on 22 February 2010" -  
that's just a slip with the date?-- Yes.

Is that right?-- Yeah, it must be, yes.

As is the-----?-- The date on the letter.

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-----date at the top of the page. That's all right. "When we  
last spoke by phone on 22 February 2010 I indicated CGU - that  
CGU was working towards individual site assessment at your  
property prior to you contacting the media." Do you agree  
that that is what you did, in fact, say-----?-- Yes.

-----as a representation - as a statement of fact?-- Yes.

You said that to Ms Doyle, "Look, we were actually working  
towards this before you spoke to the media."?-- Correct.

30

You told her that?-- We said to her we were waiting - "You  
know that we were waiting on details of your tenant so that we  
could conduct that site assessment and get a first-hand  
eye-witness account from the tenant." So, yes.

That's right.

COMMISSIONER: Sorry, when you say "we said to her", do you  
mean you said that in that conversation?-- Yes, in that  
conversation on the 22nd, that's right.

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MR CALLAGHAN: And then you went on, "At the time, I made  
reference to this being reflected in call recordings." Again,  
that was a clear representation of fact, was it not, that the  
fact of CGU working towards an individual site assessment was  
something which was reflected in call recordings?-- Yes.  
Well, it was reflected in CIS notes.

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Yes, that might be right, but in the call on the 22nd  
of February you indicated to Ms Doyle that it was reflected in  
call recordings as per your letter-----?-- Yes.

-----did you not?-- In the conversation I said to Ms Doyle we  
would be able to check the veracity of either position based  
on the call recordings.

No. That's not what is represented in that letter. That letter says - you made reference to the fact "being reflected in call recordings". It was a statement of existing fact that you made in that letter, was it not?-- Well, read that way, no, it's not. 1

Well, read what way?-- My assumption at the time was that all calls into our claims areas were recorded. What I hadn't appreciated was that when we set up our flood team on a different floor they weren't accessing the same technology. I automatically assumed that every conversation that came in around a claim was recorded. 10

Right. Well, you may well have assumed that, but you'd accept that what you said to Ms Doyle on the 22nd was as you have recorded it in the letter which was that it was, in fact, reflected in the call recordings?-- Yes.

Well, can I ask you this: how did you know that CGU was, in fact, working towards an individual site assessment in Ms Doyle's case?-- Because I had talked to various people involved in the claims process. 20

And so you really had - that was your sole source of knowledge?-- No, it was also the conversation on the 14th at Ms Doyle's premises, where I reminded her that we were still waiting on details of the tenant from her to arrange the site inspection and the eye-witness account.

So, you really had no idea whether it was reflected in call recordings or not?-- I think it's poor English, but, yes. My understanding at the time was that all calls were recorded. I automatically, therefore, assumed that we would be able to use those call recordings to determine whether or not the assessments made or the assertions made by our staff were correct or whether Ms Doyle was correct. 30

And that's what you - you represented to her that it was, in fact, recorded, did you not? There was no reference to having to check something?-- In the telephone conversation or this letter? In the telephone conversation----- 40

In the telephone conversation?-- I advised her that we had - we had telephone recordings and we would be able to check them.

Well, you would accept that as that letter reads, you say you made reference to this being reflected in call recordings?-- Yes. 50

That is an assertion of a positive fact or could be interpreted as an assertion of a positive fact that it was, in fact - sorry, that what you had said was that there was, in fact, in existence a call recording which proved your point?-- Yes. The better English would have been if I made reference to the - "this would be reflected in call recordings".

And, indeed, it's the following sentence where you equate the

status of the call recordings to the file notes, in effect, as being something which did, in fact, record what CGU was doing?-- Correct.

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The only mistake you admit to in the letter is whether it was the recording or the file notes which recorded that fact; is that right?-- I'm sorry, can you say that again?

The only mistake you admit to making in the letter - in the letter, the only mistake you-----?-- Yes.

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-----admit to making is whether it was the call recordings or the file note which recorded what CGU was doing?-- Clearly I had - I had misled Ms Doyle on the telephone conversation of the 22nd and the letter was to point out to her that we did not have call recordings for all - all of those conversations.

I was going to ask you why you wrote this letter. Look at paragraph 30 of your statutory declaration which is in response to the question as to why you wrote the letter. You say you sent the letter dated 1 March 2011 in response to her request for copies of audio recordings. The CEO wouldn't normally be the person who such a request came to-----?-- It didn't-----

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-----directly?-- It didn't come to me, counsel.

Well, who drew it to your attention?-- It was brought to my attention, I think, by Danielle Tarabay, who was a claims consultant, who I think, from memory, Ms Doyle had written to requesting copies of the tapes.

30

What did Ms Tarabay say to you?-- I don't specifically recall, but the reason that I maintain my involvement is because I - it became very clear to me at that stage that we'd given or I'd given Ms Doyle some misleading information so I wanted to address it.

Well, you'd certainly done that, but I do want to suggest to you that having given misleading information to her, you'd have a better recollection of how that was drawn to your attention and by whom. Now, you are suggesting it was Ms Tarabay?-- I am reasonably confident that it was Mr Tarabay who wrote to me or - by e-mail perhaps - to say, "We have had this request, I'm not sure of what tapes we do or don't have, should we release them or not?", and I remember there was some discussion about - at a later date about the fact that some of the calls that were recorded in relation to Ms Doyle's claim weren't actually with Ms Doyle, they were with her broker, RockSure, and there was a question about getting clearance from RockSure for privacy reasons, but my - my instruction to staff at the time was to release what we had. Counsel, Ms Doyle throughout this entire process was nothing but courteous and respectful and our entire approach was designed to try and manage her through this process in a way that minimised her distress. She'd obviously had a difficult first week post the flood event.

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Well, what I suggest to you was that you found yourself with an urgent need to write this letter, because what you had told Ms Doyle over the phone was something which was not just misleading, but was simply untrue; that is to say, that not only did you have tapes, but that you had listened to them?-- Well, firstly, I never said that I'd listened to them. In 30 years in the industry I have never listened to a recording of a customer conversation. So, I certainly never said that. What I did say was that we would have copies of the tapes that would show whether my assertion was correct or hers, and given the circumstances that the - our calls to our claims area are ordinarily recorded, that we had set up a temporary room to house our flood consultants that was not connected to the technology was not something that I knew of. So, the advice to Ms Doyle at the time on the 22nd was given in good faith.

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Would you accept at the very least that the account given in paragraph 21.3 is not a full account of that which you must have said to Ms Doyle on this occasion?

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MR NEWTON: With respect, it has already been made clear by it's witness it's not a verbatim exchange, it doesn't purport to be.

COMMISSIONER: No, but it does say it's a full and fair reflection of what was said, as I understood. He said that at the outset.

MR NEWTON: Well, initially the question was, "Does it reflect what was said?", and the witness answered by saying, "Well, obviously not verbatim, a lot was said but it represents the effect of what was said."

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COMMISSIONER: Mmm. I think we're getting to the point well, actually there's a bit missing. What's wrong with that?

MR NEWTON: Not in effect, your Honour.

COMMISSIONER: In effect it seems to me that there might be but, anyway, I propose to allow the questions, Mr Newton.

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MR CALLAGHAN: There's no mention in paragraph 21.3 of any other source of knowledge you might have had about the status of the move towards an independent assessor before Ms Doyle spoke to the media, is there?-- I don't follow the question, I'm sorry.

What did you tell Ms Doyle about your source of knowledge as to what CGU was doing about getting her an independent assessor?-- Well, I didn't need to. We'd had that conversation on the 14th where I reminded her at least on two occasions during that conversation that we were still waiting on her to provide details of her tenant so that we could conduct a site assessment and get a first-hand eye-witness account of what actually happened. To date, all the information that we had had been from Ms Doyle passed on from the tenant.

50



So, it was just completely out of the blue and not in response to anything she said or not in the context of any particular conversation about the status of her claim, you just said, "Oh, and by the way, we have got call recordings that we can check."; is that right?-- No, no. If you recall, counsel, I was actually trying to give you the context before when you asked me to address the very specific question. The conversation around the four demands completed. Ms Doyle said, "So" - or words to the effect, "So, you are not giving us any of these demands.", and I said, "No, we have made changes to the process but we can't accede to the other demands.", and she said, "Don't you guys want to do business in Queensland? Don't you care how your brand is going to be trashed up here in this part of the world?" I said to her, "It's very disappointing when not all the facts get into the public domain.", and that's what framed that dialogue we just discussed.

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Well, do you still say that your statement is a response to the request to provide an account of the telephone call, including any details of the aspect - of any aspect of Ms Doyle's account with which you did not agree?-- As I said before, it's not a verbatim account, but it is a reasonable summary.

20

Is it, as you authorised in the media release, a detailed statement, absent as it is the dialogue which you have just now related to us?-- I guess two things, counsel. Firstly, the reference to it being detailed was not specifically in relation to paragraph 21 but in relation to the whole statement, and, secondly, as I said before, these are - were very traumatic times, many customers had suffered significant loss. Many of them had not even had to deal with an insurance company before. So, we were mindful very much Ms Doyle was a valued customer, she had behaved with great courtesy and respect throughout the process.

30

I am going to interrupt you because it's completely nonresponsive to my line of questioning which is about the adequacy of your statement. Now, you just in the witness box for the first time that we know of cited some significant dialogue as between yourself and Ms Doyle and I had hoped in my earlier questions to ensure that there wouldn't be the need to review the adequacy of paragraph 21 by asking you what I asked you. So, I shall ask you again if there is any other conversation or if there's anything more that you want to add to this detailed statement that will appraise us of exactly what exchanged between you and Ms Doyle on the 22nd?-- I think your questioning has now pulled it out. The only-----

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My questioning has what, sorry?-- I think it's elicited - elicited the detail of the conversation. The closing remark by Ms Doyle was something to the effect of, "Well, I guess it's open season on CGU.", and I said somewhat resignedly, "Well, you will have to do what you will have to do.", and the call was ended.

You are now familiar with the evidence which has been adduced

from Ms Doyle on this issue, I take it?-- I am.

1

Are you familiar with an e-mail that she sent on the 23rd of February to Danielle Tarabay at 4.06 p.m. which appears in attachment 3 to Ms Doyle's statement?-- Yes.

You have seen that document?-- I have, yep.

Would you accept that it contains these things: a summary of the effect - you see item 1 in almost the middle of the page. There's a summary of the call of the 1st of February, including an acknowledgement that CGU suggested the need for more information from the tenant?-- Counsel, I am looking at an e-mail here from Sally Doyle to Danielle Tarabay dated the 23rd of February which is at the bottom of the page, and at the top of the page is Ms Tarabay's response also dated the 23rd of February.

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In the attachment - can I ask you do you have attachment 3?-- Three. Yes.

20

On the second page of that, there should be a document, page 1 of 2, "Sally Doyle re claim for 77 Gray Road, West End."?-- Yes.

If you look on the screen, is that the same document you are looking at?-- Yes.

So, I was taking you to point 1. You see there's some paragraphs numbered but the numbering starts halfway down the page?-- Mmm-hmm.

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Paragraph 1, I suggest to you, is a summary of the call of the 1st of February and I'd suggest to you that that is an accurate summary of what we know by reference to CGU records?-- According to CGU records, Ms Doyle's claim wasn't denied until the 27th of April.

All right. That at least records her perception that her claim had been denied and you are aware that she sent a letter asking for confirmation of that proposition? I accept that it hadn't been or at least-----?-- Yes.

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-----or at least from CGU's perspective it hadn't been?-- The letter seeking confirmation, I am not quite sure which letter that is.

That was a letter on the 10th of February, an e-mail?-- Was this the open letter?

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No. All right. It doesn't matter. If I can take you to paragraph 2, you'd accept that she - that paragraph 2 falls into two parts, two paragraphs, in effect. You'd accept that it records that she was not told that an assessor would be assigned, nor that it was an option in that-----?-- I accept that's her assertion, yes.

Yes. In the second paragraph she records the visit from the

local politician and the media interest and so on?-- Correct, yes.

1

And the third paragraph is where she talks about that e-mail on the 10th requesting the letter of denial; do you agree with that?-- Well, I have it here, yes.

Yes. Are you aware that such e-mail was, in fact, sent?-- Yes.

10

All right. Also that from lodgement of the claim until the 1st of February there was no call from CGU. That's accurate, to your knowledge?-- Oh, I would have to go through the chronology, but I - I'll accept that. Bearing in mind, of course, and again I don't have the chronology in front of me, but there was certainly contact between RockSure, who was Ms Doyle's representative, and CGU.

Yes. What I'm getting at, Mr Harmer, is as a broad proposition this e-mail is an accurate summary of events to date and that in the first paragraph of that e-mail, sent the day after your conversation with Ms Doyle, she recorded that you had told her that you had been in receipt of and listened to taped conversations of her?-- Yes.

20

You can see that?-- In the first paragraph, yes.

You don't accept that you said any such thing?-- Correct.

If a member of your staff misrepresented a fact like that, you would regard that as a serious breach of their duty, would you not?-- Given that - if they were operating under the same circumstances as I was and that is in the belief that all claims or all calls coming into the claim centres were recorded then, no, I wouldn't consider that a serious breach, I'd consider it something that would need to be addressed or redressed with the customer immediately, which is what we did, but I wouldn't consider it a serious breach.

30

Let fasten on the words "listened to". If it was represented to a customer falsely that conversations had been listened to, that would be a serious breach of the insurer's duty, would it not?-- It would. As we have already established, I have said that I did not say that I listened to the tapes.

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Did you - at the time of the conversation of the 22nd, when you said, "Oh, look, there are these tapes that we can check," did you offer to retrieve them or-----?-- No.

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-----send them to her?-- The context of the conversation was there was a dispute, and again cordial, the voices were not raised, it was a very balanced conversation, there was a dispute between our versions of events-----

Yeah?-- -----that her claim had not been denied and that a site inspection had been offered, which is why we wanted to get in touch with the tenant, and when she disputed that that was the case I simply said to her, "Calls" - you know, "We would have access to the call recordings to be able to verify whether I'm right or you're right."

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And-----?-- At that point-----

But didn't go that next step and say, "Well, we'll get them and sort it out"?-- No, I didn't.

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Any reason why not?-- No particular reason, no.

Was it because you-----?-- I think we'd already established, certainly in the conversation that I had with Miss Doyle on the 14th at her premises, there was no dispute from her when I put it to her that we were still waiting from her - for her to provide us with details of the tenant. We needed more information. We needed to speak to the eyewitness.

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COMMISSIONER: Can I just understand, in this conversation what was she disputing, that you were in fact waiting for the tenant or that you had indicated you would give a site assessment subject to the tenant or what? What exactly was the argument about?-- From memory it arose in relation to my, I guess, expression of disappointment that the media reports were reasonably lopsided, they weren't taking into account the full - the full facts, which in this case included the offer of - well, first of all, the fact that the claim hadn't been denied, and I think at this stage Ms Doyle was still under the impression that she had been denied. I guess we've been able to show that's not the case. And then secondly that she hadn't been offered a site assessment when I was able to say to her, "Well, you know, you were," quite clearly.

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So there were two things. She said, "I don't agree that my claim was not denied," and, "I haven't been offered a site assessment," it was both those things?-- Commissioner, I doubt very much that she would have singled both items out. I - again I don't recall the exact words but it would probably be more along the lines of, "That's just not the case."

50

So how did it arise then? You - I'm just trying to get a picture of how all this happens because your statement jumps from 21.2 to 21.3 without anything in between?-- Yeah.

I'm trying to work out what comes between. You have said to her, "We're not going to agree to the various demands"?-- Yes.

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What's next?-- The next thing was a statement to the effect that - from Ms Doyle that, "Clearly you guys don't want to do business in Queensland. Don't you care how trashed your brand is and is going to become?" And that's when I said to her, "It is disappointing that not all the facts get into the public domain. For example, The Courier-Mail article didn't highlight the fact that, firstly, your claim hadn't been denied, and, secondly, that, you know, we were waiting on details from you of the tenant to be able to conduct a site inspection and gain an eyewitness account."

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And then?-- That's when she said something - again, your Honour, I don't recall the exact words, but I expect it would have been something like, "Well, that's just not the case." I found again, you know, Ms Doyle at times was very strident and fixed in her views and I found it difficult sometimes to actually get her to recognise, for example, that - you know, to acknowledge that we had in fact sought details of the tenant from her on multiple occasions-----

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"Multiple occasions"?-- To my knowledge, yes. So - which I - so then-----

Mmm?-- -----from there, off the back of that dispute again - this was a very, I guess, controlled conversation, voices weren't raised, there was no malice or spite or animosity in the conversation whatsoever, but we're just saying, "Well, it's just not the case," or words to that effect, and I said, "Well, you know, we would have the call recordings and would be able to show that." Then I think the closing comment that she made was, "Oh, well, I guess" - "So you're not giving us anything?" "No, we're not able to." "So then I guess it's open season on CGU." "Sally, you'll do what you have to do."

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Thank you.

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MR CALLAGHAN: Mr Harmer, I'd suggest in conclusion that the words of your letter of the 1st of March are perfectly clear and that as at that date you recorded that you had referred to things being reflected in call recordings and that you represented that you knew that because you had listened to those recordings?-- The words in my letter? Sorry, is that the question?

Well, it's probably two questions. The words in your letter clearly indicate that you were aware of something which was in fact recorded from a telephone call or calls?-- Counsel, can you remind me of the annexure that that letter is at?

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It's annexure 4 to-----?-- Ms Doyle's statement.

-----Ms Doyle's statement?-- And now if you could repeat the two questions, please.

First of all, that the letter is tolerably clear and that it indicates a state of knowledge - indicates that you had told her you had a state of knowledge about something which was in fact recorded?-- What the letter says is that during our telephone conversation I made reference to the fact that an individual site assessment had been offered, that that would be recorded - would be in the call recordings, yes.

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Well, it's the words "would be" that are the sticking point. They don't appear there, do they?-- No they don't and I've - as I've acknowledged already.

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And, Ms Doyle has, as you know, sworn that you represented that you knew that because you had listened to them. You reject that?-- I do.

And you would reject the proposition that this was - the representation that you had listened to them was a misrepresentation of fact calculated to silence a vocal critic of your company?-- Absolutely, and in fact it would not be consistent with the behaviours that were demonstrated up and to that point in time.

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Well, which behaviours are you talking about?-- The site visit, the welcoming of Ms Doyle and her delegation into our Brisbane office's boardroom to have conversations about other customers' experiences, to accept the tabled demands, et cetera.

Yes. Of course, it's suggested, at least, that there's a change in the relationship following the confirmation of the fact that her demands were refused. You understand that, at least?-- I saw in Ms Doyle's statement that she referred to a change of tone in my voice. Is that what you're referring to?

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Yes?-- Yes. I've read that.

All right. Was - Ms Doyle was not challenged on this yesterday but you deny that, I take it?-- That there was a change in tone?

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Yes?-- I'm unable to do that. When I was reflecting on her statement thinking - when I was running through the list of demands I would have been reading from my notes and then I would have engaged Miss Doyle in a conversation. Now, in all my interactions with Miss Doyle, there were only a small number, I was very careful not to further inflame the situation. So was there a change in tone? Quite possibly, in fact quite probably. Would it have been a tone that inferred something threatening or sinister, as Ms Doyle has inferred? Absolutely not.

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The suggestion would be, far from trying to inflame the situation you were in fact attempting to extinguish it?-- By "situation" are you referring to the demands of the protestors or her claim?

Well-----?-- The demands of the protestors certainly.

The situation of Ms Doyle's claim generally and what she was making of it?-- No, there was already a process underway. There were - we had already commissioned, to my recollection, hydrology reports so the claim was still in process at the time.

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Yes, all right. Thank you.

COMMISSIONER: I assume nobody's got any questions other than Mr Newton; is that right?

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MS McLeod: No.

COMMISSIONER: Mr Newton?

MR HOLYOAK: Thanks, no questions, your Honour.

COMMISSIONER: Mr Newton?

MR NEWTON: Would your Honour bear with me for one moment?

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COMMISSIONER: Certainly.

MR NEWTON: Mr Harmer, it's recorded in your statement that you prepared this statement in response to a letter from the Commission dated the 27th of September 2011, which was received at about 4.03 p.m. Do you see that in paragraph 2 of your statement?-- Yes.

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All right. When you say received at 4.03 p.m. by whom do you mean?-- My I understanding it was received by-----

Sorry. Received by?-- By counsel.

Received by your solicitors, I suggest?-- Yes, correct.

You don't mean received by you, I take it?-- No.

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All right. When - the 27th of September is a Tuesday. Do you happen to recall where you were at the time your solicitors received this letter and what you were doing, generally?-- Well, I would have been at work.

All right. But do you recollect attending a seminar?-- Oh-----

A CEO seminar?-- I'm sorry. I was travelling to Melbourne that evening to join a three day offsite the following day, so I think I was on a - I probably would have been in the air at that time, to be honest.

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All right. Are you talking - when you say in "that evening", you mean on the evening of the 27th of September?-- That Tuesday.

All right. And do you then recollect what you were doing over the next few days?-- We an offsite at Torquay for my senior leadership group.

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Right. What did that comprise of?-- It was a three day program designed to get our broader leadership group of 110 people to understand the significant business changes that we were about to embark upon. It started each day just after 7 a.m. with a executive board meeting to prepare for the day. We ran through to mid morning for morning tea breaks, we had relatively short lunch breaks, we ran through to an afternoon tea break, ran through into, on both evenings, an evening activity.

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All right. Now, can you have a look at paragraph 2 of your statement? And you may have already answered this, at least in part, but can you refer to any difficulties you had in preparing the response by the requested time, which was by 4 p.m. on the 3rd of October, because you refer to that time as "limited given the requirements"? Can you explain what you meant by that?-- Well, clearly I couldn't be checking e-mails through the course of the conference, we did so in breaks, and I think most of the statement was put together over the weekend.

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All right. Do you recollect that either you or those on your behalf wrote to the Commission pointing out the difficulties that you would have in attending to this demand so promptly?-- I understand.

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Right. And are you aware whether any extension of time was given to respond to the requirements?-- Not aware of any extension.

All right. And so it's the case that you did your best in the limited time you had to respond by the prescribed time, which was the following Monday, the 3rd of October?-- Correct.

All right. Which is what in fact you did?-- In fact it involved a specific visit to Brisbane on Monday only for the purposes of sitting down and running through to make sure that we were as satisfied as we could be with the statement.

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All right. I have nothing further.

COMMISSIONER: Well, I'll just ask you something and Mr Newton may have something else arising out of it, I don't know. But did you make any note of your conversation with Ms Doyle?-- I would have, your Honour, I'm sure of that, but I haven't been able to find those notes at this stage.

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And are conversations at your level recorded or is that really more the consultants' level-----?-- No. Again to the best of my knowledge the only call recording facilities we have are in our claims area and I think there might be something around some of our telephone sales in our personal loans area, but, no, certainly my phone calls aren't recorded.



Anything arising out of that, Mr Newton?

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MR NEWTON: No, your Honour.

COMMISSIONER: Thank you. Mr Callaghan?

MR CALLAGHAN: Just excuse me one moment.

COMMISSIONER: Well, while Mr Callaghan's looking for something I might ask you something else. In your letter you say that it's actually a file note that documents the situation in relation to the assessors and so on. Was that a particular file note you were thinking of?-- I think, your Honour, from recollection it was the sys notes, the claims information records.

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All right. I understand. And that's of-----?-- That were - again to memory, were attached to the letter.

Right. And you were talking about a particular conversation. That's the first with Miss Tarabay, is it, or where's it come in?-- I beg your pardon?

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You were talking - when you were referring to a note, a file note, were you talking about a particular conversation with Miss Tarabay?-- I think I was referring to the sequence of conversations that had been recorded through the sys system.

Anything?

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MR NEWTON: Just to clarify that. I take it these are the file notes which you provided to Ms Doyle which are annexure 4 to her statement?-- That's correct.

Thank you.

COMMISSIONER: I've seen them, thank you.

MR CALLAGHAN: No, I have nothing further, thank you. May Mr Harmer be excused.

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COMMISSIONER: Yes. Thanks, Mr Harmer, you're excused?-- Thank you.

WITNESS EXCUSED

MR CALLAGHAN: I call James Merchant.

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JAMES MERCHANT, SWORN AND EXAMINED:

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MR CALLAGHAN: Tell the Commission your full name and occupation, please?-- James Merchant. I'm the National Claims Manager for CGU.

Mr Merchant, there are - we already have three statements from you before the Commission as Exhibits 626, 662 and 717. I now tender a further - well, I'll show you two further statements of the 22nd of September and the 27th of September. Those are the further documents that you prepared for the Commission; is that correct?-- That's correct.

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I tender those.

COMMISSIONER: The statement of the 22nd of September will be 742 and that of the 27th, 743.

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ADMITTED AND MARKED "EXHIBITS 742 TO 743"

MR CALLAGHAN: And, Mr Merchant, you have copies - do you have-----?-- Given the large volume of material that I have-----

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Yes?-- -----sworn I just have a copy of my main statement - each of my four main statements-----

All right?-- -----so if you would like me to refer to any annexures I would appreciate a copy.

Certainly. The statement which was just tendered, the one of the 27th of September, which I think was 744-----

COMMISSIONER: 743. Sorry, 27th is 743.

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MR CALLAGHAN: 743, I'm sorry. Is what I'll call a general statement; is that correct?-- It's referred to as my main statement.

Main statement, all right?-- Yes.

It doesn't - your other statements specifically address the circumstances of individual clients?-- That's correct.

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All right. So can I ask you to look at that main statement? And I take you to paragraph 12, perhaps 12.2?-- Of annexure 3?

Sorry, I just have it as a paragraph within your statement. It's annexure 3, apparently?-- I have it, counsel.

Right. I just want to ask you some questions about the so-called triage process adopted by CGU. I understand - is it correct to say that some hundred and 90 cases were decided and in fact declined on the basis of information provided over the telephone?-- I'm not familiar with that number, counsel. 1

12.2.1?-- That's correct.

Can I ask you about that concept of claims over the telephone in the first place. Perhaps take you through to paragraph 22. It might just be a question of emphasis but in there you say that a dedicated local phone line was set up for potential flood customers, and you can read for yourself what's there. You emphasise in the last sentence that the customer had the choice of calling the general claims number, for which there was no charge from landlines, and so on. My question is this: was the general claims number free from a mobile phone?-- It depends on the origination of the call. The general claims number is a 1300 number and my understanding is that it's free if the call is actually answered in the same place from which it originates from. If that call was made in Brisbane and answered in Melbourne, for example, then my understanding is that there could be maximum charge of four cents per minute applied to the phone call. 10

And the question which accompanies that is was the dedicated line a free call?-- Dedicated line was a 1800 line. Very similar arrangements are in place from - in terms of if the call was made from Brisbane and answered in Brisbane where that line was in operation then it would be a free call, but if the call was made from outside Brisbane and answered in our flood team where that line was then there would be minimum charges. 30

All right. Now, on the subject of telephone calls from customers, you've addressed some evidence to the situation of Mrs Lynn Doyle; is that correct?-- Yes, I have.

It was put to Mrs Lynn Doyle when she was here that CGU initiated 12 phone calls to her and her husband during the course of her claim. It's at transcript 3190. Are you aware of that?-- Not particularly aware of it, counsel----- 40

All right?-- -----but I accept that that was recorded in the Commission.

I'll show you now a document. Have you been provided with a copy of that?-- I received this document late last night.

All right. You've had the opportunity to review it?-- In a cursory fashion. I note that it is a summary of my chronology of events for Mr and Mrs Doyle's claim. 50

Yes. That's - when you talk about the chronology, is that annexure 1 in Exhibit 626, which is your statement of 22 September? Or a statement of 22 September?-- From memory it would be-----

All right?-- -----and there would be a second chronology, being the CIS notes.

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Well, I'd suggest to you that this is an accurate summary of the contents of that annexure?-- I accept that the summary's been derived from the contents of the annexure.

All right. And it would follow that - when we're talking about calls from CGU to Ms Doyle that "initiated" might not be the most appropriate word to use, when we see how many of them are in fact, in effect, responses to calls from Ms Doyle or her husband?-- I guess somebody could use the term "initiate" to say that they actually rang somebody but I accept what you're saying that-----

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Initiated in response to, sure?-- Initiated in response to, yes.

Okay. Which isn't really initiating, but, anyway, I'll tender that document?-- Can I just clarify the last - page 6 of this document, counsel? Is that where - are they the calls that you refer to when you say 12 calls?

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Yes. Yes.

COMMISSIONER: What's it to be called?

MR CALLAGHAN: It's a summary of - it's got a heading on it, Madam Commissioner. It's a summary of contact between Mr and Mrs Doyle and CGU with accompanying detail.

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COMMISSIONER: Exhibit 744.

ADMITTED AND MARKED "EXHIBIT 744"

MR NEWTON: Your Honour, I don't object to it being tendered but it's with this proviso, we haven't had a chance to check it against every item to which it refers. I notice it's headed "Summary of". I'll assume for the moment it's accurate but we haven't read it.

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COMMISSIONER: Oh, well, you can point out anything if it's wrong.

MR NEWTON: Thank you.

MR CALLAGHAN: Is that a convenient time, Madam Commissioner?

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COMMISSIONER: It is when I finish writing this. 2.30, thanks.

THE COMMISSION ADJOURNED AT 12.56 P.M. TILL 2.30 P.M.

THE COMMISSION RESUMED AT 2.30 P.M.

JAMES MERCHANT, CONTINUING:

COMMISSIONER: Yes, Mr Callaghan?

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MR CALLAGHAN: Mr Merchant, do you still have what you call your main statement in front of you - that's Exhibit 742?-- Yes, I do.

If I can take you to paragraph 12.2, under the topic of whether the claims were declined without site assessments having being carried out. A little over halfway through that paragraph, it appears the sentence: "The system of assessing whether damage was caused by flood in addition to the internal and external review process was robust." What does that mean? What does robust mean?-- It means it was very thorough and, as time would tell, each of those decisions with - stood up to further scrutiny through appeals processes.

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It was a process which was carried out by a number of staff - and I think in paragraph 6 you refer to them, is that right? Is this the ten experienced staff?-- That's correct.

Can you just tell us by way of background what sort of qualifications these staff have?-- Certainly. We compiled a flood team - a dedicated flood team to respond to this particular event. The staff that made up that flood team came from claims consultancy - claims management consultancy backgrounds with - and also there was a very experienced technical manager and team manager appointed to lead that particular team. Those staff are recruited to CGU without any particular academic qualifications and they are trained by us through in-house training and also through the opportunity for them to come into the organisation at more junior levels and to move through the organisation as they became more experienced and better trained into claims management consultancy positions.

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Presumably that training involves some education in dealing with people who are in traumatic circumstances, would that be right?-- It does. We focus very much on customer service training. In addition to that training, during this particular event I undertook to have an external consultancy called - through our employee assistance program, so an external psychologist to come in and provide extra support to that particular team, and what we found was that team provided support to each other. Because they were working in the confines of a training room, it was very clear to them when each of their colleagues may have required some assistance or some debriefing after a particularly difficult conversation or traumatic conversation.

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One of the tools that is provided to staff doing this work is in the form of a script or a set of questions, is that right, that they can ask-----?-- Yes, yeah. If you're referring to what we term a question set regarding the circumstances of the water inundation, that was provided to ensure consistency in information collection.

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Are these the documents that I think are annexures 5 and 7 to the statement that we're talking about, the main statement?-- I will just check that.

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Please?-- Annexure 5 was not provided to the flood team. Annexure 5 was provided to our national lodgement staff and annexure 5 was a script that we took customers through at the point of lodging their claim. Annexure 7 was the question set that I thought you were referring to in terms of clarifying the water inundation.

I was really interested to know about all sets of questions or scripts, or whatever you want to call them-----?-- Yes.

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-----that might have been used earlier this year by CGU staff. We can identify those two, and you have explained those?-- Yes.

Thank you. But were others used? Were other sets of questions or scripts or anything of that nature used?-- Probably halfway through the event, management, following our press release - or Peter Harmer's press release to the community, we did go back to the flood team and walk through the details of that press release with that particular team, and identified some procedural changes that we would like them to follow. There wasn't a particular - I wouldn't call it a script but a change to our process.

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Well, I was going to come to that later but we may as well deal with it now. We're talking about the change which has been discussed following Ms Doyle's complaints, is that right?-- That's right.

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And the change in procedures, insofar as ensuring that awareness of the possibility of an individual site assessment was communicated-----?-- Yes.

-----to each client. And I was going to ask you about that and how that was in fact communicated to your staff. You say it wasn't in the form of a change to the set of questions that they would normally ask a client?-- The purpose of the set of questions referenced by annexure 7 was not to take the client through everything that occurred during their claim; it was to try and clarify whether further information was required in our decision-making process in regard to the likelihood of the damage being caused by a storm or floodwater. So in regard to the change in process following our press release, there wasn't a particular script to amend.

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So how was that change in process communicated? Was it by way of a training session, or email, or what was-----?-- Or both.

What occurred was that the press release was put on our intranet - our company intranet, which is an on-line facility for all staff within the company to read. In addition to that I was part of a leadership team which reviewed the information that we received from our customers post the meeting at our offices, and worked through the process changes that we should instigate to respond to that information. So we minuted the changes required in that meeting, and the event manager for the Brisbane event took those minutes back with him to Brisbane and subsequent meetings were held with the flood team specifically, because they were the only staff who were actually working on these claims, to make sure they understood the contents of both the press release and to understand the changes that we were instigating in terms of process. One of those changes was that we would be absolutely sure that our customers understood that should they have any issue or grievance with the process that we followed, and should they see merit in a site assessment, then one of those was available.

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This line of questioning started because I wanted to be sure that we had a copy of all pro forma scripts or questions sets or anything like that which might have been issued to CGU staff in the relevant period. So between annexures 5 and 7, which I understand are different things-----?-- That's correct.

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-----that's all there is?-- That's correct.

Thank you. Can I take you to 12.2.3 of your statement - your general statement, main statement. 12.2.3 and 12.2.4?-- Yes.

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Where you explain how the claims - you were in the course of explaining how claims might have been declined without site assessments having been carried out?-- Uh-huh.

And 12.2.4 is probably the logical place to look because it is said there, "Where the data was inconclusive, a site assessment and other site specific information would be sought." For these purposes how was "inconclusive" defined?-- The process of coming to a very accurate decision in regard to a claim varied almost with every particular claim that we received. In the cases where we felt that a site assessment was not necessary, the volume of information was great - very great for us to be able to review. In particular, information provided by NearMaps, which is a satellite system enabling us to view the water as it inundated a property over a time period, was of great benefit, and with very limited assessing resources at the time, we had - we were very very considerate of how we used - utilised those resources. So in order for situations where we were uncertain and absolutely needed to appoint a loss adjustor to have a look at the damage, such as with one of the other customer cases, Lyn Doyle, we wanted to make sure that we could get quick response as fast as possible to those particular customers. So based on a thorough assessment of some very, very professional information and reliable information, we were very confident in our decision-making ability without site assessments on some

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claims, but certainly not all. There were 3,000 claims. And a very small percentage of those claims went through the process without a site-----

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Just to get back to the question that I actually asked, though, which was perhaps not made clear enough, but what did you convey to your staff in order to - or what guidance was given to them-----?-- Right.

-----as to whether something was inconclusive?-- We had a very experienced group of people, and the guidance provided to those people was to utilise all the resource material available to see if a decision - an accurate decision was possible. Should it not be possible, the guidance was to seek further information, and a typical example of further information would be a site assessment from a loss adjustor, or, indeed, a site assessment from a hydrologist.

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And how was that guidance given? Was that written down somewhere? Was that conveyed in the course of training sessions, or how was that conveyed to staff?-- Part of the guidance was the questions set that you referred to in annexure 7.

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Yes?-- And the rest of the guidance was with, you know, a very experienced technical manager and team manager in the room sitting down everybody in the same room walking through the abundance of reference material available to us, and I referred to Brisbane Flood Mapping, overview hydrology reports, the NearMaps, the Google Maps. There was a significant amount of information available to us in some cases - not in all cases. That information wasn't available in Toowoomba, for example.

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All right. Could I come at it this way: what instructions were given, if any, as to the status which was to be accorded information from a client standing by itself?-- If we received information from the client which indicated that there may well be stormwater damage to the property, then that included - that introduced an element of doubt for us in terms of the information that we had to hand, so we sought further information.

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As a matter of course?-- As a matter of course.

You are familiar with the circumstances of the Sallyanne Doyle-----?-- Yes, I am.

-----case? It does appear that what you would suggest should have followed as a matter of course did not occur in that case. Would you agree with that?-- No, I would have to disagree with that.

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Well, you are familiar with the conversation on the 1st of-----?-- Yes, I am.

----- February?-- I am.



What Ms Doyle was saying to Ms Tarabay was in direct contrast with the conclusion that Ms Tarabay suggested should be drawn from her information?-- The----- 1

Sorry, can you agree with that as a proposition?-- Yes, yes.

Does that not, on your interpretation of the way things ought to have worked, mean that an assessor ought to have been appointed at that point?-- The difference with the Sally Doyle case was that we were receiving information which was third hand, and bearing in mind the finite resources available to us in terms of property assessors, or, indeed, hydrologists, we were being very considerate before we actually appointed a hydrologist. So we had two things to manage: one was our own decision-making in terms of the technical assessment of a claim, and secondly were our customer expectations----- 10

Correct me if I'm wrong, I am sorry, but there is no indication in the notes made by Ms Tarabay that she was treating the information provided by Ms Doyle as different because it was third hand. She didn't at any stage - and again, correct me if I'm wrong - she didn't at any stage suggest, "Well, that's not coming from you, so we have to treat it differently because it is coming from your tenant or your property manager", or whatever?-- My understanding of the recollections of that conversation on the 1st of February were that Ms Tarabay and Ms Doyle could not reach a conclusion on the evidence provided that a loss adjustor should be appointed immediately, so Ms Tarabay sought approval to speak to the tenants so as to gain more information to assist with that considerate decision-making process. 20 30

Well, let's go back a step, though. We might get the file note from the 1st of February. It is attachment 4 to Ms Doyle's statement. I think Mr Harmer might have been given a copy when he was in the witness-box. We might be able to get it up on the screen?-- I have Ms Doyle's statement.

You have it? It is attachment 4 to that statement?-- Is it on the screen? I will find it here. 40

And if we move forward through the file notes to the 1st of February, and to page 3, just move a little further on. The paragraph beginning, "As per the hydrology report Ms Tarabay advised the insured that in this instance it appears the proximate cause of damage is flood and will be declined." Now, that advice was given, seemingly, after the answers to the questions which appear above, and I would suggest to you that all of those - well, that Ms Doyle at least had given an account which might raise at least a possibility that it was not flood as defined. Would you agree with that?-- I do agree with that, and my understanding is at the end of that phone conversation that Ms Tarabay sent an email to Ms Doyle's broker to indicate that we required further information from her tenant so that we could make a decision. 50

That's true. At the end of the conversation that might be so, but nonetheless the record suggests that she was advised that it appears the proximate cause of damage was flood and would be declined?-- And following that statement Ms Doyle offered some more information-----

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Well, yes, Ms Doyle was persistent, and we know how it ends, and we know the impressions that people had, and we know what her impression was and that it might have been a different impression entertained by Ms Tarabay, but it would seem at least that as part of the process, or in the processing of the claim, notwithstanding what Ms Doyle had said, it was indicated to her that her claim would be declined, notwithstanding that she'd given an account which would suggest that at least more information was required?-- It was clearly Ms Tarabay's understanding of the conversation that they had at that point that more information wasn't forthcoming, but post - you know, as the conversation progressed - and I understand it was a very long conversation - as it progressed, the two parties agreed that speaking to the tenant was a very sensible next step to the claim.

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You would agree with this, at least: there was no suggestion that an assessor would be appointed?-- There was no suggestion from Ms Tarabay at that point in time that an assessor would be appointed.

That's right. That's notwithstanding a very clear assertion from Ms Doyle which stood in direct contrast with the conclusion suggested by the hydrology and the photography and everything else. And I would suggest to you that by your definition that would have meant, even at that point, that the situation was inconclusive and that an assessor ought to have been appointed. Can you comment on that?-- Yes. My understanding of the records of that conversation is that it was most unclear from Ms Tarabay as to the circumstances surrounding - that Ms Doyle was trying to introduce. So she requested to speak to the tenant who was actually there on the day. And I - I would have expected the claims consultants to be very considerate in terms of the appointment of extremely scarce resources at the time-----

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COMMISSIONER: What do you mean considerate? Do you mean considerate towards the customer or just consider long and hard about CGU's resources?-- No, no, I think the whole industry and the whole community was struggling to obtain site assessments from loss adjustors. Indeed, the major independent companies were flying people in from overseas, and we could clearly identify from other customers' accounts that a site assessor was required, and it was our strong desire to be able to use those scarce resources more effectively by having them appointed to - when we were quite confident that it was going to add value to the decision-making process. In Ms Doyle's case, clearly Ms Tarabay required an additional degree of confidence before she felt that it was - before she felt that she could recommend a loss adjustor.

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It just might be your use of the word "considerate" into the

more common one, perhaps?-- I am sorry, we had to make-----

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I think I understand what you are saying. You had to think long and hard before you went about getting assessors because there weren't many?-- We had to balance a lot of competing priority, competing resources.

All right, thank you.

MR CALLAGHAN: I don't want to dwell on this too much longer. Can I ask you to turn to annexure 3 of your statement?-- Yes.

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Exhibit 717?-- I am sorry, I missed the paragraph.

It is on the third or fourth page, third page of that annexure. These are actually the more detailed notes, is that right, as opposed to the summary we've been looking at? This is the source document for the summary which I have shown you?-- I don't think - are you referring to the CIS notes?

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Yes?-- Annexure 3 is not - annexure 3 is a chronology, not the CIS notes. I think CIS notes would be-----

Well, I will just see if we can see if we're talking about the same document. The one I am looking at is clearly headed annexure 3?-- Yes, they are the CIS notes, which stands for Computer Information System - sorry, Claims Information System.

Is it annexure 3?-- No, it is not. Not on mine.

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What is it?-- I am sorry, annexure - I have been confused. Annexure 3 on my main statement is indeed the summary. Annexure 3 in the Sally Doyle statement does contain the CIS notes.

If you turn to the third page of those, and look at the bottom of the page, it is recorded there that the conversation went for about 30 minutes during which the explanation was that it was consistent with flood and it shows that Ms Doyle would not agree, would not accept it. And it was only as we turn over the page, "Eventually, as conversation was not adding value to the claim, asked if could speak with someone else." Now, what more did Ms Doyle have to do in this situation to pass the test which, I understood you to suggest, would have entitled her to an assessor at that point? How long did she have to keep arguing for?-- It is difficult in that unfortunately we don't have a call recording of that conversation, and I wasn't there, but I think the notes reflect that Ms Tarabay was not being provided with information that in her view would support a requirement for an assessor, and I understand that perhaps versions of what occurred on the day were unclear given that Ms Doyle was not there. So I believe it was reasonable for Ms Tarabay to identify - to speak with somebody who could give her a life account of circumstances at the time.

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Ms Tarabay recorded that Ms Doyle was adamant that water run-off went through the property prior to the floodwaters.

That's four entries up from the bottom of the third page.  
What more does someone have to do other than be adamant that  
it occurred in a way other than what would be described as  
flood?-- As I said, counsel, it is - I need to go on the  
basis of the information provided to me, and Ms Tarabay was of  
the opinion that the conversation was not factual enough for  
her to be able to immediately authorise a loss adjustor  
without speaking to the tenant, and I think further  
investigation to the claim indicated that it was not  
conceivable that stormwater would have-----

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We're not talking about the further investigation, though,  
we're talking about what was happening at the time the claim  
was lodged. But, look, I think we've been around that enough.  
Just tell me, what was the hydrology report from which  
Ms Tarabay was working at this time?-- I understand that  
Ms Tarabay was working from an overview hydrology report of  
the general area and working from some very detailed  
photographs over a period of time-----

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I am just interested in the hydrology report at the moment, not the photographs. What was the date of the hydrology report from which your staff were working at this time?-- I don't have that date with me. I'll need to refer to the documents. I believe it was page 21. So, there I have it in my list as annexure 21 which would be dated 4th of March 2011.

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I am talking about a conversation on the 1st of February. Ms Tarabay's notes refer to a report to hand?-- I'm sorry, this was the - this was the hydrology report for the specific site.

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Yes, and I'm asking what report she would have been referring to when she was talking to Ms Doyle-----?-- Yes, I understand.

-----on the 1st of February?-- I can't find that as I sit here.

Was there, in fact, a hydrology report being used as at the 1st of February?

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MR NEWTON: Your Honour, I am just wondering whether I might assist because it's actually in the record. It's in Mr Merchant's statement. I am not sure whether my learned friend has a point or whether he's actually just testing the witness's memory, but the documentation is actually in the statement.

COMMISSIONER: So, where is it to be found, Mr Newton?

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MR NEWTON: It's in annexure 11, your Honour, and it's dealt with in Mr Merchant's statement at paragraph 12.3.3.

COMMISSIONER: Thank you.

MR CALLAGHAN: Is that annexure 11 to the - it's called the main statement?

MR NEWTON: Yes.

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WITNESS: Sorry, I was looking in Ms Doyle's statement.

MR CALLAGHAN: There's a list of documents in annexure 11 and you have been referred to a paragraph in your statement. So, can you tell us, then, which of the documents we should be looking at?-- We had a preliminary report on the 27th of January and an overview report on the 20th of January.

And, I'm sorry, I missed the paragraph to which-----?-- I'm sorry.

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-----you were referred in your statement, so please look at it by all means?-- That's my main statement that-----

I believe so. I just want to know which one Ms Tarabay was using?-- Right. So, my main statement, annexure 11, refers to a list of all area hydrology reports that were received by

CGU. The dates of those reports are contained in annexure 11.

1

Yes?-- I can't be specific in term of which particular one was used by our claims consultants at that point in time.

All right. Thank you.

COMMISSIONER: I haven't got those in front of me, but when you say "area hydrology reports", did you have different areas of Brisbane which had-----?-- Yes.

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-----hydrology reports?-- And Ipswich, Toowoomba, and so it was - it was - we are - the first reports we commissioned were regional reports.

Mmm-hmm?-- And we went on to commission a further 126 site specific reports where we required additional information on particular customers' properties.

In the case of Ms Doyle's property, would have it been a whole of Brisbane report or a West End report or what was it?-- I'm sorry, Commissioner, I can't answer that level of detail.

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All right. Thank you.

MR CALLAGHAN: Just looking at the list of documents and using a process of elimination, would we be necessarily left with the third entry under January 2011 which is the preliminary report dated 13 January 2011? We can eliminate-----?-- Yes.

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-----the Toowoomba one?-- There are three reports prior to the 17th of February by the looks, so it would be one of those three.

Well, one's Toowoomba, one's Oakey and one's-----?-- Indeed.

-----Queensland; is that right?-- So, it looks like it might be the one dated 9th to 11th of January conducted by WorleyParsons.

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Sorry, 9th to 11th of January. Oh, yes, same one, yes, the report dated 13 January?-- Yes.

Okay. Thank you. It would then be incorrect to say that the company had received no hydrology report by 2 February, because you at least had that one; is that right?-- We at least had an overview report, yes.

All right. Look, I will try to abbreviate this. As we know, Ms Doyle eventually did have an assessment. You know that?-- Yes.

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The assessor recommended a hydrologist?-- Yes.

The hydrologist's report noted that some damage might have been covered by the policy?-- Yes.

And the technical manager who reviewed that report recommended

that the hydrologist provide further advice as to the likely depth of the inundation?-- Yes.

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Look at Exhibit 717. That's the statement of 3 October, annexure 3 to that statement?-- Is that in Ms Doyle's statement or in my main statement?

In your statement. Yes, your statement relating to Ms Doyle?-- Thank you. Could you refresh my memory a little on what I'm looking at?

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You have got annexure 3 there. Counting the page that says annexure 3, if you go 10 pages in to that exhibit?-- Is that this page that starts with an e-mail from Danielle Tarabay?

The top - the 10th of March, the entries are arranged chronologically. I am looking from the entries of the 10th of March. There are a few of them?-- Okay. It's the page before, I have it thank you.

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I am interested in the entry 10th of March, 7.34.29, 07.34.29. Do you have that?-- The 10th of March at 16.25?

No, at 0700 - 34.29?-- Sorry?

10.3?-- Yes, I have that, thank you.

You have that? Okay. And it goes over on to the second page. This is an entry from the technical manager; is that right?-- That's true.

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And when you go over the page, still within that entry but five lines up from the bottom, we see it has been recorded, "She now has a site specific report, which is a great deal more than anyone else will get." Do you see that there?-- No, I can't, I'm sorry. Five lines up?

It's on the screen in front of you, the larger block of text there?-- Oh, okay. Right.

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Five, six lines up from the bottom?-- Yes.

"She has now has a site specific report, which is great deal more than anyone else will get." What does that tell us about the approach of CGU to site specific reports, Mr Merchant?-- We commissioned 126 site specific reports from - and the hydrologist resource was very scarce indeed, so it's unfortunate language, as I read it, but I think the - our actions speak for themselves in terms of the number of individual site specific reports that we commissioned.

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So, that's just another case of unfortunate language, is it?-- I'd agree to that.

Yes. We went through a moment ago the history of the claim and the various findings and reviews. Doesn't all of that show that these situations can be quite complicated, that you could have even that provisional opinion-----?-- Yes, yes.

-----that some might have been other than flood damage?-- We were very - we were very conscious of offering - of looking for opportunities to pay people's claims. We - if you look at the Brisbane-----

I am just - please, I really want to keep this as brief as we can. I am just asking you to agree with the proposition that these situations can be quite complicated, that they're not necessarily straightforward?-- I agree.

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And doesn't all that demonstrate that in those circumstances this initial process, this triage treatment is a process which is in danger of being inadequate?-- The purpose of the question set that our staff were using to obtain consistent information was to identify if there is any - any - any opportunity of the water inundation being stormwater because if any damage is caused by stormwater prior to flood water, then we pay for that proportion of damage. So, the - as soon as there was an indication from the customer that there may have been stormwater involved, then that's when we - we seek further information, which invariably led to site assessments.

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That's not invariably when you see the site assessment in the first place. That's not what happened here, was it? You had that information?-- As soon as we - we were - we were seeking further information from Ms Doyle from somebody who was actually at the site during the damage and it was - we were relying on - you know, at the time we were trying to manage very scarce resources and we-----

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All right. Let me ask you this: was there anything at all inadequate about the handling of Sally Doyle's claim?-- I think there were parts of - in every event we seek - we receive learnings and Ms Doyle has certainly communicated to us that our communication with her during the claim was inadequate. We had a look at that feedback and on that basis I would have to agree that on balance we made some communication errors.

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Which were they? What do you say were the errors?-- The actual decision regarding Ms Doyle's claim was proven - or so far has been-----

What do you say were the errors?-- The errors were that we had a customer that - who - who had - who had a desire for more information than what we provided her in terms of regular updates, and she also had a desire to better understand what the process was, and in her particular claim I don't believe that we delivered - we met her expectations, for which I'm very sorry about.

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And that's solely because you didn't update her more often, is that it?-- Not just a question of update in Ms Doyle's case. I think-----

I am asking you for the errors. Can you just tell me what they were?-- The errors were that we - first of all Ms Doyle



had an expectation from us that she would receive more information and a better understanding of what the process was. It's a little - it was a little complicated.

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Sorry, that's not an error by you unless you think it's an error to choose customers with expectations. What were the errors?-- I think the learning for us as expressed by Ms Doyle was that she required a high level of information about not only the process but the timeframes involved and for us there was a learning in terms of having two parties to communicate with, one being Ms Doyle's broker and one being Ms Doyle, and we-----

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Sorry, that pertains in every case surely?-- Not in every case, counsel. Not all of our customers are represented by the brokers.

It must be common enough, though?-- About 60 per cent of our customers are represented by brokers and the others would be represented by financial institutions such as a bank or a credit union.

20

Well, common enough. Anyway, look, I think I have asked you the question often enough and I think I understand the answer. I take you to your general statement, paragraphs 15 and 16. The essence of these paragraphs communicates that in cases where a decision was made to decline a claim in whole or in part this was confirmed both verbally and in writing detailing the reasons for the decision, as well as the options available, and in paragraph 16 we learn that all letters setting out determinations referenced all material relied on to come to the decision; is that correct?-- That's what it says, yes.

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Well, I know it's what it says. Is it correct?-- I believe I have seen some letters which I would - I would question wherever there's a full detail of all the information.

Well, when did you see those?-- I have seen a number of customer letters and I believe that there are a - a number have been provided to the Commission.

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Well, they have. Let's have a look at a couple. Your statement of 22 September re Mrs Dobrowa, Exhibit 662, annexure 5?-- Dobrowa?

Yes. Sorry, but before we look at that, answer my question about when you have seen letters that didn't-----?-- Each of the letters of denial and the three customers who addressed this Commission I have viewed, they've formed part of my statutory declaration.

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All right. So it's subsequent to the 22nd of September; is that right?-- I recall having conversations in my - in the course of my duties about the wording contained within denial letters.

I'm sorry, I missed that?-- I said I recall having

conversations with people under my leadership about the wording and the material provided in our denial letters. 1

Right. Well, the Dobrowa statement's executed on the 22nd of September, which is the same date as your general statement, is that right, your main statement?-- Without referring to them, I accept that that's right.

Can we have a look at that exhibit now? If we can scroll down? Do you say that anywhere in that letter, "The reasons for the decision are detailed."?-- The letter - no, to answer your question, we say that, "We have reviewed your claim very carefully.", and, "On the advice and information available to us and we conclude that the loss for which you have claimed was caused by flood." 10

Yes, do you say that's detailed reasons?-- No, it doesn't comply with my detailed definition of "detailed reasons".

Do you say that any of the material relied upon to come to the - to set out - to reach the determination is referenced in that letter?-- No, I don't say that. 20

Well, you were aware of that on the 22nd of September, I'd suggest to you, the same date that you said in paragraph 16 of your main statement, "All letters setting out determinations in relation to a customer's claim referenced all the materials relied upon to come to the decision." Even if you'd executed one before the other, you must have known on that date and before these documents were provided to the Commission that that's just not true?-- The purpose of the letter was a follow up to a detailed conversation that we had with our customer and to provide the customer with very clear information about how they could elevate or appeal their decision. 30

Right. So, at paragraph 16 we read, do we, these words, "All letters other than those which followed a detailed conversation setting out the determination", and so on, we read those words into that paragraph?-- Yes, I accept that. 40

All right. The other one that you've seen is the one that was sent to Mrs Doyle?-- Yes.

Which is in Exhibit 626, annexure 3 to that statement, again a statement, I'd suggest to you, you executed on the 26th of September, and in more or less identical terms, would you agree with that?-- Yes, I would.

Your statement in paragraph 16 is just misleading, isn't it?-- Can you put the statement on the screen, please? 50

Pardon?-- I would just like the opportunity to read the statement again.

Sure?-- Yes, upon reflection I would like to opportunity to change that sentence.

How would you like to change it?-- I would like to point out that the letters were a confirmation of discussions that we had with the customer, the detailed discussions we had with the customer over the telephone.

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COMMISSIONER: Mr Merchant, I am just looking at the Doyle statement and there's an attachment to it which is a summary of the telephone conversations from CGU and I notice that the telephone conversations have CGU telling Mr Doyle that you'd received a hydrologist's report which confirmed damage had been caused by flood, "We advised Mr Doyle the claim was declined as the policy excludes flood damage." That seems to be the extent of telephone conversation, and the same record then says, "We sent them a letter.", which is in exactly the same terms. So, there's not a lot of comfort to be had from the telephone conversation, is there?-- The reference to a hydrologist's report is from a professional engineer, and we place a high degree of emphasis on the information contained in those reports, Commissioner.

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Yes, it is just that you're telling us that the letters follow up on a detailed conversation with the customer explaining why they're claim has been refused. This noted of the telephone conversation suggests that they were just told "damage had been caused by flood"?-- My assumption is that that conversation includes the opportunity for the customer to ask questions and receive further information about-----

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Sorry, it's not actually an annexure, I think it's paragraph 6 question 2.1, "We contacted Mr or Mrs Doyle to update them on progress of their claim as follows"?-- Yes. Right.

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Well, so do they have to ask to find out exactly why they're refused; is that what you're saying?-- Yes. I mean, that was - that was our policy at the time. We have had the opportunity to reflect on what worked well and what didn't work so well during our response to the - to this particular event, and certainly I acknowledge that the detail of our denial letters and, indeed, supportive information could well be improved upon in terms of attaching supportive information.

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I have just checked it against the actual notes in your - is it - I forget what the system is called, but it doesn't seem-----?-- The Claims Information System.

-----the information is any more expansive than that?-- One of our learnings, Commissioner, is that the inclusion of call recordings in all of our claims management centres we believe would add great value to the process and we have already undertaken to complete that to put the call recording into the Brisbane centre and there's only one other centre that I understand we need to put that into at this point in time.

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So, what are you saying that will do? What do you say that will do?-- It will enable us to have a better reflection of the - of the conversations that took part between ourselves and our customers, because our CIS records reflect the operator's account of the conversation post that conversation,

and as we have seen from some customers' accounts, I - there's often a - there have been occurrences where the two parties are left with a different understanding of what was said, and given the emotion surrounding this particular event I can understand how that can occur, but I still it would be more prudent for us to have call recordings of all of our conversations.

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Yes, Mr Callaghan?

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MR CALLAGHAN: Let's just see how things might have been improved. If I can take you to your statement relating to Ms Dobrowa, paragraph 7?-- Sorry, I just have the wrong - forgive me while I find the right file.

This is Exhibit 662?-- Dobrowa, paragraphs 7?

Paragraph 7?-- Of?

Your statement?-- Yes.

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You set out there the information upon which the decision to deny the claim was, in fact, made. I don't need to read it, 7.2, 7.3, 4, 5 and 6, WorleyParsons, Crawford & Company report, flood mapping, aerial photography, Google Maps?-- Yes.

All of that?-- Yes.

And as you point out blatantly in paragraph 8, this was not provided with copies - this material was not provided at the time of providing a written notice of the determination?-- Yes. As I just explained to the Commissioner, I - upon reflection post our event we thought that that would be a good idea for future events.

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Yes, and that statement also executed on the 22nd of September, the same date upon which you provided the Commission with the information in paragraphs 15 and 16 of what we call your main statement saying, "All letters referenced all material relied upon", you gave that to the Commission notwithstanding the fact that you must have known on that date that that was just not right; is that correct?-- It's level of detail that escaped me in my - in my submission.

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Thank you.

COMMISSIONER: Can I just ask you, Mr Merchant, when you send a loss assessor to-----?-- Yes, Commissioner.

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-----a property, what exactly do you expect from them? What is it that you want them to do?-- It depends on the type of loss. In Toowoomba our loss adjustors who were sent were carpentry qualified and they established that the cause was storm and they established what the quantum of loss was, and within two weeks we'd paid 220 claims.

All right. Don't wander off on what you did?-- So - so-----

I just want to know about the loss assessor?-- The loss assessors in the Brisbane event, their role was to speak with the customer and obtain more information which would hopefully assist us in determining whether there was any stormwater involved prior to the flood water.

And is that universally the case or - is that - was that the writing instructions to all your loss assessors in Brisbane, or-----?-- Yes, it was. We provided all of our loss assessors, and there were three different suppliers. Two external and our internal assessors. We provided them all with the same template set of questions so that we could be sure that the questions that they were - the answers they were seeking from a conversation with a customer were - gave us the best possible information to determine whether there was a likelihood that we could - we could pay a portion of that customer's claim.

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All right. Do we have the template of questions, can I just confirm?

MR CALLAGHAN: Yes.

WITNESS: Annexure 7, I think they were, in my main statement.

MR CALLAGHAN: Annexure 7.

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COMMISSIONER: All right. It's an annexure to one of your statements, is it?-- Yes.

Thanks. That's fine. Thank you, Mr Merchant. Does anybody other than Mr Newton have any questions of Mr Merchant?

MS McLEOD: No, I have no questions.

MR HOLYOAK: No questions, thank you.

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COMMISSIONER: All right. Thank, Mr Newton.

MR NEWTON: Thank you, your Honour. Only one question, Mr Merchant. Can I take you back to the circumstances involving Ms Doyle, who gave evidence yesterday?-- Yes.

And we're all aware of the conversation that took place on the 1st of February. That's the long conversation that was said to have taken 30 minutes or so. And there's a reference in the document, to which my friend took you, to the need to contact the tenant. You know the document we're talking about?-- Yes.

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I won't take you to it. I take it that in the normal course of things the person - once an arrangement is made to speak to the tenant and a convenient date is organised, that the person who actually goes to see the tenant and inspect the property is the assessor; is that right?-- Yes. We provide our assessors with tools of trade cards that enable that to occur.

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All right. And, as we know in the Doyle case, Ms Doyle's case, that assessment took place on the 16th of February?-- It did.

I have nothing further.

COMMISSIONER: Thank you. Mr Callaghan? 1

MR CALLAGHAN: No. May Mr Merchant be excused?

COMMISSIONER: Yes. Thanks, Mr Merchant, you're excused?--  
Thank you.

WITNESS EXCUSED 10

MS WILSON: Madam Commissioner, I call Dominic Dower.

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DOMINIC JAMES DOWER, SWORN AND EXAMINED:

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MS WILSON: Is your full name Dominic James Dower?-- Correct.

And you're employed by Insurance Australia Group Limited as the State Claims and Assessment Manager for NRMA Insurance in Queensland?-- Correct.

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Mr Dower, I'm going to have to ask when you answer every question you've got to say "yes" or "no" or provide an answer-----?-- Sorry.

-----because it will be recorded. You made a statutory declaration for these proceedings?-- Yes.

Can you have a look at this document, please? That statutory declaration has attachments; is that the case?-- Yes.

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Is this the statutory declaration that you made?-- Yes, that's correct.

Before I tender that I understand that a correction needs to be made at paragraph 68 of your statement. Where it refers to pages 233 to 273, it should be referring to pages 274 to 280; is that the case?-- Yes, that's correct.

Perhaps if you could make that correction now?-- Sure. Sorry, 274 to?

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280, as I understand. Madam Commissioner, I tender Mr Dower's statement with attachments.

COMMISSIONER: Exhibit 745.

ADMITTED AND MARKED "EXHIBIT 745"

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MS WILSON: Mr Dower, you've brought along a copy of your statement as well?-- I have.

If we can work through this statement. Your statement is your evidence but there's just some further matters that I wish to seek clarification or some further information on?-- Yes.

You provide at paragraph 7 some background, and the final sentence of that paragraph you refer to that you, "reviewed all process documents that were created for the Queensland flood events". I just want to be sure - to be clear, was this prior to the implementation of these process documents or did you review these documents to complete your statutory declaration?-- No, I reviewed them prior to them being implemented.

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Okay. You provide an overview of insurance claims at paragraph 19?-- Yes.

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"The majority of assessments were completed within six weeks of obtaining access to sites affected," at 19.1?-- Yes.

When you say "completed", what do you mean by that?-- So, for NRMA Insurance we use a internal assessing work force, so - basically what that means, any of the claims that required a physical site assessment, which were any of those claims that had potential flood issues, claims that were of a critical nature or of a semi-critical nature, because we prioritise our work - our claims based upon the nature of the damage, any of those claims, one of our internal assessors had been to that site.

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So the majority of site assessments were completed, is that-----?-- It was 98 per cent of them.

Okay. So to give further clarity to that sentence, is the majority of site assessments; is that the case?-- Correct.

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Okay. You refer to claims - "all customers are reminded at lodgment that a flood is not covered by their policy but that the claim would be lodged for consideration"?-- Yes.

So what you are saying up there is that when - when a customer puts in a claim they're upfront told, "Look, it's not covered for flood, your policy does not cover your claim for flood, but it can be accepted for consideration"?-- I agree with the latter part of that. So customers are advised upfront that their policy does not cover flood and that the claim will be lodged for consideration. So they certainly aren't given a decision at the time of lodgment as to whether coverage exists or doesn't exist.

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Okay. And the purpose of advising the client that flood is not covered by their policy is?-- It's to be transparent to give them - it's to remind them in relation to the key aspects of the product which they purchase.

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And when their claim - "the claim would be lodged for consideration," is any further information given to the customer at that point in time what the term "consideration" means? What does that mean to the customer when they're told it will be "lodged for consideration"?-- Okay, so the information that would be given to a customer is that we'll - the claim will be referred through to a claims consultant and for matters such as that the claims consultant will make a determination as to whether coverage in their mind exists or whether it is still uncertain and that in those instances a loss assessor or, as we call them, a home assessor will be appointed to that claim.

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So you've just provided a package of information in your answer?-- Yes.

Is that the package that is given to a customer at this point in time?-- Broadly speaking, yes.

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"Broadly speaking". Was there a script provided to your customer consultants-----?-- Okay.

-----to give that information to a customer?-- Sorry, I would just like to give you - I'd just like to clarify my actual role and the components that I do manage. So I'm responsible for managing post-lodgment through to finalisation. So the information on the scripting, which I know is annexed to this document, is the information I've relied upon from the national contact centre.

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So is it the case you can't answer that question that I asked you?-- Correct, yes.

If we can go over the page - and please tell me if I'm asking any questions that are beyond your expertise or-----?-- Sure.

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-----ability to be able to answer. At 23.2 we see the claims were assigned to a claims consultant. When a customer of NRMA lodges a claim are they provided a single claims consultant to work with them through their process?-- For the life of the claim, no they're not.

Okay. And why is that?-- It's from - from our experience it is logistics. So when you're managing, you know, many tens of thousands of claims, so I guess across the three operations that I manage it would be in the vicinity of 120,000 claims per annum, the difficulty for a customer to be able to get back in contact with that specific claims consultant if that claims consultant is on a lunch break, on leave, absent, it's problematic, so we tend to - we - sorry, it isn't that we "tend to", we actually run a model whereby claims consultants operate within a team and customers are given a direct dial number into that team that will provide them with the next available claims consultant to assist them.

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And how many claims consultants work within that team?-- It's generally a number of between eight to 12.

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Okay. So a customer at any one time could, if they're unlucky, speak to eight to 12 claims consultants?-- Potentially.

"Potentially". Has any consideration been given to confine this process so that a customer can speak to the same person that can see them through the insurance process?-- Yeah, I can assure you that we have trialed case management models over the years and from my experience the flipside to that is that if - if a - if the case manager isn't available to assist the consultant then ownership of that file is somewhat in limbo. Whereas if it's owned by a team and the claims - the claims consultants are trained that they need to actually not only enter appropriate notes but, more importantly, what steps are required by the - sorry, what are the next steps required to finalise the claim, then it means anyone picking up that

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case can quickly read the last few dot points of the claim summary to understand what information's outstanding or what actions need to be completed.

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You would agree with me, though, that the knowledge that can be picked up on by looking at the file or those notes is only as good as the information that is put into those notes by the previous consultants?-- Yeah, I agree with that in part. The piece - the piece I don't agree with, which possibly I need to give a little more emphasis to, is that we certainly do prioritise our claims based upon criticality. So if, for example, if we're talking about home claims, if you have a customer that isn't able to live in their home or they don't have cooking facilities or washing facilities, those claims would be classified as a critical claim. A customer with structural damage to their property, those claims would be classified as a semi-critical claim. Now, those claims are assigned to one of our internal home assessors. So that, in effect, becomes the case manager, as you describe, for those claims in which there is a level of criticality. For the non-critical claims the customers are given options around either the insurance company, as in NRMA, managing the service providers for them, or alternatively the customers obtaining their own quotes or in fact organising for the repairs or the replacement to be completed. And a contents example of that, so a contents example would be, if, for example, a customer had a damaged fridge or microwave and weren't able to, you know, keep food in the house, that would be a contents claim that we would characterise as critical.

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I was asking about notes and the adequacy of notes that-----?-- Sorry. Yeah, sorry, I was trying to give clarity to-----

Well, can you give clarity to-----?-- Okay-----

-----my question which was-----?-- -----okay-----

-----about that the service that can be provided to the customer, it will be only as good as the notes-----?-- Correct.

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-----that are put into that system?-- Yes.

Is that the case?-- Yes.

Now, a quick comparison between the recordings that are made and the notes that are provided is that some things can be left out of those conversations. Have you had - done an analysis of that?-- I haven't done an analysis so to speak, no.

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So is there - I understand from your statement that the training is provided-----?-- Yes.

-----to the customer consultants about taking notes and putting that information into the system?-- Yes.

Is training given - provided as to the standardisation of what should be put into that system?-- Yes, it is, yes.

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And what would be assessed as critical information? Is training provided as that?-- Not only is training provided but there's also the quality review process where the team managers of those individuals are doing file audits on four to five claims a month to actually check the compliance to that process.

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So what you would be trying to avoid is the same questions being asked to the customer by different consultants. That's something to be avoided; is that the case? You've got a customer ringing up on one occasion, being asked questions by a consultant, and then when being contacted again the same questions being asked. That's something that the company wishes to avoid?-- In its simplest form most definitely. So the only time that would occur, I would imagine, or should occur, would be where a clarification was required on those points.

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And if it did occur that would be seen as the system breaking down?-- Correct.

Okay. At 23.3 you set out five matters of consideration that NRMA Insurance used in making a determination of the claim. The customer's account of events?-- Yes.

Now, was that taken over the phone on the first call or when was that taken?-- It was originally - so it will have been taken on the first call when they've lodged a claim and then our claims consultants would do an outbound call and obtain additional information, which would also then supplement what was collected at the point of lodgment.

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"Additional information"? Why additional information if there wasn't enough information provided?-- Well, for the flood claims it would be because of the complexity of it. So, you know, for NRMA it would be - it would be - I couldn't give the exact time but it would be years since we last experienced an event that had complexity of policy coverage to the extent that the Queensland flood event had.

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So you were finding that the information provided by the customer on the initial call was not sufficient information for you to assess the claim?-- Yeah, and with that complexity comes the emotion as well. So we had, you know, customers that had suffered, you know, significant and in some instances tragic loss, so when they're actually ringing to do that first lodgment call, you know, there is - it's the human reality that information isn't always going to be collected or communicated in the most - you know, in the most effective way.

50

And was it the experience of the insurance company that you were getting different accounts because of that emotional first call that not - the information wasn't as accurate as could be?-- You do - you do to some extent. I mean - and,

again, I suspect it's a characteristic of human nature, you get some individuals on the first lodgment call that will say - customers in the first lodgment call will say, "Look, I'm okay, don't worry me" - "don't worry about me, worry about everyone else," and then upon recontact with those customers you will find that the extent of damage that they have probably suggests that we should be worrying about them.

1

An onsite assessment is another factor that is taken into account?-- Yes.

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How was that relied on?-- It's purely just relied upon to determine whether we needed to obtain a hydrology report. So I know annexed to the document there is the home assessment report, so it's a flood template, and it was just catching some basic information from the customer around the flow of water, when the water rose, how long the water was at that level, and then the assessor's just taking some measurements of those watermarks of the water height.

20

So, if I can understand, the contents of the onsite assessment, it is the customer's account, included with some measurements taken by an assessor onsite; is that the case?-- Yes.

Okay. What happens if the customer is not there?-- If the customer isn't available for the assessment then the option would be given for the customer to have a representative or somebody acting on their behalf to be present. So, for example, if it was a tenanted property then contact would be made with the real estate agent, that would be standard process, to contact the real estate agent, and determine from them whether they wished to be present at the time of inspection.

30

Is it standard process for an assessment officer to attend with someone, either the customer or the customer's agent?-- For - for a home assessor, sorry?

Yes?-- Is it standard-----

40

For an onsite assessment?-- Oh, yes, yes.

And is it standard practice not to do that without those persons being there?-- Without - without the real estate or the agent's permission.

And would that be - and is that because that - it would be pointless to attend without supplementary information being provided?-- For a non - well, for a non-flood claim, so if you're talking about something where there is internal damage, it most definitely would be pointless because you would need to be able to get access to the site to make a full and proper assessment. For the potential flood assessments, where - where, you know, the assessment report itself did not form the primary evidence for declining a claim or accepting - sorry, for declining a claim, then, you know, I guess, the relevant importance wouldn't be as significant.

50

Anyway, it's standard practice for NRMA to always assure - ensure that there was someone at the site when doing an onsite inspection?-- Yes. 1

Okay. Aerial images taken during the flooding and river level data are the next matters that are relied on and then, finally, a regional external hydrology assessment. What is the value of such an overarching assessment when determining a site-specific complaint?-- Sorry, can you just repeat that question? 10

What is the value of an overarching report-----?-- Yes.

-----which is the regional external hydrology assessment-----?-- Yes.

-----when determining a customer's claim?-- Okay, so determining coverage?

Yes?-- Okay. So the overarching report from the hydrologist for that region, if it was - if for that claim the NearMap images for which we had access to and the Queensland Government mapping and the assessment report all supported the fact that flooding had occurred at that property, then the overarching report would form the basis of our decision to accept or decline a claim. So in saying that, I guess saying it a different way, is that if, for example, we had an overarching report but the NearMap images didn't show a continuation of water between, say, the Brisbane River and that customer's home, then we would not rely on that overarching report, we would arrange for a site-specific hydrology report. 20 30

And have you got any numbers in relation to - ratio numbers of how many times that NRMA did that, arrange for a site-specific report?-- Yes, it was 198, of which 38 were for customers that coverage was declined and then as part of our internal dispute resolution process we offered them an individual hydrology report and they took up that offer. But 160 of them were accounted for those where we looked at the claims - looked at the individual claim, looked at the information that I went through before, and found that we weren't able to make a conclusive determination. 40

And just to give some context to those numbers. In paragraph 19 NRMA Insurance received nearly 3,000 home and landlord claims?-- Yes.

So you're saying 100 - out of that 3,000, 198 there were site-specific hydrology reports, is that-----?-- Yes. 50

I'm just trying to understand the figures?-- Yes, so - but that's also - I guess the other context there that needs to be given is-----

Please?-- -----that over 70 per cent of those 3,000 claims were in fact accepted.

Yes. No, I'm just trying to-----?-- Sure. I was just wanted to make sure I was giving you the full information.

1

Now, to be clear, can you tell me this: was a site-specific assessment, a hydrology report-----?-- Right.

-----only conducted if the customer requested it?-- No. No, not at all.

And that was a decision made by NRMA taking into account the information that had been provided to then determine, "Okay, we need to go the step further and get a site-specific report"?-- I wanted to be absolutely sure that before we made a determination on coverage that we'd given full consideration to the customers. So if there was any doubt from that - from the information, whether it be the NearMap imaging or the government flood mapping, then we would engage an individual hydrology report.

10

You've included a flowchart in your statutory declaration, and it's about two pages further on?-- Yes.

20

And the hydrologist reports and information is discussed in this flowchart?-- Yes.

You also state in that box, "Extensive data collection from Bureau of Meteorology and other external sources to provide comprehensive scientific report". I'm interested as to what those other "external sources" that provided "comprehensive scientific report" was?-- Okay. So it's important that I note that for the engagement of the hydrology reports we actually gained access to those services through IAG's Natural Perils team. The Natural Perils team is made up of a number of climatologists and from, my understanding, they actually collate some of this data, and I'm unsure from what sources.

30

While on hydrology reports, and regional hydrology reports, if we can go to paragraph 59, and that refers to the update of the earlier Ipswich regional hydrology report?-- Yes.

40

And there was one obtained on 21 February 2011 and then a further report dated 24 June 2011?-- Yes.

Why was a further report obtained?-- The further report was obtained purely as a matter of caution because at that stage - at that stage additional - additional rainfall and river data had been released by the Bureau of Meteorology so we wanted to be - again we wanted to be absolutely sure that the decisions that we had made on the - based on the initial hydrology report were still sound.

50

And whose decision was it to obtain the additional report?-- It would have been the decision and - I believe it was the decision of the manager of our internal dispute resolution team.

And that was - was that decision made, if you can - I don't know whether you can answer this question, was that decision

made after reviewing the additional information from the Bureau of Meteorology?-- I can't answer that question, sorry.

1

But are you telling us that the motive for obtaining that report was the additional information provided by the Bureau of Meteorology?-- Yes, most definitely.

Now, once NRMA had that additional report-----?-- Yes.

-----did NRMA review all previously rejected claims with the information that was contained in that report?-- Okay. So the basis of that report didn't - didn't change the outcomes for the original overarching report. In fact, the additional report simply just reconfirmed that the - that the initial decisions were in fact solid.

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And were the customers provided with that additional report?--  
I don't believe so. They certainly weren't from my team.

Any reason why?-- Because - because the decision on the claim  
didn't change. So the actual - the actual data in no way  
influenced the outcome of the claim.

Now, the hydrology reports that we've been talking about, the  
site specific hydrology reports-----?-- Yes.

10

-----do you know whether qualified hydrologists performed -  
did these reports?-- Do I personally know?

Yeah?-- No, I don't.

Your statutory declaration deals with communicating with  
customers during the claims process?-- Yes.

And also that in that part of that process, telephone  
conversations were recorded?-- Yes.

20

"We record all conversations made to and from customers by our  
frontline staff for quality and assurance purposes". We can  
find that at paragraph 91?-- Yes.

When we're talking about frontline staff-----?-- Yes.

-----who are they? What type of category of staff?-- Our  
claims consultants.

30

So all conversations with claims consultants are recorded?--  
We endeavour to record all conversations, yes.

And that is whether the conversation is from a mobile phone or  
not?-- Sorry, the customer's ringing in on a mobile phone?

Yes?-- Yes, we endeavour to.

When you say "endeavour", you are putting a qualification on  
that answer. Why when you say endeavour-----?-- Because NRMA  
has been transitioning from the Avaya to the Cisco phone  
system and I am aware of some technical difficulties when it  
came to - it wasn't the actual recording of the call but it  
was the archiving of those calls. So I know that there was  
some calls that we've been unable to retrieve due to technical  
issues where they seemingly weren't saved off.

40

Is that being addressed?-- Most definitely, yes.

50

I understand due to NRMA suffering flooding itself, the  
premises suffering flooding, staff were stationed at Stafford  
and Salisbury?-- Yes.

Were conversations recorded between customers and consultants  
based at Salisbury and Stafford?-- No, no, for that period -  
for the period of those - sorry, for the period of that week,  
no, there isn't call recording at those sites.

Okay. And is call recording only available on certain phones with teams?-- Okay, so with the Stafford and the Salisbury site, those two sites are fundamentally motor vehicle assessing centres. So they aren't designed as call centres, so they form part of our contingencies. Now, if you're talking about the claims assistance centre where the claims consultants are based, then calls are recorded to and from claims consultants' phones. They certainly aren't recorded on home assessors' mobile phones, et cetera.

10

In paragraph 92 you set out what telephone calls are not recorded?-- Yes.

Why is there a distinction made for those categories of persons?-- Sorry, I can't answer that question, why there is a distinction.

Is there - can you see any benefit for recording those conversations between those persons?-- Home assessors, there is a logistical issue with the mobile phones, with the technology.

20

But why can - that's what I was asking you before. You told me that customers who ring in on mobile phones, their conversations are recorded?-- Yes, because it is coming through our - it is coming through our PABX, so to speak.

General line?-- Yes, our general line, whereas the mobiles are network to network in many instances. So a home assessor making an outbound call on a mobile phone, that isn't going through our PABX.

30

But a home assessor making a call into a claims consultant, would that be recorded?-- Yes.

Okay. So that will be included in the category of phone calls that would be recorded?-- Yes, yes, correct.

Is there any other benefits seen from any of the other categories of persons to record those conversations?-- Look, for training purposes and for the purpose of validating information, I have no doubt that there is benefit.

40

Has that been considered?-- I am unsure.

Now, where customers requested copies of recordings of transcripts, NRMA insurance has sought to meet those requests?-- Yes.

50

Again, there's a qualification in that answer of "sought to meet". You have not been able to meet them all?-- Yeah, that's correct, and that comes back to the technology issue of some calls not being archived.

But if the recording is there-----?-- Yes.

-----and a customer wants it, then NRMA may well provide that

call?-- Yes.

1

Is that NRMA's position?-- It is our policy. Always has been.

Just in terms of what conversations are recorded, you have seen the log that's attached to claims of, you know, the customer ringing in and notes taken of the call?-- Yes.

For every conversation that a customer has with a claims consultant, should that be in that log?-- Should the - should the call be recorded, is that what you are asking me?

10

No, I'm just going back to the log and the notes made-----?-- The file notes.

-----customer consultant into that log. Would we expect to see-----?-- Yes, we would.

-----in that log every conversation noted?-- Yes.

20

What about if a customer, during the claims process, has conversations with other persons in the NRMA Insurance company, would those conversations be included in that log?-- Only if they are within the claims or assessing function.

Okay. Or if they are dealing with a claims question raised by an insurer?-- Oh, if one of the sales consultants is dealing with a claims question, then that call will be transferred to the claims team.

30

So any queries or inquiries made by a customer to NRMA about their claim should be recorded in that log?-- Yes. And, again, I qualify. So provided that that customer has spoken to one of the claims or assessing staff members.

What about if it has to go up the line and it needs to go to another level? Does that happen?-- How do you mean up the line?

40

If it needs to go to a manager?-- Most definitely.

And that would again be recorded?-- Yes.

Okay. Now, when a claim is rejected, a call is made to the customer to advise them of that decision?-- Yes.

And also a letter is sent to the customer?-- Yes.

Is the customer provided with all of the information that NRMA had when making that decision?-- So are you speaking specifically about the - about flood declines?

50

Yes?-- So the customer is provided with the information that formed - that formed the key basis for that decision, so - which was the hydrology report.

Well, what about the assessor's report?-- Well, the

assessor's report is an attempt at showing the water heights, so those weren't provided as a matter of course, but they didn't form the basis of the decision. So the assessor's report to decline a claim simply determined whether a hydrologist was required, and was then used, as I described earlier, in determining whether an individual hydrology report was required. So we certainly did not deny any flood claims on the basis of one of our internal home assessor's reports.

1

Okay. So if we go back to 23.3, where you set out the following information sources in making your determination on the claim?-- Yeah.

10

Those five sources?-- Yeah.

So in any given claim, those five sources were sources of information that NRMA relied upon to make their decision, is that the case?-- NRMA relied upon that information to determine the process that was required from a hydrology perspective, and then ultimately the decision. So, again, I emphasise that we did not decline any claims without hydrology advice.

20

So, therefore, are you saying that the customer would only receive the overarching hydrology report or the site specific hydrology report?-- Yes, that's correct.

And that ultimately was the only source of information that NRMA used to determine to accept or reject a claim?-- It was - it was ultimately the end piece of information that was used.

30

So you used other pieces of information as well?-- We used other pieces of information to determine whether an individual hydrology report was required.

Okay. So when you get the individual hydrology report, that is - that is the only information that is then used to determine whether a claim will be accepted or rejected? Yes or no?-- No, it isn't the only information. So the NearMap imaging, as I described before, and the Government Flood Mapping were things that were taken into consideration, but those are publicly available information anyway.

40

So you do - did you set out - sorry, in any document provided to the customer did you set out, "These are the pieces of information that we relied upon and this is the hydrology report."?-- In the verbal scripting, which is annexed to this document, there was - it was explained to the customers the pieces of information that we've used or we've viewed in coming to a claims decision.

50

And you would expect that to include all of those pieces of information, is that the case?-- Well, all those pieces of information including the customer's version - incident description all form critical pieces of information in determining the claim outcome.

If I can just finally draw your attention to communication with the customer?-- Yes.

1

You would agree that communication with customers is essential during the claims process?-- Yes.

It is a primary focus of NRMA to ensure that proper communication occurs with the customer during the claims process?-- Yes.

10

And part of that process is to reassure the customer that their claim is being processed and that their claim is being worked on?-- Yes.

Were you aware whether any angst was caused - any customers were concerned that they weren't getting enough information from NRMA?-- Yes.

And that - what information were you aware of in relation to that?-- So, for example, when it was determined that an individual hydrology report was required, we - our staff used standard scripting which advised the customers of the need for hydrological - for that individual hydrology report. And also set out with those customers that it would be a matter of works due to the demands on hydrology services but I am certainly aware from, for example, Sharron Campbell, from her complaint, that she is one customer who has clearly noted that she would have - her preference would have been to receive further communication or updates during that process.

20

And what do you think about that - such a request to receive further information during that process?-- I actually think it is important that with all such things like that that we build those into our learnings, because if there are customers that we weren't meeting their needs, then absolutely. We need to look at the way that we can improve the mechanism by which we communicate. In fact, I can give one example of where we have done that, where - as a result of our learnings from this event, there was a system change that was implemented on the 28th of April that has allowed at the point of lodgement within our system capturing what the customer's preferred communication method is, whether that be letter, phone, email, SMS, and by the fact that we're capturing it within our system now allows us to interrogate that data to ensure we're matching the communication method with what the customer's preferred method is.

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Sharron Campbell, who gave evidence yesterday, told us, in effect, that it is human nature that when you're not hearing anything you think that nothing is happening?-- Mmm.

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We've heard evidence from another insured whose claim was processed by another company, but received weekly text messages and they found that of great assistance -----?-- Yes.

-----in understanding how their claim is processed. Would NRMA consider such a weekly or regular contact with their

customers?-- Oh, most definitely, and the system change that I spoke about fundamentally is designed to enable us to do that, but I think, importantly, with that it is about matching what the customer's preferred method of communication is. As bizarre as this may sound, I certainly have received complaint last year from a customer who believed that we were communicating with them too much.

1

Yeah?-- So it is important that we match expectation with process, but ultimately I do agree with your statement.

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Thank you. I have no further questions.

COMMISSIONER: Has anybody got any questions?

MR AMBROSE: No questions.

MR HOLYOAK: No questions.

COMMISSIONER: Ms O'Gorman?

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MS O'GORMAN: Thank you, Commissioner. Can I take you, Mr Dower, to paragraph 26 of your statutory statement? It is correct, isn't it, that the three causes you attribute to the delay in obtaining the site specific reports are, firstly, uncertainty of coverage of policies; secondly, the fact that there was a small pool of expert hydrologists available; and, thirdly, the dates by which the bureau had provided data to NRMA?-- Yes, that's the information that's been provided to me.

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It is correct, isn't it, if I understand the evidence that you've given, that these difficulties relate only to two per cent of the claims that were made to NRMA?-- Two per cent?

Namely, the 178 claims out of the 3,000, is that correct?-- Sorry, can I just read 76? I just want to be clear that it is not - it isn't referring to the overarching reports as well.

40

Certainly?-- So it was - there is 198 site specific reports that NRMA organised, of which 160 were at the initial claims process, there was additional 38 through the internal dispute resolution process.

Right?-- So I haven't worked it out in percentage terms but those are the numbers.

50

That's okay. And are you aware of the date when the IAG Natural Perils Team made a request to the Bureau of Meteorology for the data?-- No, sorry, I don't have that information.

If I put it to you that it was the 28th of January 2011, are you able to comment as to whether or not-----?-- No, sorry, I - I cannot comment on that.

And are you aware of the date by which the bureau provided information to the IAG Natural Perils Team?-- No, sorry.

Do you have a basis then for the claim in paragraph 76 that the delays were caused as a result of the Bureau of Meteorology having some delay in providing that information?-- The basis for that is on the expert advice which I relied, and which I referred to within this document, which would have been the Natural Perils Team provided the information.

10

So do you rely upon an opinion that's expressed by the Natural Perils Team that the bureau had delayed in providing that information?-- I am relying on the specific information they have given to help construct this statement.

Well, how about if I put it to you that the bureau provided the information by 17th of February 2011. Do you have any basis on which to say that's correct?-- If it was provided on the 17th of February?

20

Yes?-- Well, the 17th of February - the 17th of February, interestingly, is a day after the overarching reports were received for the Brisbane/Ipswich area.

So you would be merely speculating as to whether or not the bureau had provided the data by the 17th of February?-- Yeah, I am just correlating the dates.

Have you read the statement of Mr Merchant?-- Of who, sorry?

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Mr Merchant?-- No, I have not sorry.

He expresses the opinion that any delay by the bureau in providing the data was minor or not significant. Would you agree with that estimation?-- I can't make a comment on that.

He also expresses an opinion that any delay by the bureau did not prejudice the outcome of any claims. Could you say that that's correct with respect to NRMA's claims?-- No, I couldn't say that, and I think the reason why I couldn't - sorry, the reason why I couldn't be that categoric is because the stormwater coverage and the - and the flood exclusion would be fundamentally different between those two products.

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But nonetheless you don't have any basis on which you can adjudge whether or not the delay was significant or not for NRMA's claims?-- I certainly can't.

Thank you, Commissioner.

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COMMISSIONER: Mr Newton?

MR NEWTON: Just a minor matter, if I may. Can I deal with an absentee landlord's claim, where a real estate agent has been appointed as the authorised person to deal with the claim in their absence?-- Yes.

I take it that - if you can assume an appointment had been made with a real estate agent to do an inspection on a given day, but the real estate agent didn't insist that they be there, you don't regard it as in any way improper for the inspector - sorry, for the assessor to do the inspection without the real estate agent there if-----?-- No, I don't. If permission has been given.

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Yes, particularly if it is an external inspection?-- Yes.

If it is an internal inspection, if, for example, the keys have been left by the real estate agent for the inspector to access?-- Yes.

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All right. Thank you. I have nothing else.

COMMISSIONER: Ms Wilson anything?

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

COMMISSIONER: Thanks, Mr Dower. You are excused.

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WITNESS EXCUSED

MR CALLAGHAN: I wonder if we might just make a couple of decisions now about the course of the afternoon? I think we had another three witnesses on the schedule. We're clearly not going to get to all of those.

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We have an appearance waiting to be entered for Mr Cordingley. I would suggest we not we're not going to get to him.

MR DUFFY: If it please the Commission, I appear for Arrow Energy Pty Ltd, which has been granted leave to appear in respect of the evidence of Mr Cordingley, which was due this afternoon. My name is Duffy, counsel instructed by Blake Dawson for Arrow Energy.

COMMISSIONER: Thanks, Mr Duffy. What's to be done about it? When can we take that evidence?

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MR CALLAGHAN: We will have to review our schedule and offer Mr Cordingley a position with some priority. He is a witness I think we do have to call.

COMMISSIONER: Mmm.



MR CALLAGHAN: And he won't be brief, which is why I suggest we bite the bullet now and let Mr Duffy depart before we commence with Mr Westerhuis.

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COMMISSIONER: All right. I am sorry about that, Mr Duffy. It just seems to be reality.

MR DUFFY: I understand that.

COMMISSIONER: Somebody will liaise with you about another date.

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MR DUFFY: Thank you, your Honour. May I withdraw?

COMMISSIONER: Yes, thank you.

MR CALLAGHAN: I suggest we do call Mr Westerhuis. I might indicate that I would be proposing to ask him an extremely truncated series of questions, and I think there is a number of issues that we can probably deal with by further statement.

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COMMISSIONER: Who else this afternoon then?

MR CALLAGHAN: Well, I suggest we call Mr Westerhuis and then call it a day. I don't think-----

COMMISSIONER: All right.

MR CALLAGHAN: I think Mr Ambrose was appearing for Mr Campbell as well. I don't imagine that he will object to that course.

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MR AMBROSE: Well, I would like to have Mr Campbell dealt with as well. I can't imagine his evidence will be very long either. But we're in your hands.

COMMISSIONER: I will have to be guided by Mr Callaghan about how long the two of them would take.

MR AMBROSE: It may be that he doesn't require Mr Campbell after all.

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COMMISSIONER: You might be hopeful.

MR CALLAGHAN: It may be. Look, I would suggest we just call Mr Westerhuis. I will ask, as I indicated, an extremely truncated series of questions and we will consider whether Mr Campbell is required.

MR AMBROSE: Thank you.

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MR CALLAGHAN: As with Mr Westerhuis, it might be dealt with - our questions might be dealt with by way of a further statement.

MR MacSPORRAN: I can indicate, Commissioner, we have no questions, as presently advised, with either of these two witnesses.

COMMISSIONER: All right, thanks.

MR MacSPORRAN: So it will be quick.

MR CALLAGHAN: I call Pier Westerhuis.

PIER WESTERHUIS, ON AFFIRMATION, EXAMINED:

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MR CALLAGHAN: Could you tell the Commission your full name and occupation, please?-- My name is Pier Westerhuis. People call me Peter. I am the Chief Executive Officer of Ensham Resources.

Mr Westerhuis, you have provided a statement dated the 26th of September. That statement has 17 annexures, one of which is an earlier statement that you provided on the 12th of May, is that correct?-- That's correct.

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Yes, I tender that.

COMMISSIONER: Exhibit 746.

ADMITTED AND MARKED "EXHIBIT 746"

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WITNESS: Can I point out an error in one of the statements?

MR CALLAGHAN: Please?-- In the earlier statement, just minor things. The last page under paragraph 15 it refers to paragraph 15 in the last sentence. It should be paragraph 14. And under paragraph 16, it refers to paragraphs 18 and 19. That should be 17 and 18. Sorry about that.

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Thank you. Just excuse me one moment. We might at this stage tender a statement that has been provided by Mr Michael Birchley.

COMMISSIONER: Exhibit 747.

ADMITTED AND MARKED "EXHIBIT 747"

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MR CALLAGHAN: Mr Westerhuis, can I take you to paragraph 44 of your statement?-- Okay.

You indicate there that you understand new model conditions

have yet to be finalised by DERM, is that right?-- That's my understanding.

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All right. Mr Michael Birchley has provided the statement which I've just tendered, and if we can look at paragraph 92 of that statement, it indicates, as I read it, that, "The reviewed model conditions were approved on 3 August 2011." We might be able to get that paragraph up. Do you know what I'm talking about? Have you seen Mr Birchley's statement? I understand we did try to give you some notice of this?-- No, I haven't seen it.

10

Okay. We were looking at paragraph 92. See the last sentence of that?-- I can read that.

And 93. It is indicated that DERM provided industry training on the new model conditions on the 25th of August. You weren't aware of that?-- I was aware of that workshop, yes.

Does that - you are aware that there was a workshop but not that the conditions had actually been approved?-- That's correct.

20

Okay. So there is no communication from DERM about the approval that you are aware of?-- Not to me directly. Some of my people have been involved in those discussions.

All right. Were they involved in training?-- Well, they went to a workshop to discuss the model conditions.

30

Okay. Now, can you look at attachment MFB-06-24(b) to Mr Birchley's statement, which are the revised model conditions. Again, did you - we did, I think, endeavour to give you advance notice of this. Have you seen these?-- I saw this about ten minutes before I left my office today.

Okay. Well, can I take you to table 4 in that document, and what that does, along with its explanatory notes, is set out - or indicates some structured limits on releases, in essence so that mines can release more water when more water is flowing in the watercourse. Can you apprehend that from the little time that you've had to look at it?-- Yeah, I guess that seems to be the gist of it.

40

Yeah. I appreciate you haven't had the opportunity to really take it in, but just at first glance, does that seem to be a sensible sort of an approach to these things?-- Sorry, I can't make any comment on that.

Would you be able to make a comment perhaps after you've had more opportunity to consider the document?-- Absolutely.

50

Okay. All right. Can I take you to paragraph 38 of your statement? I'm sorry, just excuse me for a moment. You indicate there that, in effect, you have no concerns in respect of the process of applying for and being granted TEPs?-- That's correct.

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I just want you to have a look at this document, which is a letter dated 21 January 2011. That document will be found in this statement of Mr Andrew Brier, which I will tender as well.

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COMMISSIONER: 748.

ADMITTED AND MARKED "EXHIBIT 748"

MR CALLAGHAN: And the Exhibit is ASBF03-24. Have you had the opportunity to look at that?-- Yes, I have.

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We can see in the first - the paragraph adjacent to the first bullet point there's concern expressed in relation to this application for amendment that that discussions with DERM officers did not consider the need for certain things, that costs were prohibitive and unnecessary and so on. That would seem to indicate, at least in respect of this one case, that there was some concerns with the process of the - obtaining the TEP. Would that be right?-- I guess we looked at the practical implications of some of the conditions in the TEP and this would have been in relation to the frequency of sampling of water on - upon discharge, and it might have been a case that after discharging for a while there was no variation notice, so perhaps this was a discussion at the time about reviewing the frequency of measurement.

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Okay. So, just coming back to your paragraph 38, would this just be an exception to that general proposition?-- No, we - our general experience Ensham is we have had a very good relationship with DERM in relation to having TEPs negotiated, submitted and approved and they have always been, in my opinion, very receptive to practical issues associated with those TEPs.

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What level of contact do you have in the course of a TEP application?-- At various levels in our organisation, quite a lot.

Mmm?-- Quite a lot.

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Can you just give us a brief sort of overview of the sort of communication that we are talking about?-- Well, I guess myself, I - I have had - I have had conversations with Director-General, the general manager that works for me has had conversations around TEPs with his counterpart in DERM, people on the mine site have communications with their counterparts in local field offices about matters to do with

TEP.

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What sort of communication would you be having with the Director-General concerning the TEPs?-- Mainly to help him understand the gravity of the situation for which we were trying to seek some remedy.

Was there a need for that to be done at Director-General level because it wasn't-----?-- No.

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-----necessarily-----?-- Probably not, probably not, I just thought to do that, give him a heads up and keep him in the picture, and I guess one of the main drivers is to make sure that he gets his people aligned, so he understands what we're up to.

All right. You have got no difficulty making contact with him in order to do that?-- No. I personally don't.

No practical difficulty?-- No, no. He's always been very, very accommodating.

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All right. Okay. Well, look, as I say, we may seek some further information from you at some stage, but that's all, they are the only questions I have for the moment.

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

COMMISSIONER: Thank you.

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MS O'GORMAN: I have no questions.

COMMISSIONER: Mr Ambrose?

MR AMBROSE: We have no questions.

COMMISSIONER: Thank very much, Mr Westerhuis, you are excused?-- Pleasure.

MR CALLAGHAN: Sorry, Madam Commissioner, there was a supplementary statement from Mr Westerhuis which I should tender.

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COMMISSIONER: That will be Exhibit 749.

ADMITTED AND MARKED "EXHIBIT 749."

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WITNESS EXCUSED

COMMISSIONER: Did you want to attempt Mr Campbell?

MR CALLAGHAN: No, look, I think I will reconsider the

materials and if there is a need for Mr Campbell to come, we will identify the specific need and the time at which it can be addressed.

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COMMISSIONER: Right. Thank you. We will adjourn till 2.30 on Monday in Bundaberg.

THE COURT ADJOURNED AT 4.34 P.M. TILL 2.30 P.M., MONDAY,  
10 OCTOBER AT BUNDABERG

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