

Transcript of Proceedings

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THE HONOURABLE JUSTICE C HOLMES, Commissioner

MR JAMES O'SULLIVAN AC, Deputy Commissioner

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IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2011

QUEENSLAND FLOODS COMMISSION OF INQUIRY

BRISBANE

..DATE 03/10/2011

..DAY 40

THE COMMISSION RESUMED AT 10.04 A.M.

COMMISSIONER: Yes, Ms Mellifont?

MS MELLIFONT: Good morning. Today I appear with Ms Kefford of counsel. The first witness is Ms Lynn de Lange, who is a resident of Festival Towers. It was inundated during the January floods. I call Lynn de Lange.

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LYNN DE LANGE, SWORN AND EXAMINED:

MS MELLIFONT: Good morning, Ms de Lange. Can you state your full name, please?-- Lynn Gezina de Lange.

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Are you a resident and owner of unit 108 - sorry, unit 2008, 108 Albert Street, Brisbane City?-- Yes, I am.

Is that an apartment complex known as Festival Towers?-- Yes.

Have you made a statement to the Queensland Floods Commission dated 14th September 2011?-- Yes, I have.

I will show you a copy of that statement. Is that a copy of your statement?-- Yes, it is.

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

I tender that statement.

COMMISSIONER: Exhibit 688.

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ADMITTED AND MARKED "EXHIBIT 688"

MS MELLIFONT: Have you today also brought with you four photographs taken of Festival Towers during the floods?-- No, I haven't. They were supplied to the Commission separately by our building manager last Friday.

All right. I will show you a bundle of four photographs to see if you can identify them. I will just ask you to just flick through those four photographs?-- Yes, they are photographs of the basements at the time of the flood.

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Right. So far as you understand they were taken by the building manager of Festival Towers at the time of the January '11 floods?-- Yes.

All right. I tender that bundle.

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COMMISSIONER: So it was four photographs, I think you said-----

MS MELLIFONT: Yes.

COMMISSIONER: -----Festival Towers. That will be Exhibit 689.

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ADMITTED AND MARKED "EXHIBIT 689"

MS MELLIFONT: 689, was it?

COMMISSIONER: Yes.

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MS MELLIFONT: Thank you.

I will come back to the photographs in a minute. Have you been living at Festival Towers for about three years, three months?-- Yes, I have.

And were you a member of the body corporate between March 2010 and April 2011?-- Well, I was a member of the body corporate committee and the treasurer.

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For that period of time?-- Yes.

As far as you understand Festival Towers was opened in July 2006?-- That's correct.

And it is your understanding that that site, Festival Towers, was flooded in the '74 floods?-- Yes, I was well aware of that when I bought my apartment.

Okay. Now, given your experience living in the building, can you confirm that the towers have been built so that the electrical switchboards and substation were placed above ground level; that is they were put on level 1 in the building?-- Yes, they are.

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But the building has a four-level basement, is that correct?-- Yes, carpark.

And out of the six lifts in the building, only three go into the basement?-- Yes, that's correct.

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The lifts can be shut off from entering the basement if required?-- Yes, they can.

And the fourth level basement has pumps to remove water?-- Yes. It removes water that's gone down into the stormwater sump.

Okay. Now, in your view did any of these features help to reduce the property damage and threat to personal safety in Festival Towers during the 2011 floods?-- Yes, they do - did. We didn't lose power throughout the whole flood, so the building stayed fully operational, except for the flooding of the two lower basements, and we were able to isolate that fairly easily.

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Okay. Now, I just want to go through the time-frames during the flood - and these are mentioned in your statement, but I will just take you through them. You mentioned that at 9 o'clock, that's 9 a.m. on the 12th of January, you were told by the Festival Towers maintenance manager that water was entering via two waterfalls into the basement 1 area?-- Yes, that was the top basement and there were two waterfalls, he told me. I could hear the waterfalls from where I was standing at the top of the carpark ramp.

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Okay. And you say that you later found out that water causing the main waterfall was entering by the conduit in which the Energex underground power cables entered the building?-- Yes, that's correct.

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Now, do you say that from your own observation, or is that from something someone has told you?-- Well, after 4 o'clock on the Thursday morning, I went down and observed those two waterfalls myself. I observed them in the afternoon as well when one had stopped and there was only the one with the cables - where the electrical cables come through that was still pouring out water.

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So that's the morning and the afternoon of the Thursday?-- Yes.

All right. Now, in respect of the water causing the second waterfall, you mention that was coming from where the communication cables enter the building?-- Yes. The communication cables enter the building - on the Charlotte Street side there was a small hole there where that was coming through where the communication lines come through.

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Again, is that something from your own observation or something you have been told?-- That's from my own observation at about 4.30 on the Thursday morning.

Now, as at about 9 a.m. on the 12th of January, is it the case there was no flooding on Albert Street?-- 9 a.m. on the 12th - that was the Wednesday - there wasn't any flooding on Albert Street until the afternoon of that day.

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Okay. Now, at this stage, so we're still speaking about the morning of the 12th, were the basement pumps able to cope with the amount of water flowing into the basement?-- Yes, they were, and I had been right down through the carpark the evening before and there was no water anywhere. I had been right down to the bottom of B4 carpark where the pumps were and everything was fine. There was no water anywhere.

Okay. Now, by that afternoon, was the backflow from the street drains pushing water onto the street?-- Yes, there was water on the street in Albert Street but not up Charlotte Street.

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And not into Festival Towers?-- No, no water came into Festival Towers at all through the whole floods except for what occurred in the basements.

Okay. And your statement mentions that at this time - so we are speaking about Wednesday afternoon - water was still coming through the conduit pipe and flowing into the basement?-- Yes. It wasn't very bad. It was enough for the pumps still then to cope with, because we were still removing cars from the carpark at that stage.

10

All right. So the water was coming in but the pumps were coping?-- Yeah.

Now, you say in your statement, "By early Thursday morning the backflow of water from the street drains had increased significantly and the streets were becoming more flooded." So Albert and Charlotte Street?-- Well, Albert Street but very little of Charlotte Street up from Festival Towers was flooded at all.

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Okay. You mentioned that "the water from the street did not reach Festival Towers but for a small area on the corner of the property "?-- Yeah.

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Which corner?-- Festival Towers is actually built one metre back from our property line, and the front door is at an angle across two property lines, and the only amount of water that actually came over the property line was at that corner where the two property lines meet on the corner of Albert and Charlotte Street.

So into the property but not into the building?-- No, no water came into the building at all at ground level.

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Now, by Thursday morning were the pumps able to handle the water?-- No, they weren't. By then the water was starting to fill up the basement carpark.

Right. Was power to the pumps lost at any point?-- Yes, when the water rises up to a certain point and in the stormwater pits and the pumps can't cope - there are actually two pumps, one pumping and then there is another one that cuts in when it gets to a certain height - so by then, by Thursday morning, the pumps had been - once the water level gets up to that point they cut out automatically.

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At the peak of the flood was the bottom basement completely inundated?-- Yes, that was - I don't know whether it was completely inundated by then but after the peak of the flood I had been down into the basement, I was just a bit concerned about going any further, but the basement floor, I think, by then would have been pretty well flooded.

Did it flood up to basement 3, halfway up the ramp?-- Yeah, halfway up the bottom ramp.

And you've mentioned that the electrical substation was located above the floodwaters, so power was not lost, the majority of the building?-- Well, the substation is right up one floor above the ground. Even though the cables come through in the basement, they turn around and go up to level 1 in the building.

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Now, on the morning of the 13th, that is the Thursday, had the flooding in the street subsided?-- Well, it started subsiding, you know, an hour or so after the peak at about 4 o'clock in the morning. When I went back down it had subsided substantially. It was off the footpaths even.

Okay. Did you make arrangements on the 14th of January to obtain additional pumps and start removing the water from the basement?-- Yes, we did, and we started pumping on the Friday, which is the 14th.

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And once the pumping had been completed were lift shafts cleaned?-- Yes, we had to get those fully degreased and, you know, hygiene treatment because of the nature of the water.

But they were able to be restored to full capacity within ten days?-- Yes, we were actually up and running on the 22nd of January with those three upper level lifts that also went down to the basement car parks. Even though we stopped them from going down to 3 and 4, we were able to put them in place and have them operational again on the 22nd.

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Okay. I want to take you to that bundle of photographs, please. I will have them up on the screen for you. This first photograph on the screen we see water over a pipe. Can you tell me where that is, and if you are able to say when that photo was taken?-- That photo - I can't say when the building manager actually took that photo, but that's - the green area is the water flowing in to where the communication cables come through. That was sort of quite a small waterfall compared to the other one, but you can see along the top there the communication cables and that's where the water was coming in from the footpath pits, the pits in the footpath in Charlotte Street where there wasn't any water outside of the building.

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In terms of that flow of water there, how does that compare to what you saw when you saw water coming through that area?-- When I saw it at 4 o'clock on the Thursday morning, it was about - it was like that. That's just a sort of pipe but it is going over about that big.

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So that's about five inches?-- Yes, about - yeah, about five inches. You can see where it is there, and that waterfall was there - that waterfall had gone by the afternoon of the Thursday.

I will just take you to the next one. That appears to be the same area but taken further out. Does that accord with how-----?-- Yeah, yes.

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-----you see it?-- That's still in the same area.

I will take you to the next photograph, please. What do we see here?-- Well, I am not 100 per cent certain on that but that's in the middle of that area of that top basement where the conduit that carries the cables into the building comes through. That conduit is about that wide and high.

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So - just so I can get it for the record, about two and a half foot wide, 30 centimetres high?-- About that high, and that conduit brings the cables in from the footpath pits through the wall and then goes across to the middle of the building, that area of the basement, then it turns around and goes up to take the cables up to level 1 where the substation is. And part of that conduit fell away and that's where it comes there, and there was a huge waterfall coming down there in the middle of that basement area, that B1 area.

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So what we're seeing in the photograph, is that the same or different location to the waterfall you saw?-- Well, it looks about the same location but - because I can just tell from "storage 109".

All right. And I will take you to the last photograph in the bundle, please. Do you know which basement this is?-- That's basement 3, which is the third basement down, and that's the lower ramp of basement 3, which was - you can see where the water came up to there. So that basement 3, that was how water was, whereas basement 4 below that was just fully inundated to the ceiling.

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Very well, thank you. Put that bundle aside.

COMMISSIONER: Did people have things stored down there, Ms de Lange?-- Pardon?

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Did people have things stored down in the basement?-- Yes, they did.

Did they get them out or-----?-- No, we gave them - tried to encourage them to get them out but they didn't. We did get every car out.

Thank you.

MS MELLIFONT: I don't propose to ask you any questions specifically about your insurance, but just to note that shortly after the floods, the body corporate engaged an engineer to determine the source of water inundation into the basement levels, is that correct?-- That's correct.

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And you have actually annexed that engineer's report as annexure C to your statement?-- Yes, I have.

Now, that report states that the source of the water inundation is believed to be at the incoming electricity mains to the building on the Charlotte Street frontage. Now, your insurer provided a report as well, is that correct?-- That's correct.

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I just want to take you to some aspects of that insurance report, insofar as it is relevant to where the water might have come from. So it is annexure G to the statement. I just want to ask you whether some of the observations in here accord with what you saw or know to be the case. The first is the comment - the first dot point under the row "Version of events"-----?-- Yes.

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-----reads, "The uppermost basement was inundated to about one third of its height." So that would be basement 1?-- No, that wasn't. See, this is the difficulty I have with this report. It was the bottom basement. There was no build-up of water in the top basement at all.

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Okay?-- Or in basement 2.

Now, the second thing I want to ask you about is the fourth dot point there: "At around 14:30 hours on Wednesday, the water started to come in as a deluge and completely overwhelmed the sump pumps." Does that accord with your knowledge?-- Yes, that's - 14:30 that's-----

2.30 p.m. on the Wednesday?-- Yes, it would have - the pumps would have been starting to struggle then.

30

All right. The next observation is that "The water appeared to be coming through the walls." Does that accord with what you saw?-- No, there was some minor seepage through the walls but that wasn't any more than normally occurs. As I said, I had walked down through the whole basements on the Tuesday evening. There wasn't any sign of any water seeping in anywhere.

Okay. And through which walls? Each of the basement walls, and/or ceilings, do you recall?-- No, there was seepage a little bit on the top B1 coming through the wall there. There was seepage, but no more than what we get with rain and what we were aware of.

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Okay. Can I take you then, please, to page 2? And the second dot point, the part of the table which deals with Brisbane River flooding, says, "Floodwater would have entered the neighbour's adjoining basement carpark to the south." Does that accord with what you know?-- No, I know that M on Mary to the south, they had no water in their carpark at all.

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The next comment is, "It is likely that the initial inundation to the basement was Brisbane River water back flowing through the stormwater pipes." Did you see any water back flowing through the stormwater pipes or out of stormwater pipes?-- No, and our engineer report said that didn't occur. I swept up some seepage on the top B1 visitor carpark area on the

Friday and the stormwater - big stormwater pipe runs through there. There was no sign of any water having leaked through there, or any sign of water coming down the walls where the joins are, as is the case where the pipe runs through B2.

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Okay. And the next point is - the next dot point: "Water would have also seeped through cracks and holes in the walls of the carpark from the surrounding ground." Perhaps you've addressed this already, but essentially did you see any seepage consistent with that?-- Well, there was some seepage I saw but nothing more than what normally comes through when there is rain.

10

Now, your submission to this Commission states that, "The day after the floods, Energex was going around the street pumping water out of pits in the footpath." Which street?-- Well, they were pumping water out of the pits in - that go up the footpath outside our building in Charlotte Street, as well as other areas of the footpaths, the rest of Albert Street.

20

When you speak about the day after the floods, are you speaking of the Thursday or the Friday?-- On the Friday morning I saw them pumping the water out.

To your knowledge had there been any floodwater in or near the pit or pits?-- Sorry?

To your knowledge, as in did you see, whether there was flood water in or near those pits?-- No, I didn't look down into the pits. Those pits are very deep, and I didn't - I just saw them with the pipes down there pumping the water out.

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Thank you. That's the evidence of this witness.

COMMISSIONER: Ms Brasch?

MS BRASCH: No questions, thank you, Commissioner.

MR DUNNING: No questions, thank you.

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MR FLANAGAN: No questions.

MS O'GORMAN: No thank you.

COMMISSIONER: Thank you. Do you wish Ms de Lange excused?

MS MELLIFONT: Yes, I do.

COMMISSIONER: Thank you very much for your time, Ms de Lange, you are excused.

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WITNESS EXCUSED

MS MELLIFONT: The next witness is Diane Robertson.

DIANE LOUISE ROBERTSON, ON AFFIRMATION, EXAMINED:

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MS MELLIFONT: Good morning. Could you state your full name, please?-- Yes, Diane Louise Robertson.

Do you reside at 36/42 Ferry Road, West End?-- I do, yeah.

Is that part - is that an apartment within a unit block called Aura Apartments?-- That's right, yeah.

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Does Ferry Street run in an easterly direction from the Brisbane River?-- Yes.

Are the Aura Apartments located about 100 metres from the Brisbane River?-- Yes.

Are you a committee member on the Aura Apartment body corporate?-- That's correct, yeah.

20

Do the apartments consist of 34 two-bedroom apartments and two penthouses built across several levels?-- That's correct, yes.

And were the apartments affected by floodwaters in the January '11 flood events?-- Yes, they were, the basements and about half a metre into the four ground floor units as well.

Have you prepared a statement to the Commission?-- Yes, I have.

30

I will show you a copy of that statement. Is that the statement you provided to the Commission?-- That's correct.

Is there any amendment you wish to make to that statement?-- Yes, there is just a date that I just needed-----

Is that at paragraph 13?-- 13, yes. It should be Tuesday the 11th.

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So "Monday the 10th of January 2011" ought to be replaced with "Tuesday the 11th of January"?-- Mmm.

Is that the only amendment you wish to make?-- That's correct, yeah.

COMMISSIONER: I might get you to change that on the copy of the statement that's tendered, if you wouldn't mind? Yes, the witness could change it.

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MS MELLIFONT: If the witness could change it, please, and initial it, thank you.

WITNESS: Do you want to do that now?

COMMISSIONER: Yes, please.

MS MELLIFONT: Can I just have a look, please? I tender that statement.

COMMISSIONER: Exhibit 690.

ADMITTED AND MARKED "EXHIBIT 690"

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MS MELLIFONT: It comes with exhibits. I'll come to this in some detail, but, in essence, from what you observed, do you believe the flooding was caused, at first, through stormwater drainage and backflow and then topped off by water coming over the bank of the Brisbane River?-- Yes, that's correct.

Have you prepared a chronology of photographs of the events relevant to the inundation on the 12th and 13th of January?-- Yes, I did. It is a combination of some photos I took, but other people took some of those photos too.

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Now, I'll show you a bundle of those photographs. Is that the bundle which you've prepared?-- That's right, yep.

I tender a copy of that.

COMMISSIONER: Exhibit 691.

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ADMITTED AND MARKED "EXHIBIT 691"

MS MELLIFONT: I'll just ask that the hard copy be left with the witness and we'll refer to the electronic copy as we go through evidence. Now, Ms Robertson, perhaps the most efficient way of getting through this bundle is for you to talk us through what was happening?-- Okay, all right. This is not the one with the chronology one, but-----

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We'll just find it for you?-- Yes, okay. It's not that one either.

We'll get there. It's the new bundle from this morning. While that's being located, I might just take you to some of the issues that you identify as being relevant?-- Yes.

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Did you identify as a problem with the floods that your services were in the basement?-- Yes, yes, that was a problem, yes, particularly the lift-----

Which services were in the basement which caused issues?-- There was a lift motor which was in the second basement; in fact, it touches the floor. There was - the sump pump controls are in the second basement and there's various CO2

controls as well.

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And in respect of the sump pump, how did its location affect its ability to perform?-- Well, obviously if the flood waters rise up to - you know, to that level, they can no longer work, but there was also an issue that the power was turned off by Energex.

All right. Now, did you have the ability to get hoses into the second basement for the cleaner?-- There was a problem there because it requires a bit more pressure to get the water out of the second basement, and if there had been an easy way to get the hoses down and suck it up, it would have been a lot quicker and easier.

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All right. And another problem was, I take it, that hot water was also positioned below the defined flood level?-- Yes, there was gas hot water beside the building below floor level, so we didn't have to pay for the replacement, but I guess it's a wastage because they all had to be replaced after the flood.

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And you also experienced that the sewerage systems could not cope and spilled out?-- Yes, well, there's - I've got some photographs where there was obviously dirty water coming up into the bath and into the toilets but it didn't overtop the bath, so there's clearly an issue there at the time.

And the last point before we take you back to the photographs is that the fire pumps and fire systems took some time to repair?-- Yes, they did.

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And they were also located in the basement?-- No, they were located in the - there's a driveway that goes down into the basement, so they were located at the side, but at a - below floor level. So, they ended up having to be replaced, yes.

And-----?-- See, it's an entrance to the carparks, and it was at the side there was where they were, you know-----

So, you're talking weeks or months to replace those?-- That took - that took quite a few months, yeah.

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Okay?-- I just can't remember the time, yeah.

I'm sorry?-- I can't remember exactly how long, but it was quite a long while, yeah.

All right. We'll go to these photographs now. Again, I think the most efficient way is for you to walk us through, not in a great deal of detail, but just so we can get the essence of how it was that the property was inundated?-- Yes.

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Okay. Starting on page 1?-- So, at the beginning there, it's just showing a picture of Riverside Drive, which is at the - Ferry Road sort of leads down - it goes over a bank and then there's Riverside Drive there. So, those photographs there are just showing the water rising in the river and the level it was at. So, that's what they show, yep.

Moving up?-- Yes, so, you can see the building in the distance is a building called Waters Edge where eventually the water came across the bank and the people standing there are closer to the end of where Ferry Road is. It's a bit further back from - this way, but the water never came over the bank, you know, at the end of Ferry Road there. The picture on the right there is - you can see it rises up, and the - where the people are standing, the water didn't quite get that far.

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All right. Now, the next photograph which is the grate, that actually-----?-- It's the building next door, and it's just showing - we've got a grate and sump pump that looks a bit like that - they're different sump pumps - but there's a grate like that where the pumps are located, and you can see it starting to fill up and something similar could well have been happening at this time in Aura, because the building is right next door, and you can see the water starting to flow across the floor - what's happening there. Now, these building - our building has little agricultural pipes along the wall - they're about that big - probably slightly bigger than that-----

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So about - sorry, just so we get an indication for the record, about, say, five centimetres in diameter?-- Whatever that is, yes.

All right?-- And in our basement there's some of these along a wall like that and in our garage, and they're designed to allow water to enter the basement when the hydrostatic pressure is too much around the building, because there's a well around our building. That's probably what was starting to happen.

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All right. So, you had a well around the building, the well was filling with water, and then it appeared to be the case the water was entering into the building?-- Yeah, probably jumping ahead a bit here. So there's, I think - see, at about - there's a photograph there that's about three or four in the morning where the water is coming through the vents. It's on page 1. It's a little hard to see. It's a tiny photo, but that's - beside that door there, there's vents, and water was starting to come in there. Probably started a bit earlier than that. I have a statement by the building manager who saw it, you know, a bit earlier at that time.

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All right?-- So, the water was coming - well, this is below floor level - coming through the vents are below floor level, which they shouldn't be - they're supposed to be like that - and the water was starting to come in and fill up.

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Okay. Now, on the next page we see a time line of how the water was-----?-- There is-----

-----flowing in the area?-- There is, yes.

I don't need to take you to any detail of that. Apart from page 2, bottom left - you see that on the 12th of January,

water has started to come up stormwater drains?-- Yes, the pictures on page 2 there are showing the stormwater drains coming up and you can see the one, two, three - the fourth picture in the middle row there on the right, that's the water coming out of the stormwater. It is at this point not entering the building. It is quite separate from the building. And then further up the street, you can see there's also some stormwater drains up there and the water is starting to come out of the stormwater there as well.

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And at this point in time, the river hadn't overtopped its banks at the relevant parts?-- No, as I understand it, it hadn't at that point.

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The next page please, and, again we have a-----?-- But while this is happening, you know, the water is coming in the vents at the back of the building.

Yes, all right. So, page 3, we see the middle photograph on the left-hand margin?-- Yes, and that's a clearer photo of what was happening. It was taken a bit later, but that was happening in that other photo, the small one.

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Okay. So, this is an indication of how you observed water spilling through the vents?-- Yes, and I didn't take a photo at the time, but we saw this at three or four in the morning, and that's what's happening, and there's other vents as well. That's just one set of vents there and it was starting to fill up. But there was another things happening in the basement, I think, as well.

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What other things were happening in the basement?-- Well, we talked before about the hydrostatic pressure and the water coming through the agricultural pipes was probably happening in our building because by that stage it was wet, it was knee-deep water all around two and a half sides of the building. So, it's probably what was happening as well.

We go then to page 4. We see at the bottom left-hand photograph, you refer to there being a sunken garden surrounding Aura?-- Well, a pathway with a garden beside it. It is very narrow, but you can see that there's a photograph of it there.

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Did water flow from the sunken garden into the building, do you know?-- Well, that's where it came - it was coming through the vents at that point - into the vents. So, several sets of vents along the back of the building.

Okay. Can I take you then, please, over to page 5?-- Yes.

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The middle two photographs?-- Yes.

The first one depicts water outside Aura around the stormwater drains, and the second one shows-----?-- In two places. There's two places in the street where that's happening, I think, as you can see. There's a dip in the road further up the street.

The second of the two photos shows that the entry to the basement-----?-- That's right.

-----shows water filling the basement?-- Mmm.

But no water going over the lip as yet?-- That's right. That's correct. But then very quickly that changed because you can see by the next photo it's obviously coming across the entrance by that point.

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So, in respect of the next photograph - which one are you speaking of there?-- Still on page 5.

Bottom left or bottom right?-- Sorry?

Which photograph are you speaking of?-- Sorry, on page 5, on the left, you can see looking down, between the buildings - that's between Aura and Arriva next door - that brown water there is the entrance to the driveway to the basements, and it's obviously full-----

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COMMISSIONER: Can I just ask you about the agricultural pipes you mentioned?-- Yes.

What's agricultural about it? Why are they called that? What are they for?-- I don't know. Maybe it's the wrong term. But, yeah, pipes - we'll say pipes.

And how is it-----?-- Somebody used that term to me, that's why I used it, but-----

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All right, so that's a bit of a mystery?-- Yes.

But how is it that the design is such that water comes into the building rather than - is it a design feature, I should ask you, that the water will come into the basement when the well is filling up?-- It is designed to do that because otherwise you get popping happening and I've heard of cases of that happening where, you know, concrete blocks have popped right out because of the hydrostatic pressure. So, it is designed not to have those problems that will cause damage to the building with things bursting, if you like. It's designed that way.

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All right. Thank you.

MS MELLIFONT: Can I take you please to page 6 of the photographs? And the middle left photograph taken on the 12th of January at 1.29 p.m.-----?-- Yes.

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-----with the caption reading, "A dry entrance to Queensland Orchestra Building which had no water here or in the building at any time."?-- Yes, that's at the end of the street.

All right?-- It remained dry, yeah.

So, it's farther away from the stormwater pipes, is it?--

Yes. There's the bank and then it sort of goes down slightly to in front of Aura, and the stormwater pipes are sort of there.

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Okay. Can I take you then, please, to page 8-----?-- There's a-----

Sorry, page 8?-- Yes.

And we see a photograph of a bath and a toilet. Can you describe what it was that you observed in this respect?-- Yes, well, you can see the level of the flood water - the brown mark shows that on the pedestal - but water has come up through the toilet and you can just see it's just - there's a crust of muddy water on the lip there and then there's the bath showing a similar thing - the water has come up to the bath but it hasn't overtopped the bath, and the flood waters did get - there's a level outside the bath where they've reached. So, it's just showing the - the sewerage wasn't coping.

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Right?-- But the other thing to do with the pipes, I've also been told that, with the building, its designed with very big pipes to take the water off the building, but it narrows to go to the stormwater drain and, in other words, it's designed to contain the water on site, to sort of, I guess, to manage the stormwater.

Okay. But it obviously didn't in the course of the floods - didn't cope?-----

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COMMISSIONER: Well, is it your water going out or the stormwater drains backing up that's the problem?-- The configuration of the stormwater I'm not quite sure, but these are just the things I've been told, you know, by various people that we were talking to - hydrology consultants and hydrologists - but certainly that is another - just design - the way it is designed. It is designed to contain water on the site - you know, if there's a big amount, before it - I guess to slow it down so it doesn't overwhelm the stormwater drains, I guess - that's the way - but that's stormwater.

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MS MELLIFONT: Can I take you, please, to page 10, the top two photographs; again, a photograph of toilets?-- Yes.

Which floor - sorry-----?-- Ground floor.

-----unit 4 is ground floor?-- Yes.

And is that the same unit as shown in page 8?-- There's a photograph - the one on page 11, there's some more toilets there. The photograph there on the left at the top is actually in the Aura common room toilet. That was one photo I had to take myself, and again it's showing - the pedestal, it shows the level of the flood but the water has overtopped the bowl. That's why it is muddy around the lip of the bowl.

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All right. And on page 11, there's a stormwater grate?--

Yes.

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Is that actually on Aura's property or next to it?-- That's actually in this sort of sunken area around the building and that one there on the left is on - and in the middle and on the right - is the stormwater drain that is right near the steps where you go up to the street. So, you come down the side of the - you come down the fire escape at the side of the building and then you go down into this pathway below floor level, and then this stormwater is right near the steps as you go up. So, as we - that all got filled up with knee-deep water very quickly, so we had to actually exit - when we exited - when we evacuated, we had to walk through knee-deep water to get out on to the street, and somebody fell down that drain because the force of the water pushed it up - pushed the grate off - it's very heavy, but it was the force of the water - and they fell down. They didn't get hurt, but it lifted right off.

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All right. Thank you?-- It's now secured, but at the time it was just sitting there.

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All right. So, subsequently it has been attached by some mechanism?-- Yeah, we've attached it there now, yes.

Thank you. That's the evidence of this witness?-- So, there's a big, big one. Some of the others are slightly smaller, but that was the big one. It's quite deep.

The stormwater grate is quite deep?-- Mmm, the drain is deep, yeah.

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All right, thank you. Sorry, just before we finish with asking Ms Robertson some questions, can I tender, please, PD Online contour map of the area?

COMMISSIONER: Should we look at that and find out where the apartment is?

MS MELLIFONT: Yes, please.

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COMMISSIONER: It will be Exhibit 692.

ADMITTED AND MARKED "EXHIBIT 692"

MS MELLIFONT: It's not actually been marked on the map, so what I might do is to tender at this stage the Queensland Reconstruction Authority Area which gives a better idea of where it is.

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COMMISSIONER: It's a what - Queensland Reconstruction Authority what?

MS MELLIFONT: Area.

COMMISSIONER: I see. That photograph will be Exhibit 693.

ADMITTED AND MARKED "EXHIBIT 693"

MS MELLIFONT: I'm sorry, I will start with the QRA. You can see in the bottom left there is a black Nikko rectangle that indicates the site of the Aura apartments.

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COMMISSIONER: Is that right, Ms Robertson?-- That's right, and Arriva is next store.

Thank you.

MS MELLIFONT: Now, we'll go back to the PD Online Contour?-- The orange one is the Queensland Orchestra Building that we talked about earlier.

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COMMISSIONER: Could we just go back and see that?

MS MELLIFONT: Yes. So, I'll just identify it on the area?-- Yeah, the-----

All right. So, just above the black marked box there's an orange building?-- I think it's orange. Wait a minute, I might be misleading there. It's actually - but you can see that it is at the end of the street, the Orchestra building.

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I might get you to come and point it out for us, please?-- That's better. That's better. Okay. It could be the building, yeah. It's got a carpark around it. So, yeah, that must be it, because Waters Edge is the one just opposite. No, it's the orange building. Yeah, that's better. I can see it better now.

COMMISSIONER: I can't see an orange building?-- Ah, yellow, just- yes, is there - someone is putting-----

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It's that large - I'd call that yellow, but is that what you're talking about?-- You can see the Nikko pen and then there's a yellow building down the street and on the right.

MS MELLIFONT: Can I get you, Ms Robertson, if you don't mind actually to go up to the screen and point out where you're talking about?-- Okay. Here.

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COMMISSIONER: Yes, thanks?-- And that's the carpark area there.

And then-----?-- It didn't come over the bank here at all, it came-----

And while you're up there, where's - it's Arriva, isn't it?-- It's next door. Right next door.

Thanks a lot?-- And this is an empty sort of construction site there - well, it's not empty. It's got a big empty area, but it's - there is a business there, yep.

Thank you.

MS MELLIFONT: So, for the record, you indicated that looking at the aerial to the right-hand side is where the - to the right-hand side of the black Nikko rectangle is where the Arriva apartments is?-- That's it, yeah.

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And the yellow building above the black box is the-----?-- Orchestra-----

-----Queensland Orchestra Building?-- Mmm.

Now, I will just go back to the contour - PD Online?-- Mmm.

And, of course, I was wrong. It is marked on there with a yellow circle. So, can you see in about the centre of that PD Online there's a yellow circle. Does that tend to show you that's where the-----?-- Can you make it just a bit larger - just a bit?

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COMMISSIONER: It's just a dot, isn't it?

MS MELLIFONT: Yes.

WITNESS: Okay.

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COMMISSIONER: Next to the word "West End". Is that what you're talking about?

MS MELLIFONT: Yes, to the left of the word "West End"?-- Yes, it is actually to the right of that dot - yellow dot there.

So, the apartments are to the right of the yellow dot?-- Yes.

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Thank you?-- Because it looks like the construction property is next door, I think.

All right. Thank you?-- It's a scaffolding business.

Finally, I just tender for completeness the zoning map from PD Online. I'll ask that that be handed up, please.

COMMISSIONER: Exhibit 694.

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ADMITTED AND MARKED "EXHIBIT 694"

WITNESS: See, this was taken before the flood. There's been some changes to that map.

MS MELLIFONT: The contour map?-- Well, it's showing a building where there's no building now, opposite-----

So, which building is now no longer there?-- Ah-----

Miss Associate, can we have the contour map back up, please? Sorry, did you say one of the buildings is gone?-- Yes, the - can I show it? That there, and it's - Waters Edge has been built as well and those buildings aren't shown there as well.

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All right. And so the building that's no longer there you've indicated above the word "West End", it's gone now?-- So, these have got two big buildings now, eight storey building there and there, and water came there, because I think that's flowed there - that's Duncan Street.

Ms Robertson, just so I have the record clear, on the map we are seeing at the river what looks like empty ground, as it were. Is that where Waters Edge has now been constructed?-- Yes, because that's the Queensland Orchestra building and there's Water Edge there, two big eight storey buildings, and this has been taken down, this one.

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And what was that building?-- Just, like, a big empty shed. There was a building - they were doing netball - playing netball - indoor netball.

All right. Thank you?-- That bit there.

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You can return to your seat, thank you?-- That's - this is where I think they've got approved 12 storey buildings and there's about 525 apartments in two 12 storey buildings to go in there - there and around to the side here.

Okay. So, in your - I'll just let you return to the witness-box?-- Mmm.

So, in your statement you refer to there being a 12 storey complex proposed for that?-- A couple of them, yes.

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Dudley Street?-- Duncan.

Duncan Street?-- Duncan, yeah.

And you express some concerns about the density of that apartment?-- Yes.

That's the evidence?-- Well, the height as well and the lack of car spaces.

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Thank you. That's the evidence of this witness, thank you.

COMMISSIONER: Ms Brasch?

MS BRASCH: No questions, Commissioner, thank you.

MR DUNNING: No questions, thank you, Commissioner.

MR FLANAGAN: No questions, Commissioner.

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MS O'GORMAN: No questions, Commissioner.

COMMISSIONER: Ms Mellifont?

MS MELLIFONT: Might Ms Robertson be excused, please?

COMMISSIONER: Yes, thank you very much for your time. You're excused, Ms Robertson.

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WITNESS EXCUSED

MS MELLIFONT: I recall Rory Kelly.

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RORY JOHN KELLY, RECALLED, RESWORN AND FURTHER EXAMINED:

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MS MELLIFONT: Before I ask Mr Kelly some further questions I should say, last week we were talking about the Dulux Powder Coating Factory at 1477 Ipswich Road, Rocklea. I ought to have made it clear last week that although the site was inundated in the January '11 the Commission has not received evidence that hazardous materials stored on site were not contained.

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Now, Mr Kelly, just returning to your evidence from last week. We were talking about SPP 1/03-----?-- Yes.

-----and that it includes the concept of natural hazard management areas?-- Yes.

Okay. Now, I'll very quickly revisit the last little bit of your evidence. Annexure 1 at A1.1 states that for natural hazard management areas this policy applies "for flood for those areas that involve the manufacture or storage of hazardous materials in bulk". You agree with that so far?-- Yes.

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Now, 6.3 of the policy then states that when assessing development applications for that kind of development regard has to be had to outcome one and two. You agree with that so far?-- Yes.

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Okay. Now, I took you to outcome one on the last occasion, which we have there on the screen, and I asked you which part of City Plan reflects that outcome. Now, you mentioned at that point in time section 3 of the City Plan?-- Chapter 3.

Chapter 3. Now, I want to take you, please, to chapter 3. Now, we'll start with chapter 3, page 1. We see that at heading 6. We have a designation for industrial areas?-- That wasn't the section I was referring to.

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That was not the section?-- No. If you go to the top of the page and go to page - I think I said page 6.

Yes?-- No, sorry, scroll back up again. Stop. Just there on the bottom left-hand corner of the - bottom left-hand corner it says, "generally appropriate impact-assessable development," and then it goes, if you can scroll up a little bit, sorry, keep - then it talks about, in the next column on the right-hand side, "generally inappropriate impact-assessable development," and then if you read the paragraph and the column, that's where it's specifically mentioned. If you scroll down to the next page it should be in the top left-hand column. Just there, talking about, "proposal does not result in unreasonable risk or hazard on the site or adjoining lands". That picks up the hazard issues that you're referring to and then we can from that - in addressing that question, because it's not a code or a - we can draw in other information, which would draw in this or

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draw in other - our Hazard Risk Policy or our PSP in City Plan which also picks that up and today would also pick up the Subdivision Development Guidelines which refer to that document.

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All right. So let me see if I can summarise this and you can tell me whether you agree or disagree. For an impact-assessable development the City Plan has specific criteria referable to hazardous material which picks up the concepts in SPP 1/03?-- In this part, yes.

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Okay. Some - some hazardous material aspects can be code-assessable if they come under certain quantities; correct?-- A use may be, yes.

Okay. Now, for those code-assessable ones there's nothing specific in the City Plan which picks up outcome one of State Planning Policy 1/03?-- No, I believe it's picked up in the relevant codes, primary or secondary codes that a code application would have to address. If I - if you go to chapter 6 or part 6 of that code that you're referring - you went to first in the City Plan, you'll notice there there's some primary codes and secondary codes and within those secondary codes there's references back, and I understand the Subdivision Development Guidelines, the 2008 version, specifically refers to the risk hazardous - hazard analysis and similar things are covered in our hazardous PSP.

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Right. What I want to ask you, and if you can't answer it now you might be able to do so after lunch, is, with respect to code-assessable uses for hazardous material what are the provisions in the City Plan which pick up the specific criteria in SPP 1/03 or is it the case that the City Plan doesn't pick up the specific criteria in SPP 1/03 but somehow otherwise deals with the aspect of flood and hazardous materials?-- Best I'd answer that question specifically after lunch, if I could.

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Okay. Now, I want to take you, please, to the State Planning Policy Guideline. Now, I'm going to have to take you through various parts before I get to a question on this, Mr Kelly, so bear with me. If we start by looking at page 1, paragraph 1.1, and you can see there that the guideline is to, "provide advice and information on interpreting and implementing the State Policy 1/03". Agree with that?-- Mmm-hmm.

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All right, we'll go over to page 10, and section 6 deals with development outcomes and development assessment. You agree with that?-- Yep.

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6.1 says that, "this section provides guidance on how to achieve SPP outcomes one through three". You agree with that?-- I've still got 6.1. Sorry, what - "outcomes", yeah, in the end paragraph, yes.

Okay. And if you turn over to page 14, and we look at step three, which is in 6.12?-- Mmm-hmm.

And we see that that looks at whether the development proposal is compatible. Agree with that?-- Is compatible with a natural hazard, yes.

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Okay. Now, still looking at 6.12. It refers to annexure 4 - annex 4 of the State Planning Policy, which you've just been to, and says, "Appendix 5 of this SPP Guideline includes solutions for each of the specific outcomes that can be used to help determine whether or not a development proposal is compatible with natural hazards". Following that so far?--
Mmm.

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Thank you. Going now to page 53, this is where - page 53 in general is where appendix 5 starts, and if we look at 5.5 it tells us that in the table that follows column two sets out the specific outcomes from annexure 4 of the State Planning Policy. Agree with that?-- Yes.

All right. Now, they seem to be the things that the scheme is said to have reflected?-- The planning scheme, yes.

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Yes. And at column three, "contain solutions that provide the basis for a local government to devise solutions and acceptable solutions for the planning scheme codes". You agree with that? Agree with that?-- Yes, sorry, I said "yes", sorry.

Okay. If we turn now to page 55. You see that table (a) relates to flood. I want to take you specifically to page 59 and specific outcome four, which is, "public safety and the environment are not adversely affected by the detrimental impacts of flood water on hazardous materials manufactured or stored in bulk". And now can I take you, please, to the solutions suggested in column three? It's the same page, and we've just lost it off the screen. Okay. And we see at 4.1, "The manufacture or storage in bulk of hazardous materials takes place above the DFE flood level or," 4.2, "structures used for the manufacture or storage of hazardous materials in bulk are designed to prevent the intrusion of floodwaters". Now, do you think that those solutions are the optimal solutions?-- For Dulux or for any hazardous material?

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Any hazardous materials?-- Well, it provides an alternative for someone wanting to store those so structures and manufacturer, "storage of hazardous material," the alternative, the "or", 4.2, provides an ability for them to demonstrate that if they do store it on site it doesn't get out if there's - if it's inundated-----

All right?-- -----so I would say "yes".

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Is 4.1 alone, though, too simplistic? Because if you have a flood above the DFE flood level which is not combined with storage designed to prevent the intrusion of floodwaters the risk of lack of containment presents itself. You agree?-- I agree with that statement, yes.

COMMISSIONER: So maybe that should be an "and", do you think?-- Well, the way the planning system's set up in Queensland is it's performance-based and this is providing a performance. The issue would be is if you defined a DFE and you set a level of risk that you believe is acceptable and the waters exceed that, it's just a matter of getting a bigger flood, you either remove that altogether as an option. You wouldn't have "and/or" if you're concerned that the DFE, the defined flood level is such, or the event, wasn't acceptable to that. Alternatively, in our subdivision development codes now, this is in 2003, but in 2008 we specify uses and we specify different flood events, so some of them go up to 500 year, and that's quite a substantial flood, and you could - if you had that same standard then you would have a performance solution, they wouldn't do the DFE they'd have to make sure that they enclosed them or encased them in such a way that they didn't get out in floodwaters. So you could still leave it there, you'd just have to define what industries you wanted to have - and what DFE they had to design to.

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MS MELLIFONT: This 4.1/4.2 we're looking at, that's current now?-- That's current since 2003, I understand, yes.

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Okay. Isn't it best to have "and"?-- Well, by having "and" you're requiring both of them-----

And what's the problem with that, because isn't number two - sorry, isn't number one by itself just not enough?-- It would depend on what's stored. I could see "or/and" being applicable. The other alternative would be not to have them stored there at all, but obviously it's a risk-assessment-based approach that this is offering and you look at the risks and make a call on that.

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I'll put this last proposition to you on 4.1 - no, sorry, I will just be repeating myself. What about 4.2 just by itself, is that good enough?-- No, because you want to - I think both of them together is - provide a solution. You want it below - above the DFE because some properties might be affected by other type of flooding as such and you want them up as high as possible. When I said "and/or", you don't need "or" there at all, you could have both of those as your solutions-----

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Yes?-- -----to be achieved so-----

Yes, and if you have them both together, that takes away the reliance on the human component we spoke about last week of having to get people on to the site to move things?-- But people still have to make sure those structures are waterproof and that they don't leave a valve open or they don't do something else that might otherwise impact on them so-----

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Yes. So provided you had those mechanisms in place for your sound storage, together with it being high enough, that's a better solution than a solution which looks to people having to come on site or do things on site when a flood is imminent; you'd agree with that?-- Based on what we discussed last time, yes.

Okay. Now, in so far as a solution which combines these two criteria, is there provision for such solution in the City Plan?-- If it doesn't already exist - the issue about the City Plan and taking the "and/or" out of this is that you then take away - well, you may reduce - the City Plan is required to provide acceptable solutions-----

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Yes?-- -----which this might be the acceptable solution and then a performance solution where a specific type of industry might have another particular type of need and therefore the applicant - because Brisbane City Council can't provide just one solution, like you've suggested here, we have to - the applicant has always got the ability to try or do something else alternative - as an alternative solution that achieves the same outcome.

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Yes, I understand that, but what I'm really asking, as I understand it currently the City Plan does not contain solutions which combine 4.1 and 4.2 with reference to flood and hazardous materials. Is that as you understand it?-- No, I believe I think it does have a certain - certain references to the storage of flammable and combustible liquids, or if not references other State legislation that does.

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All right. I'll ask you to have a look at that one over lunch as well?-- Yes.

And to be clear, I'm looking for criteria which reflect specifically a combined approach of 4.1 and 4.2 within the City Plan. All right, I want to now speak about the Hazard and Risk-Assessment Planning Scheme Policy. Now, what is that policy?-- That's a planning scheme policy at the rear of the City Plan that's picked up in relevant codes that may be applicable when that's called up.

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All right. Now, it's not called up for all industrial development, is it?-- I'd have to go through each of the individual codes that are picked up, whether it's code or impact, I believe it is. I believe it's in the stormwater management code, which picks it up as well. I'll just check.

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Is that something you can check now? Is that something you can check now or would you prefer to do it over lunch?-- I'll just having a quick look, I've got some bits of the City Plan here. No, I don't have a full copy of the City Plan so I'd have to go back and have a look.

All right. So we'll add that to your list of things to look at for lunch but I'll make it clear what I'm going to be asking you so that you have an opportunity to look at it. The propositions are that the Hazard and Risk Assessment Planning Scheme Policy is not called up for all industrial development, that it contains no specific reference to flooding, and I will ask you whether it ought to raise the issue of potential intrusion of floodwaters as a consideration. Is it correct, so far as you understand, that there is no natural hazard management overlay in the Brisbane City Plan?-- We - with the exception of maybe the Mt Coot-tha DCP or the local plan. I

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think that deals with fire-----

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Okay?-- -----and slope.

How does Brisbane City Council determine what falls within a natural hazard management area as that term is used in SPP 1/03?-- I couldn't tell you without referencing back to the City Plan, sorry.

All right, I'll let you have a look at that, too.

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COMMISSIONER: Is somebody making a note of all of these for the poor man?

MS MELLIFONT: I hope so.

MR DUNNING: Yes, Commissioner, somebody is.

COMMISSIONER: Yes.

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MS MELLIFONT: And just to top and tail it, I'll ask you whether certain parts of Rocklea would fall within that category as perceived by Brisbane City Council, so I'll put that on the list of things to look at?-- There is a major hazardous area in Rocklea and a buffer that's specifically referred to in the general industry area designation for part of the City Plan.

So you would perceive that Rocklea would fall within the category of natural hazard management area but you need to work out, first of all, how Brisbane City Council determined what is a natural hazard management area?-- Yes.

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Okay. Is that a convenient time for the morning break?

COMMISSIONER: Yes. We'll come back at 25 to.

THE COMMISSION ADJOURNED AT 11.21 A.M.

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THE COMMISSION RESUMED AT 11.38 A.M.

RORY JOHN KELLY, CONTINUING:

MS MELLIFONT: Can Mr Kelly be shown his fifth statement, please? Madam Commissioner, the next line of questioning relates to a Caltex Service Station at Ashover Road, Rocklea. Can I make it clear that the site flooded in '74 but did not flood in 2011. The case is being looked at simply from a systemic point of view as to hazardous materials, and it is expected that far less time will be spent in respect of this one than the previous.

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Can I start, please, by tendering a Brisbane City Council aerial map which has the location of the service station marked with a cross? I will have that shown to the witness.

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Mr Kelly, can you confirm this is a Brisbane City Council aerial photograph which marks the location of the Caltex Service Station with a cross in the centre of the page?-- Yes.

I tender that.

COMMISSIONER: That will be Exhibit 695.

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ADMITTED AND MARKED "EXHIBIT 695"

MS MELLIFONT: Now, is it your understanding, Mr Kelly, that this property did not flood in the 2011 floods?-- Yes.

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Although it came quite close?-- Yes.

Can I take you, please, to your statement? You describe in paragraph 8 how the site's land use was originally for a truck depot, store houses and a hazardous industry and that this use was approved in 1986?-- Yes.

Okay. Now, you say in paragraph 7 you have been unable to find on council's file a development approval to authorise the use of the subject land for a service station or a like use. Are you able to say - observe anything in terms of the state of the records which would indicate to you why such a document couldn't be found?-- No. I believe the records from '86 onwards are very accurate for the site, and would suggest that as a service station since 1978 and the '86 approval was under the '78 plan. The '87 plan and the 2000 plan the service station has required a development approval to operate on the site.

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So the file should have been complete? You would expect the file to have been complete?-- I would expect another file there for an application for a service station, yes.

All right. But what I'm asking you about - let me preface it by this: you have produced a number of statements and across I think almost all of those statements there has been an indication that some records have been missing. I'm interested to find out with respect to this particular matter whether there was something about the way in which council have kept their records which indicate to you a problem with the record keeping system?-- There is no problem with the record keeping system as far as I could ascertain, or even get a glint of on this particular site.

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It just happens that these documents are missing?-- What documents?

The - a document-----

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COMMISSIONER: Well, the development approval, aren't you assuming it exists?

MS MELLIFONT: I'm assuming it exists, the development approval exists, but isn't the problem with this particular file that some documents surrounding that development approval simply aren't on the file and you would expect them to be there?-- I don't - from my understanding, looking at all the files, as I was concerned that there was a service station reference on this site, and that I couldn't find one, that I don't believe an approval has been sought, so there is no documents missing.

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I see. I've misconstrued it. I am sorry. Can I take you, please, to paragraph 12 of your statement? I will just ask you to explain some of this terminology which appears to be historical terminology. You see there it reads, "The site is not affected by an interim regulation line". What is that, insofar as is relevant to flooding issues?-- The interim regulation line in relation to filling, since '87, that I know of, you are not allowed to fill below the regulation line. We identified one on the Dulux site, and basically below that area there, that's adversely affected by flooding or likely to be adversely - frequently affected by flooding, and that the filling below that line is generally not acceptable.

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Okay. You will see on the last line on that page, under the heading "Recommendation, conditions and requirement", "The applicant to be advised as follows: relevant flooding information per the attached sheet." We're speaking here about Exhibit 63 to your statement. Can you tell me whether that attached sheet is there?-- The attached sheet would be - it is referred to as folio 47, it is the second page. Folio 63 contains a - that's the sheet that's now attached there. That's the old flood reports that we used to send out with approvals.

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All right. So that's the extent of the flooding information that would have been on the file at the time?-- Yes. That's the relevant information there.

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All right, thank you. Now, since the original approval in 1986, there have been a number of approvals for extension to the use, the most recent of which is an approval for building works on 4th of June 2004, is that correct?-- Yes.

I just want to take you to some documents from that approval, and these documents will come up to you. The first is a memorandum from Ylva Bohm, the Pollution Assessment Officer. It is dated 22nd August 2003. Can I take you to the second page of that document which refers to a further information request and requires that "the applicant demonstrate that the package store and aboveground tanks will be provided above the level of a Q100 event." Now, in another one of your statements, I think the statement with respect to Mirvac, you refer to sometimes Q100 being used incorrectly interchangeably with other terms. Do you believe the description here for Q100 is properly used?-- It was - the Q100, it is likely that Ylva would have been referring to the DFL. Back in 2003 we were still using the term Q100 to describe DFL.

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DFL, all right. I just want to take you to a couple of aspects of this memo which speaks to the notion of flooding. So the next page over, please, you see under the heading "Stormwater Management Code", and it refers to there being - "the potential for spills and leaks could be increased due to loading activities of packaged flammable and combustible liquids. However, this risk can be addressed by imposing conditions for these activities." Now, I will just take you to another part and then I will ask you a question. Back to the page where it says "Further information request", in the paragraphs above that, it speaks about "The potential for contamination of stormwater could increase but with standard conditions relating to emergency procedures and bunding requirements for the storage of potential contaminants. No further upgrading of stormwater infrastructure would be required." What I wanted to ask you is how much reliance does Brisbane City Council currently place on Q100 and placing things above Q100 as being a satisfactory way to address risk for hazardous materials?-- Q100 is the defined flood level, so that's the level of risk management that we use, or that's used in this instance for the type of thing - type of chemicals or what they were storing on the site. So it is what we currently - well, what we used in 2003.

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So substantial reliance?-- Well, substantial reliance, yes.

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I will just show you a memo to see if this does support that contention. It is a filenote of Danielle Thomas, filenote number 868940. You will see in the middle of the page it says, "Applicant needs to clarify level height of tanks, ensure above the Q100 equals eight metres, land level equals 8.8 to 10 metres. Tanks should be okay." So that tends to indicate, doesn't it, that provided it is above the Q100, that it would get the tick?-- For the activity they were carrying

out on site, yes.

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Can I take you, please, to paragraph 15 of your statement? You state that you "could not find a development approval for a material change of use for an environmentally relevant activity on the file"?-- Yes.

Did you expect that the file would have an ERA application on it?-- If it was devolved to council, yes.

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Was it devolved to council?-- I understand it is not because it exceeds the 500,000 litres of underground storage that they currently have. So it is likely that it is licensed by DERM. It should be.

Given that it is not devolved to council, isn't it still a good idea for the Brisbane City Council to have a copy of the ERA on the file?-- Yes, it would be, and it might exist on one of the - well, yes.

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Okay. So you mention that in paragraph 15, "I understand, however cannot formally confirm, that DERM has issued an approval for an ERA for the subject land." Why is it that you are not able to confirm that?-- Based on the files that council had, we didn't have a copy of the - if the ERA licence had been issued.

So it is not an issue - if you rang up DERM or asked DERM if there was an ERA, you could get it off them?-- I could chase it up, yes.

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COMMISSIONER: Where did you get your understanding from?-- That the - the flammable combustible liquid licence identifies the chemicals or the package groups that are stored on the site, and when you add those up they exceed the requirements that council licence it under the ERA - it actually is greater than the 500,000 cubic litres - and from that I inferred that the ERA, if there is one, is issued by DERM, not council.

Okay. So you have got absolutely no information about what DERM has actually done-----?-- No, I haven't sought that.

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-----you are just assuming from the fact-----?-- That the-----

-----it would fall within the province that they have. I see.

MS MELLIFONT: Can you suggest some processes or procedures that council could put in place to ensure that it does have on its file ERAs that have been under the province of DERM? What could you do?-- Well, DERM would have to - in our electronic world that council now operates in, it wouldn't be anything for DERM, when they issue a licence, to advise the local government authority in which the licence is issued, Brisbane or wherever, and send an electronic copy to a designated council officer, be it the CEO, or for attachment on to a file.

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And do you know whether there are protocols currently in place-----?-- No, I do not.

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-----for the exchange of that information?-- No, I do not.

Who would know that? Whose province would it be to know that?-- Probably DERM or the H - hazardous industry - the old CHEM Unit. I am not too sure what they are called now.

But who within Brisbane City Council - whose province would it be in terms of exchange of information with DERM on this issue?-- I couldn't tell you.

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COMMISSIONER: What about the other way around? Does the council let DERM know when it has approved-----?-- I understand we do but I couldn't - I would have to chase that up too.

MS MELLIFONT: You referred to a flammable and combustible liquids licence. Now, your statement refers to that having been issued on 2 September 2011?-- Yes.

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So obviously very recently. Was the impetus for that licence anything arising out of the floods?-- Not that I am aware of, no.

Do you know why there was the need to issue that licence in September '11?-- I believe it was applied for because of the change of use - user on the site, and that the old occupier of the licence, from what I gleaned from the file, had finished with the site, someone else had acquired the site and wanted to take over the licence and applied to council to get a current hazardous - flammable combustible liquid licence for what they were doing on the site. It is just an ordinary course of transferring one licence owner to another licence owner.

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Okay. Mr Kelly, Ms Kefford will now ask you questions in respect of the Yeronga development.

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MS KEFFORD: Mr Kelly, the Yeronga development is dealt within your seventh statement, so you might wish to have a copy of that with you, and that statement relates to development of an aged care accommodation facility at 5 and 15 Cansdale Street, Yeronga. Can I firstly just take you to a few PD Online maps, that are exhibits, to help orient us? If we could bring up on the screen Exhibit 564? Do you recognise this as a PD Online map with aerial photography overlaid?-- It appears to be, yes.

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And we can see the site of the Yeronga retirement village is that depicted with hatching, is that correct?-- Yeah, the hatching is not part of iBimap. Someone's done that manually, I'd say.

Yes. And do you understand that hatching, though, to be over what is the site of the Yeronga Retirement Village?-- Yes.

The site has frontage to two streets?-- Yes.

They are Cansdale Street and Venner Road?-- Yes.

If we could bring up incident 565? This is a PD Online map showing the area classifications. Once again there is hatching that has been hand drawn on to the PD Online but can you see the Yeronga Retirement Village site there-----?-- Yes.

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-----in blue? And it is marked in the middle of the site with the letters LI. Does that indicate that the site is designated light industry under the City Plan?-- Yes.

And towards the eastern end of the land we see an area marked with horizontal lines. What does that depict?-- It is likely to predict the waterway corridor but it could also be a - I would have to find out what layers you had turned on, but it seems to show the waterway corridor, and the lines might also be that there was a waterway vegetation in there as well, too.

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Does the legend across to the side generally give you any indication of what layers were turned on?-- No, that seems to be generic. There is somewhere else on iBimap that shows you the layers that are activated. Down the bottom, I think, sometimes, if you can scroll down a bit. A bit more. No, see, that's an extract out of one. So someone's got the table - that table normally appears separately. Someone has put the two of them together, or it would appear that's what they've done.

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In any event, it could either depict waterways or waterway vegetation?-- It is definitely the waterway corridor because the blue line there shows the centre line of the waterway corridor in the middle of that, or why I say that it might be something else is that there is a little wetland marking just above the blue in the yellow. It is sort of a reverse C, you can see there. It has got the little grasses in there. That tends to come up when the local asset - the Natural Asset Local Laws theme is also triggered. It is the old VPOs. But I'd - that corridor is definitely a waterway corridor.

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Well, it does appear from the legend across to the side that wetlands-----?-- Yep.

-----is also marked on this map. You would accept that?-- Yes.

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If we could next bring up Exhibit 566? Do you recognise this as a Queensland Reconstruction Authority aerial photograph showing the extent of the flood in 2011?-- It appears to be, yes.

We can see the site marked on this exhibit with cross-hatching

just to the left of the orange line that runs from the top of the page to the middle of the page?-- Yes.

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Would you accept that the site appears to be separated from the Brisbane River only by some form of park or sporting fields?-- Yes.

Do you know if that is the case, whether it is park or sporting fields?-- There is the Salvador Soccer Club directly immediately to the north, then there is the AFL centre, between that, and then on the other side of the road there is the Somerville House rowing shed, and then there is the Brisbane River directly north.

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In fact, it looks like that apart from some large buildings to the west, the site is surrounded by parklands or sporting fields, is that correct?-- Yes.

What are the buildings across the road, effectively, to the west?-- I believe one of them is Moxon Timbers, and the other one directly immediate to the west is some form of warehouse - industrial - a few industrial sheds.

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Industrial uses?-- Uh-huh.

It would appear from this exhibit that the site flooded during the 2011 floods, and that accords with what you tell us at paragraph 3 of your seventh statement, doesn't it? You just have to answer?-- Yes, sorry.

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We can also see from that aerial photograph - if we can bring that back up - that both Cansdale Street and Venner Road flooded as well, didn't they?-- Yes.

If we could go to your statement, at paragraph 5 you tell us that the first development application for aged care accommodation was lodged in April 2005, and you describe it in brackets as the primary development approval. What do you mean by that?-- Well, it was for the preliminary approval which set up the subsequent stages for development on that site. It is akin to a rezoning application, I suppose, talking about the impact that it had on that particular land use on the site, and it changed the level of assessment for subsequent applications.

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So would you expect that the most rigorous assessment of the proposal would occur at this stage when a development application was made for the preliminary approval overriding the scheme?-- Yes.

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And that application - this first application was impact assessable?-- Yes.

And it is fair to say that the preliminary approval overriding the planning scheme, I think you mentioned, sought to change the level of assessment so that future applications would be code assessable?-- Yes.

That's a lower level of assessment, isn't it, the code assessable?-- No, it just removes the need for public advertising. It still has assessment against relevant codes, as such, that is applicable to that development. 1

Well, a code assessable application doesn't get assessed as extensively against the City Plan as an impact assessable application, does it?-- To the extent that it is not against the whole of the plan, yes. 10

So a code - in that respect, a code assessable application is a lower level of assessment?-- In relation to the areas it has to cover, yes, in the City Plan, but it still picks up relevant codes that are applicable to that type of development.

Yes, but the provisions of City Plan against which a code assessable application is assessed - compared to an impact assessable application, the code assessable application has a much more confined assessment?-- Yes, there is less codes. 20

At paragraphs 9 and 10 of your statement you tell us that the potential for flooding issues to arise was identified during the prelodgement process. So you would accept that was an issue which council was undoubtedly alive to with respect to this site?-- Yes.

If we could move now to some of the documents lodged as part of the first application, and if I could take you firstly to RJK106 to your statement. It is in - do you have the hard copy there - no? It will be brought up on the screen. Do you recognise this as the development application report, the letter that was lodged as part of the development application?-- It appears to be, yes. 30

And if we could go to appendix H to the development application, which is the hydraulic assessment. It is - I am not sure if it assists the associate to know that there is a Brisbane City Council number on the bottom of the corner of 061.4852?-- Excuse me, which document - attachment was that? 40

106?-- Yes.

It was appendix H. We seem to have it up on the screen now. If I could go over three pages to the introduction, there is a few pertinent matters in appendix H that I wish to take you to before asking you a series of questions. Firstly, do you see in the introduction that in the second paragraph it states that "the report considers the potential implications associated with the flooding of the site and available opportunities for the development to proceed without impacting on flood levels"?-- Yes. 50

And do you see in the final paragraph on that page that a similar statement is made in that final paragraph?-- Yes.

And if we go back up to the third paragraph on that page, can you see there that it says that "the site is affected by both

local flooding and backwater flooding from the Brisbane River"?-- Yes.

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Then if I could ask you to have a look on the next page over, you will see the page is headed "Applicable flood levels", and towards the bottom half of the page there is a paragraph above table 2. Firstly, if I could ask you about table 2, do you know whether the levels stated in table 2 are in fact based on table B2.2.1 of the subdivision and development guidelines as that paragraph suggests?-- I would take it that that was correct. I can check, if you like.

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You are not-----?-- I would have to-----

-----particularly familiar with them?-- No, I - those subdivision development guidelines aren't used anymore, so it is not something I reference, but I do have a copy on me.

If you could check that for us, that would be helpful.

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What was the relevance of the subdivision and development guidelines to this development application?-- They have - there is a section on flooding in there and that sets the standards and what assessments are required to demonstrate that you won't have an impact both on the use for the site, but also on upstream, downstream and adjacent properties in relation to localised flooding, or from Brisbane River, or the sources of flooding that that has. So it was quite significant.

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Is it correct to say that the subdivision and development guidelines are only called up as - by acceptable solutions in the Brisbane City Plan?-- It is picked up largely in the stormwater code, which is a secondary code, or a code that would have been addressed here, and, yes, it deals with secondary and acceptable solutions and performance solutions.

Sorry, does the calling up of the subdivision development guidelines occur only in the acceptable solution or does it occur also in the performance criteria within that stormwater management code?-- Depending on what your primary code is, it is in the stormwater - for this application, because it was impact, a stormwater code is a primary code and it is picked up in there as part of reference to flooding.

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When you say it is picked up in the Stormwater Management Code, what do you mean by that?-- Well, it is the acceptable solutions that you have to achieve. It sets the standards or the performance criteria if you want to - you reference it if you want to not meet those acceptable standards - acceptable solutions, sorry. So, an acceptable solution for it would be the levels stated in the subdivision and development guidelines at the time.

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So, I was correct then when I suggested that it is called up - it's referenced only in the Stormwater Management Code in an acceptable solution?-- Yes.

It's not referenced specifically in the performance criteria?-- The way the plan works is that if you don't meet the acceptable solution, you go to the performance solution, and we'd go back to the code to find out what they're not performing against - sorry, the subdivision guidelines - and if there's something in those guidelines that assists us, like a risk management or a hydraulic report, that's when - so, we go back to that document anyway even if they don't meet an acceptable level, say, for habitable floor.

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In terms of where the words "subdivision and development guidelines" appear within the Stormwater Management Code, those words only appear in an acceptable solution within that code; is that correct?-- I'd have to check, but I - you might be correct.

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And I'll allow you to check that, but assume that's correct, do you accept that an acceptable solution is only one means of complying with performance criteria?-- Yes.

And that if a developer elects not to comply with the subdivision development guidelines, they can demonstrate compliance with the performance criteria in other ways?-- Yes, that's the way the City Plan works.

And when determining whether the other means relied on to demonstrate compliance with the performance criteria do, in fact, achieve compliance, the performance criteria ought not be construed by reference to the acceptable solution?-- Yes.

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And so if a developer elects not to demonstrate compliance by use of the acceptable solution, but, instead, adopts another means of compliance, there would, on my scenario - where the only reference to those words "subdivision and development guidelines" is within the acceptable solution - there would be no reason to go to the subdivision and development guidelines?-- Well, in stepping outside the acceptable solution and going to a performance solution in trying to achieve that and what the intent is for the area, they would have to have a better standard or a higher standard or demonstrate to us that our standard is still being achieved, and we would go back to the subdivision development guidelines because that's the standard they're to achieve. So, the subdivision development guidelines is based on risk

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management, they would have to come back and show us how that risk management could actually work. We'd have to be satisfied. Just because they go to a performance solution doesn't mean the Brisbane City Council would accept that either way. 1

I thought you accepted earlier the proposition that I put to you that in construing a performance criteria, it should not be construed by reference to the acceptable solution?-- No, I didn't say the acceptable solution. I said the subdivision - the subdivision development guidelines, while they have an acceptable solution that's picked up in the Stormwater Code, still has a whole lot of other information on doing hydraulic reports or risk management - risk assessments associated with that. We go back to that to have a look at background. So, we're not accepting the acceptable solutions, we're looking at the basis behind how the subdivision development guideline is arrived at and whether they've achieved the same intent. There's more information in the subdivision development guidelines than there is in an acceptable solution in a code. So, we go back to that reference. 10 20

And that is obviously the practice that the Council adopts - this practice that you've just described of going back to the subdivision and development guidelines and looking at the document more broadly?-- Yes.

Yes, thank you. In terms of that practice, though, that practice isn't reflected in the words of City Plan by reference to - sorry, by inclusion of the words "subdivision and development guidelines" anywhere in the performance criteria; is that a fair summary?-- Yes. 30

Do you think it would be advisable to include reference to the subdivision and development guidelines in the performance criteria?-- Because - look, the practice is that we would do it - we would go back to that set of standards in lieu of another set of standards being adopted. I would say that to go and accept a performance solution that didn't look at at least your current standards and the documents that are supporting the City Plan would suggest that that whole code needs to be rewritten. 40

I'm not sure that you answered my question?-- I'm sorry.

Do you agree that it would be advisable to make reference to the subdivision and development guidelines in the performance criteria so that the practice adopted by Council could be picked up in a formal sense?-- I don't - I would say that I'm not sure, because we do it anyway. It's a standard, so putting in the subdivision development guidelines limits your options then as a performance solution achieving maybe something else if the subdivision development guidelines have been outdated in relation to some other piece of legislation that we could go to. So, you limit - you channel what you could look at by putting in a performance solution, as opposed to leaving a broad statement which is what I understand the City Plan is required to do. 50

COMMISSIONER: But you say one the one hand that's what you do do-----?-- We do do that, but in some instances, particularly of flooding or air quality, there are better standards out there that we can go to that provide a more up-to-date approach because the City Plan hasn't been updated yet. But to put a standard in there, you are then setting your standard back to a performance solution, back to an old set of documents - a document that may not have the best and most up-to-date information if someone is trying to seek a performance solution.

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What's the difficulty about identifying the best, most up-to-date standard and referring to it then?-- Because it takes a long time to change the City Plan, and if you have a broad statement, it allows people to get that information and we can accept it or not accept it, depending on what the actual issue is. So, for flooding, we've had to do something else to amend the City Plan to bring it up to date, but, if we didn't, and we had that standard in there, it takes - it can take several - it can take up to 18 months to amend the City Plan, by the time you go through the process, and that would mean that we're stuck with an old set of standards, because the applicants would come back and say, "Well, that's your performance solution, that set of standards, not something else." We're effectively going back to the acceptable solutions if we do do that anyway, I would think.

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MS KEFFORD: You obviously consider the practice to be a beneficial one - the practice of looking at the subdivision and development guidelines when determining compliance with the performance criteria. You consider that to be a beneficial practice?-- Yes.

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How is that - is there any way in which the practice - any way of ensuring that the practice is adopted across the whole of Council? Is there a checklist or the like?-- No. If you assume that the administration - or a current Council has adopted a set of standards in the subdivision development guidelines, they want to know how much you've exceeded those by. If you go for a performance solution, and - so that's how you reference it back - and then, in there, you look at how you can still achieve an alternative solution for diverting from what is the acceptable solution in the code.

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You accepted earlier, though, and I'll go back to this again, that a performance criteria ought not be construed by reference to the acceptable solution-----

MR DUNNING: Well, I object to this question. Commissioner, I've been reluctant to take any objection to this, but, with respect, Mr Kelly is being pressed with answers that are not really consistent with what he's given. He's been asked a number of times and consistently said, "Frankly, a little unsurprisingly, that if you don't meet the acceptable criteria and you wish to be assessed according to a performance criteria, any meaningful assessment of your performance criteria must be referable to and be measured against what is

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an acceptable criteria. To then be asked repeatedly these questions about, "Well, what is your practice?", doesn't fairly reflect, frankly, the evidence that he's consistently given on a topic he's now being questioned on - essentially on one or two of the same questions now for about 15 minutes.

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COMMISSIONER: I actually thought he did at the outset agree with that proposition but then moved away from it in the course of his evidence, but I don't know. I don't want to waste time on something that may not be all that productive. Is there any point in-----

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MS KEFFORD: No, Commissioner, the reason I'm pursuing the point is that the case law in the Planning and Environment Court at this stage suggests that a performance criteria ought not be construed by reference to an acceptable solution-----

COMMISSIONER: That probably makes sense, but isn't it-----

MS KEFFORD: Yes, and if there's a practice that is a useful practice, exploring whether that practice ought somehow be put in a checklist or the like so that it's adopted uniformly across the Council so that other officers within the Council don't take different views in light of the case law-----

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COMMISSIONER: Okay, just ask whether a checklist would be useful. Mr Kelly has already said there isn't one. I don't think you've yet asked him whether it would be a good idea. Ask him now.

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MS KEFFORD: Yes. Mr Kelly, in your opinion, would a checklist be a good idea to ensure that all of Council officers adopt the same practice?-- No.

Why not?-- Because the plan - you would need a checklist for each performance solution, maybe, depending on what you're actually seeking, and that when an officer goes from what is an acceptable solution to a performance solution, they go back and look at it carefully against the criteria in either the planning scheme policies or the other documents that - the subdivision development guidelines - and - or other officers do - and it provides an ability to move and address it, not because you've ticked a box, but because there's a justifiable cause - a justifiable reason, sorry, for departing from what would otherwise be an acceptable solution.

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You say the officers do this. How, for example, does a new officer - is there training, or something, that assists any new officers in understanding that this is the practice followed by existing officers such as yourself?-- Particularly with regard to the newer graduates, they go through on-the-job training with a senior officer, and they have to justify to the senior officer why they've sought a performance solution or why the applicant has sought a performance solution and what the applicant has used to demonstrate the performance solution, and whether its creditable and stands the test.

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So, does this on-the-job training ensure that all officers are adopting this same practice - beneficial practice across the board?-- Yes, because at the end of the day the delegate has got to sign it off and they've got to be accepted - they've got to be - at the end of the day, the delegate signs off the application, he signs off - or she signs off where the performance solution has been sought and what the justifiable grounds are for signing that off. Having a checklist won't do anything because it's a case-by-case basis - each application is assessed on its merits, particularly with regard to the circumstances they find themselves in, the application is lodged over, and to limit it down to, "Look, it's in the checklist", or, "It's not in the checklist" defeats the purpose of having a City Plan that's performance based.

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So, in your opinion, is it fair to say that you consider the on-the-job training ensures that this beneficial practice is adopted across the board in Brisbane?-- On-the-job training is the one way we do it at the moment in DA.

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Is there any other means of ensuring that the beneficial practice is followed, in your opinion?-- We have SOPs as well, too - Standard Operating Procedures - with practices in there. There could be an SOP for it, I'm not too sure.

One might exist?-- One might exist.

And you're just not sure?-- I'm not too sure.

Could you look that out for us as to whether one exists?-- I'll put it on the list.

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COMMISSIONER: What do your Standard Operating Procedures look like. Do you have a book?-- They're electronic now. We keep our - because we've gone from a paper-based development assessment process to electronic, there are an awful lot of electronic SOPs for doing electronic assessment.

And are they searchable? How do you manage it?-- They are searchable. We have a DA intranet site which they're put up there. There's a weekly review of what SOPs have changed. I would think that you would be left back to common sense because the delegate would query the assessment officer, "Why have you done this? Why have you done that?" They do it at the information request stage. If the applicant has not provided enough demonstration, there are some instances where we won't accept an alternative solution - you know, flooding habitable floor levels, it's a pretty strong case to argue why we would divert from that standard - and I think the development industry generally knows there are some things that can change and there are some things that don't - the Council won't move away from - even though that's contrary to the way the performance-based planning scheme works.

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MS KEFFORD: If I could direct your attention back to Table 2 in that - that's on the screen, and just ask if you could help us with a few of the terms in that table. There's reference to design levels to be achieved for allotment fill. Do you

know what that's a reference to?-- If you had a vacant lot and you were just filling it and someone were to come along and buy that lot and put a house on, what it's saying is because you're creating a lot, we don't want to deal with the filling issue later on when mum and dad or the first home buyer goes and buys that and finds that they have got to fill the allotment to a certain level to achieve flood immunity, because there are other things associated off that site, before we subdivide that block, we look at the impact of fill up to the 100 year ARI plus 300.

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And is that fill just within the boundaries of the allotment?-- Yeah, that's the fill - yeah, you're not allowed to fill outside the application you make.

And the reference to habitable floor, is that a reference to a design level for the minimum floor level on which a bedroom or a living area can be built?-- For a habitable room-----

Habitable room?-- -----as defined, can be built. So, it includes a number of other things other than-----

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And the non-habitable areas, what does that refer to?-- They're referring to, for example - non-habitable rooms is defined under the various areas, both in the City Plan and in the building act, and non-habitable generally includes, say, the car parking area, it might include closet, or includes the bathroom, hallway.

And the final design level mentioned in that table is car parking, and we see in that note underneath the table that it says that, "Basement car parks can be set below the nominated level provided that suitably waterproofed perimeter walls, air vents and entry/exit ramps at the carpark entrance are above the 100 year ARI flood level for all sources, including the Brisbane River."?-- Mmm.

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There's obviously no detail in that table with respect to how these levels will be achieved with no worsening off the site, is there?-- No, because that's just setting the design levels.

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Right. And the design levels in Table 2 don't include a design level for the roads from which the site gets accessed, do they?-- No, that's in a separate table in the subdivision development guidelines.

And if we turn over to the next page, which is headed "Development of the Site", we see that in the second paragraph the developer posed a solution of widening of the existing channel and extension of the channel to Hyde Road, and in the final paragraph it's said that, "Detailed modelling will be required to define the extent of the channel required and the revegetation works possible within the channel." The report wasn't accompanied by any detailed modelling data, was it?-- Not that I'm aware of, but it may have, but they would have - I understand from my reading of the file there was an analysis and they provided it as a hard copy.

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Following an information request?-- They provided more information because they used a different model than what we, Council, uses to look at its assessment, so they did an interpretation and I understand they used XStorm whereas we use Mikel0 and HECSRAS which are two models that are identified in the Subdivision Development Design Code.

On the next page is the conclusion, and if I could just get you to read the final paragraph to yourself. The report contained minimal detail about the measures proposed to deal with flooding, didn't it, at this point in time?-- At this point in time, yeah.

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And the City Plan contains a number of performance criteria with respect to flooding?-- Yes.

The application did not specifically address those criteria at this point in time?-- Sufficiently, no.

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Is this hydraulic report typical of the standard of report received by the Council with development applications?-- It depends on how much discussion they've had. In this particular instance, they use a different report, and I would say that some firms use a different report and it takes a little bit longer to get - to make a determination. From my experience, where people don't use Council's models - i.e., they plug their information into a Council model and then use that data to assess it - it tends to take longer, or we tend to go back and forth a lot.

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And when you talk about going back and forth, is that through the information request process?-- Information request, further issues, meetings held to try to work out how their assessment of flooding equates to Council's assessment of flooding.

So, where insufficient or where little information is provided in the development application as originally made with respect to flooding, when flooding is known to be an issue for the site, the Council tests that issue and seeks further information?-- Well, if they haven't demonstrated the acceptable solutions, yes, we definitely do.

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So, you wouldn't expect a report that is lacking in detail like this one would be sufficient to satisfy the Council that a development ought be approved on a site known to have flooding issues?-- I don't know how deficient this was, only that there was a lot of questions asked and that we went back and - to the applicant - to ask them to demonstrate. The paragraph you refer to is that in this instance the applicant was wanting to relocate a waterway channel because it impacted more on their site. We had a local Stormwater Management Plan for this area which looks at specifically what we were doing, and if they adjusted it it would impact on upstream properties or where we had done the local Stormwater Management Plan with details, so, in relation to this, their lack of information was because it conflicted with what we had previously planned

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for this site.

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Now, the application was referred to a senior engineering officer for Development Assessment South, Bruce McArthur; is that him?-- I understand that, yes.

Is that typical process?-- Yeah, it would normally indicate - sorry, as part of the daily team meeting process where we assign work, applications and assessments, it would have gone to an engineering officer for referral back to TST.

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And who participates in the daily team meeting process?-- Senior planning officers and sometimes senior engineers.

And is there some criteria that are used to assist in determining whether an application ought be referred to a senior engineering officer or-----?-- Well, no, all developments applications, largely, where there is an engineering issue, is referred to an engineering officer to carry out an assessment of the engineering issues, as they are allocated to other people within the multidisciplinary team to carry out their specialist assessment. This application had a hydraulic report, so it would have been - we don't assess that. If it's a significant report like this proposal was, it will go to our specialist hydraulic or our specialist traffic or our other specialist areas to actually have a look at detailed assessment.

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And so the senior engineering officer, Mr McArthur, do you know whether he has special expertise in hydraulic assessment?-- I understand he used to work for the Works Department and his name appears on some other files that I've made statements for, so I understand he had a knowledge of what - how Council assesses it, but he wouldn't have assessed the hydraulic report, he would have referred it to the technical specialist person for that assessment because of the size of the hydraulic information.

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And is there an internal process that deals with that further onforwarding of the file - some mechanism that ensures that a senior engineering officer like Mr McArthur would onforward it to someone with specialist knowledge?-- I'm not too sure if it's written down, but it's well known because that's why we have those specialists in the technical specialist team area and they provide advice to the officers on how assessments are going and Bruce would be involved with that ongoing assessment.

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So if you had a new employee who was brought in in a senior engineering officer role you'd expect that to be part of the training for that officer, is it?-- It would be definitely of the training.

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Definitely part of the training. Is it within a training manual?-- I couldn't tell you, sorry.

Do you think it would be wise to have it in the training manual to ensure these processes aren't missed?-- The - what would be in there would be what - the development assessment branch is broken into a number of functions and within those functions the new trainee would know what those functions are, so when it came to a hydraulic report they're likely to say, "Well, I don't have the confidence to assess this but I do know that this technical specialist team area looks at those issues and I'd speak to my senior officer, my principal engineer and he would refer it"-----

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So there's a - from your answer it would seem that there's a record somewhere of the hierarchy of the teams and the people and skills available within the teams, would that be-----?-- Yes, and everyone knows what they are, it's part of their induction into council, into the team.

20

Thank you. If we could go now to attachment 113 to your statement, and that appears to be an internal council memorandum from Geoff Ahmet to Roger Greenway. You describe - sorry, it describes Mr Ahmet as a "program officer". What does that role entail?-- A "program officer" is a term they use in the city planning branch, in the strategic planning branch as opposed to development assessment, and it's just a term they use to identify the roles and undertakings that that officer does.

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And what does that officer do?-- I understood Geoff at this time was co-ordinating responses. Because this application sought preliminary approval it's a - well, it's a usual requirement that we would refer it up to city planning and then city planning or strategic branch would coordinate a response from other areas of council in relation to the development, so there would be other areas - policy areas of council looking at this because they were proposing to change the area designation land uses through the preliminary approval process.

40

So would it be fair to say that the program officer role ensures that development applications are referred to relevant specialties for consideration?-- They have a - they have a referral area where they - if it's got to do with stormwater, they will refer it to that area, or the branch in council that deals with stormwater issues in a policy area, so, yes.

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And in terms of the divisions listed in the first paragraph of that memorandum-----?-- Yes.

-----is it the Water Resources division that deals with hydraulic issues?-- Yes.

And so then when we see a little further down the page the heading of "Water Resources", is it fair to assume that that is the response from that division back to the officer who's in control of getting all the comments back with respect to the development application?-- Yes. Can I just clarify another point? You referred to water issues. Water Resources deals with the flooding but Pollution Prevention may deal with quality of water being discharged off the site or into a waterway, and Parks and Environment would deal with the ecology issues associated with a waterway. So it would be covered with three areas but flooding specifically would be dealt with by Water Resources.

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And in terms of flooding, does Water Resources deal only with flooding as it impacts on the site and properties upstream and downstream, or - sorry, I'll withdraw that question. Does Water Resources deal with the issue of access to the site and potential flooding of roads cutting access to the site----?-- That would be part of - that would be part of what they did, together with Traffic and Transport.

20

And how is that responsibility for that consideration divided between Water Resources and Traffic and Transport division?-- Water Resources help construct the Subdivision and Development Guidelines and that's referenced in there in relation to the flood immunity for various roads. Traffic and Transport would work out whether alterations could be done to those roads to maybe improve the flood level or not. Water Resources would only deal with the water issue.

30

And in terms of - you made reference to the fact that the Subdivision and Development Guidelines contain criteria in relation to this issue. Do you know whether those criteria within the Subdivision and Development Guidelines are specifically called up or referenced in Brisbane City Plan?-- Yeah, that's part of the stormwater. You come back to achieving - they meet the certain levels. It's got to do with the hazardous issues associated with the stormwater as well, too, which is referenced in another performance - acceptable solution performance criteria in those - that code, I understand.

40

And if we just, while we have that on the screen, scroll down and look at the response from Water Resources, we see that it wasn't a favourable response at this stage?-- No.

Now, following that memorandum an information request was issued and we can see that at attachment 114 to your statement. And on the third page of that information request we see, at paragraph 2, that the applicant was requested to provide further information to demonstrate that the proposal complies with several sections of the stormwater management code. None of those requests, though, relate to how access to and from the site might be obtained during times of flood, do they?-- I'd have to look at the individual references but - so I can't answer that one, sorry - question.

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Well, I think you had a copy of the Stormwater Management Code there before, did you want time to have a look at-----?-- Performance Criteria 3, the third item-----

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Yes?-- -----deals with that performance criteria, as I read it out of the stormwater code, because we're - "road access is provided in accordance with the flood immunity levels identified in the Council's Subdivision and Development Guidelines," so that's where it's picked up.

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Right, but when we look at the request in relation to Performance Criteria P3 the request in paragraph 2(iii) asks that the, "applicant demonstrate that the proposal complies with that criteria and that the development design must reduce property damage and where applicable ensure public safety by ensuring the development levels are set about the relevant design flood level or storm surge level". That doesn't appear to query of the applicant at all anything in relation to flood immune access, does it?-- Well, someone may have summarised it there but what it says in that information request, "demonstrate that the proposal complies with section 4.2 P3 of the Stormwater Management Code," full stop. The fact that they've gone on and described it a little bit more doesn't remove the fact that the applicant would go back, look at P3, and it indicates quite clearly there, "must reduce property damage, provide flood immune access to the property," so they would look at it in addressing P3 properly of the Stormwater Management Code and therefore deal with access.

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Okay. So - now, P3 obviously also deals with the matters the subject of the sentence - the final sentence in that paragraph 2(iii), doesn't it?-- No.

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Sorry, P3 does not also deal-----?-- Sorry. What was your question again?

I apologise. Paragraph - the final sentence in paragraph 2(iii) of the information request, the matters dealt with there also come from Performance Criteria P3, don't they?

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COMMISSIONER: Have you got, "to reduce property damage," and, "ensure public"-----?-- Yes.

MS KEFFORD: Yes-----?-- That's in the performance criteria, sorry, yes.

But from your answer earlier I take it that you would be hopeful that the applicant would nevertheless address the whole of Performance Criteria P3 and not just that part of P3 which is referred to in the sentence-----?-- No, because we've asked them to comply with that section in whole, not just acceptable solution 3.1, which just deals with those levels, levels set relevant to the flood level.

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COMMISSIONER: Probably more to the point, did they? Did they tell you how they were going to make sure access routes-----?-- I would have to go back and have a look. I understand we did look at it but I - that will have been

assessed by our hydraulic person.

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MS KEFFORD: Well, in terms of the documents attached to your statement, none of those documents address flood immune access at all?-- It may have been that they looked at levels, said that was okay, or it met the acceptable solutions in that code at the time, and continued with their assessment. We generally don't ask the applicant, where we have the information, to reiterate a request.

10

COMMISSIONER: But presumably, then, the council has a record somewhere that says, "Well, we've looked at the flood access question and here's how it's all right," or not all right?-- I would say so, yes, or the engineer's done it and not recorded it. We can go back and have a look today and see if we complied with it. If it did they may not have recorded it in their notes.

That seems extraordinary, that a question as important as that would not be - the answer to it wouldn't be recorded?-- But if it more than complies they would - it would be - yes, it's part of their overall recommendation, they might say, yes, it meets all the requirements without listing out and detailing every one.

20

MS KEFFORD: Well, the Subdivision and Development Guidelines in terms of flood immune access, are you aware whether they require for residential development flood immune access of Q100?-- I don't believe for an existing site they do. Excuse me, sorry. In 2000 and - in the November 2000 version, that was applicable at the time, section 2.3, Road Trafficability in the Subdivision and Development Guidelines, it looks at minimum design levels for the crown of the road. It also looks at flood immunity levels for existing dedicated road. So if you were doing new roads you would have certain levels but if were doing existing roads it has other levels. For a local access, which is likely to be Venner Road, 'cause it only accesses it's 20 year ARI from the Brisbane River, 20 year ARI from a creek or waterway, which is the two sources of flood that we've looked at, and if you take overland flow it's 50 year ARI, so the road would have to be above that. Neighbourhood access would be Cansdale Street and from all those sources it's 50 year ARI.

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COMMISSIONER: Even those the uses are changing in an area, that's not factored in in any way?-- That's where you get to a performance solution. The roads are existing and sometimes you can't raise road levels because you create other problems, so we look at how you could get out of that site, whether there's more than one access, for argument's sake, and the time it took for the water to get up to there so you could properly evacuate the building, there was enough time for - based on the warnings that are available, and that's why localised overland flow paths are higher because you have less time to evacuate a building than, say, from Brisbane River or creek flooding.

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MS KEFFORD: This site was designated, and still is designated, as light industry, and for new roads in light industry developments Q20 or Q50 are acceptable; are they not?-- New roads 50 year ARI, yes.

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Q50 is acceptable. So when the use is changing from an industrial use where Q50 road level is acceptable to a residential use, does part of the consideration as to the acceptability of the change of use involve consideration of the levels of the existing road network and the fact that the criteria won't require those existing roads to be raised?-- Yeah, well, that's part of the management - risk management approach that's picked up in the Subdivision and Development Guidelines, I understand.

10

It's picked up - is it picked up only in the Subdivision and Development Guidelines?-- I know where that - that's where it's referenced----

Yes?-- -----I couldn't tell you if it's somewhere else in the City Plan.

20

How is it picked up as a consideration for a proposal for a change of use like this proposal?-- Back in 2000 it didn't have specific uses referenced into it. In the 2008 version, they now have a list of other users and different DFLs or DFEs for those particular uses, and aged care has a higher flood immunity level now, or hospital does, than what existed at the time this was going through, the application was considered.

30

And does that new criteria require consideration of upgrading of existing roads that are below the new criteria?-- It does look at their access onto those roads. It's unlikely that they'll change the - well, that's an issue for an engineer and the hydrologist to look at. From a planning point of view we make sure that the access is flood free into the site from initial access to the road.

The initial access to the road, do you mean the access on the site side of the road or on the road itself?-- Well, once you drive into the site we look at ensuring that the flood level is above Q100. Sorry, the access level is above Q100.

40

But what about when you drive off the site, are the roads that you have to drive onto, are they - do you ensure that they are above - what is the new level, Q100, for aged care?-- No, it's more than that but for roads, I believe they're not dissimilar to this. It's the Q100 or the aged - hospital care is a higher level. I would have to look at the new standard but it might be more than a hundred year ARI.

50

What I'm getting at is a concern that there is a requirement to address the levels of the road within the site but that doesn't address that in a Q100 event residents who seek to leave the site only have options such as, in this case, to drive on roads that are at Q20 or Q50. Is that issue addressed at all in an assessment of a development application for this type of facility under City Plan?-- It is in the

Subdivision and Development Guidelines in addressing the performance criteria in the subdivision stormwater code when we're talking about looking at the risk and the hazard and access out of the site. If you - and it assumes that people are given enough warning to evacuate the site before - because we don't know how high the flood level is, before it gets to the defined flood level or even higher.

1

Okay. So the criteria in the Subdivision and Development Guidelines now address not only roads to be built on the site but the need for roads connecting the site to the wider road network requires that those roads be raised to levels - to particular levels?-- No, it looks at those and the risks associated with that and I believe the new one also picks up the Commonwealth guidelines with regard to access and flood-related issues associated with evacuating a site. So it provides a bit more criteria we can use to assess it.

10

Do you know what particular provision of the Subdivision and Guidelines deals with that?-- The 2008 version does that I'm aware of. Prior to that I don't believe it specific - it doesn't spell it out like it does in the 2008 version.

20

Okay. At paragraph 18 of your statement you tell us that on the 3rd of August you gave a presentation to Council's Development Assessment Committee. What is that committee?-- Development Assessment Committee was a - is a - was a formalised committee meeting - committee consisting of the manager of City Planning or the branch, the managers of the various branches and representatives from each of those areas we saw before from the Geoff Ahmet area, you know the Traffic and Transport, there would be a principal officer or a manager there, there would be one from Water Resources, Natural Environment, et cetera, et cetera, and they would look at the assessment of - a presentation would be given there for endorsement of the recommendation for the ongoing assessment of an application. So if there was other issues that the officer might have missed they would have an opportunity to be picked up there and added into.

30

And when you gave the presentation on this occasion, we can see at attachment 115 to your statement, on page 7, in the middle slide, that you identified hydraulic overland flow, flooding and lawful point of discharge as a key issue. And then on the following page the recommendation, in the top slide, was that there be in-principle support for the residential use of the site?-- Subject to, yes.

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Subject to a number of matters. Those matters don't raise a need to address flood immune access, do they?-- No, because they're part of-----

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At the point-----?-- The recommendation-----

Sorry?-- -----from that endorsement was more that we could still proceed with residential on that site, that there were issues that we were resolving in relation to that, and that's why it's in-principle support and it was subject to us

ensuring that when we brought it back that residential was appropriate on that site.

1

At the time that you made the recommendation that in-principle support for residential was appropriate there had been no response to the information request?-- I'd have to look at the time frames but probably not and the reason for that is it was - we normally try to get there - to the Development Assessment Committee as early as possible for this application, so if they said, "No, absolutely no way. Doesn't matter what the applicant says it's not going to residential," we would know earlier on in the assessment process as opposed to getting to the end of the assessment process only to tell the applicant, "No, no way."

10

Does the in-principle support - does it have the potential to put pressure on the officers to reach a position of approval, do you think?-- No, it gives the officers, and there's myself, written that a number of times, at least confidence to proceed in the light of what the applicants requested or applied for, residential use. It doesn't mean that it will necessarily be in the form that the applicant applied for, we still have to do our assessment. All it means is you're not wasting your time continuing to process an application for residential use in an industrial area ahead of any strategic direction or neighbourhood plan for that site.

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Is that a convenient time, your Honour?

COMMISSIONER: Yes. 2.30. Thanks.

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THE COMMISSION ADJOURNED AT 12.57 P.M. TILL 2.30 P.M.

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THE COMMISSION RESUMED AT 2.31 P.M.

RORY JOHN KELLY, CONTINUING:

COMMISSIONER: Yes, Ms Kefford?

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MS KEFFORD: Mr Kelly, if I can take you to paragraph 41 of your statement? That's the seventh statement, I should say. And there you say, "It appears that no conditions were imposed in relation to access or evacuation routes in the event of flooding", and at that point in your statement you were talking about the development approval for the first development application?-- For the preliminary approval, yes.

Yes. And in terms of subsequent approvals, there were no conditions with respect to access or evacuation routes in the event of flooding in the subsequent approvals either, were there?-- No, not to my knowledge.

20

And if I could take you to paragraph 45 of your statement on the final page of the statement, there you identified that the two access roads to the subject land are Cansdale Street and Venner Road, and that they have road pavement levels of approximately Q50 flood immunity and Q20 immunity?-- Yes.

30

Do you accept that the occupants of a retirement village have a higher potential for reduced mobility than occupants of an ordinary multiunit dwelling?-- Well, yes.

And there is likely to be a higher percentage of occupants without a licence or without a vehicle?-- Yes.

And it is important, in those circumstances, would you accept, to allow extra time to evacuate?-- Or get to higher levels in the building if they didn't want to evacuate the building.

40

Getting to higher levels in a building wouldn't assist where the building floods, though, would it?-- Well, I do recall in relation to the access that the access levels, the driveway crossover to that just into the site was a Q100. If there was a greater event flood - and we're talking about river flooding here that it is impacted by - is a greater time in which to effect that evacuation, and/or if they wished to stay, as a lot of people do, they had the ability to go up another two levels well and truly out of any - and then seek alternative arrangements to evacuate if they wanted to.

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If there is a greater event than Q100, that doesn't assist where the access roads are at Q20 or at Q50, though, does it, in terms of allowing extra time? The fact that the site is above Q100 doesn't provide extra time to the residents to evacuate, does it?-- No, but it does provide an opportunity for them to seek - if it was a slab on ground, or a ground

level unit and that's all they had to go to, it would be more of an issue for people because they couldn't stay on the site in a safe location outside the flood level.

1

And where there is a multi-level retirement village, though, if there is a need to move to higher levels within the building in a greater than Q100 event because the bottom level floods, that's more likely to be difficult where the occupants are occupants of a retirement village than a multiunit dwelling when lifts are not operating. Do you accept that to be the case?-- If they need a lift, yes.

10

Do you think it is prudent for retirement villages, as opposed to multiunit dwellings, to take these types of reduced mobility issues into consideration?-- I understand they have to do that anyway under the Building Code of Australia, dealing with access and egress out of a building.

But when determining the appropriateness of use of a site where the access to the site is at Q20 and Q50 levels, do you think that the reduced mobility of the residents should be taken into account?-- Yes, and it is now in the subdivision development guidelines.

20

And is that because you say that the subdivision and development guidelines now have provisions with respect to-----?-- Hospital and other facilities.

Sorry, I missed-----?-- There is a reference now in relation - as a result of SPP103 to include there is an expectation - people will have to read exactly for it, but that certain uses have a higher flood immunity than Q100.

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That's a higher flood immunity on the site, though, as opposed to the access routes to the site?-- I believe so, yes.

And in terms of in the current subdivision and development guidelines, the current version is the 2008 version, is that correct?-- I believe that's what it is, yes.

40

And the current subdivision and development guidelines, the requirements for existing dedicated roads fronting the development or providing access within 200 metres of the development is simply that they comply with flood immunity standards that involve provision of access - provides for a minimum of the 50 year ARI?-- I believe so. I would have to look at the reference but it sounds right.

So in events where the flood is greater than a 50 year ARI, there is a potential for these types of developments to become isolated?-- Yes.

50

Do you consider that acceptable?-- From - I would look at the issue of risk and how long it took for that 50 year ARI. If it was over a creek or a waterway course, not the river, in relation to the Cansdale Street site, that's likely to come up quicker, and therefore they wouldn't have the ability to get out of the building. But in relation to river flooding, that

might be more acceptable, but not necessarily. It reflects the location of where the application is proposed.

1

So would you accept that there ought be criteria that requires consideration of the particular characteristics of the use and the particular characteristics of the occupants - proposed occupants of the site, together with those characteristics, not just in relation to the level of the roads but the circumstances of flooding in those roads?-- It appears that that's what we're going to, but, yes, I agree.

10

And does City Plan currently have those criteria?-- Other than in the subdivision development guidelines I am not aware elsewhere that they have those higher than what's stipulated in those guidelines.

And the subdivision and development guidelines focuses just on the levels of the roads, doesn't it?-- Yes.

Yes. Thank you, I have no further questions in relation to Yeronga.

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COMMISSIONER: Ms Brasch?

MS MELLIFONT: Can I-----

COMMISSIONER: Sorry, that's not the end.

MS MELLIFONT: It is a multi-chapter story, this one.

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Can we turn, please, to your sixth statement with regards 616 Long Street East, Graceville. Can I start, please, by tendering the PD Online aerial map for 316 Long Street East?

COMMISSIONER: Exhibit 696.

ADMITTED AND MARKED "EXHIBIT 696"

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MS MELLIFONT: And we can see in the centre of that map the yellow dot to indicate an apartment complex development at 316 Long Street East. Can I now move, please, to tender PD Online zoning map for 316 Long Street East?

COMMISSIONER: 697.

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ADMITTED AND MARKED "EXHIBIT 697"

MS MELLIFONT: I will ask you to have a look at that on the

screen, Mr Kelly. The current zoning for 316 Long Street East is low density residential area, is that correct?-- Yes.

1

And it is situated near to a waterway which is marked by the blue hatched section?-- Yes.

Did I tender that?

WITNESS: No.

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COMMISSIONER: 697.

MS MELLIFONT: Thank you. I will take you now, please, to PD Online for 312 Long Street East which is a private residence next to the apartment complex. And we see there that 312 is designated by a yellow circle, so I tender that document.

COMMISSIONER: 698.

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ADMITTED AND MARKED "EXHIBIT 698"

MS MELLIFONT: I just want to show you, just so we get-----?-- Sorry, the one you have in front has the old site, it doesn't have that private residence. It has a brown roof on it. That's not the map with the yellow dot for the residence on it.

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So that's not right?-- No, the 312.

Yes?-- You have got the townhouse site that you identified previously before. You said the private residence.

Yes?-- Are you talking about the residence on that site that has the red roof fronting-----

I will get you to have a look at it close up. You can tell me whether Exhibit 698 has a yellow circle at 312 Long Street East, Graceville. I appreciate it is quite difficult to see?-- Yes, that one does, yes.

40

All right, thank you. So that's Exhibit 698. And, Madam Associate, can I have Exhibit 648 up on the screen, please? While that's being done I will just start with some preliminary information, Mr Kelly. Now, at the time of development application for the property at 316 Long Street East, Graceville, you were a planning officer, is that correct?-- Yes.

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And you actually had the role of the assessment and processing of one of the applications with respect to this property?-- I think I had both - part of both, yes.

All right. As I understand your statement, you were the planner responsible for assessment of a rezoning application

and town planning consent permit application up until 1994?--
Yes.

1

But that after the '95 elections there was a change in council's team boundaries and so you were no longer the planner responsible for the assessment of subsequent applications, nor of the latter applications-----?-- Yes.

-----on that site. All right. Madam Associate, if we can just zoom on the cross hatching which is on the bottom right-hand, approximately, corner? So what you are being shown there, Mr Kelly, is the QRA aerial photograph or representation of the flooding, and do you accept that that crosshatching generally represents the area of 316 Long Street East, Graceville?-- Generally. It is missing a few bits and pieces here but, yeah, there are a few residents there that are in it but-----

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That aren't crosshatched?-- Aren't crosshatched, yeah. It is only one or two. It is more or less the same area.

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Are you able to describe what's missing?-- Well, I believe the white-roofed house just near where it forms the L might be part of the site.

Can I ask you to go up to the big screen and point out the parts you think are missing from what should be the crosshatched?-- It might be this residence just here. That one there. And it included that access out to Haldane Street as well, the site. There is a road access starting there. I don't know if it has a name. That's Haldane Street, Long Street East.

30

So it is a residence on what street-----?-- It might be this one here. I just have to have a look at the approved plan. It just seems that it came around - I don't think it was a straight boundary, and that access there out to Haldane Street was part of the application as well.

We might leave - if you return to the witness box - we might leave the first part of your extending list of things to follow up on - we will give you a clean copy of this and you can crosshatch it how you think it should fit 316. Now, in preparing your statement in respect of this development, you note at paragraph 4 that this is - that the council files, particularly the earlier ones, have not been maintained in their original chronological order, and some secondary documents do not appear to be on the file, but you say "the critical documents from the perspective of development controls and approvals the subject of the notice all appear to be in place." To your mind, what categories of documents are critical from the perspective of development controls?-- Well, the conditions of approval, some of the earlier memorandum memos, internal or otherwise, the hydraulic report for addressing this, the decision notice, or the town planning consent permit that was issued.

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What types of secondary documents were missing?-- Well, it

appears the formal letter advising of an extension in time in which to extend the life of the approvals seemed to be missing, as were a letter like the information request letter that we may have sent out, but - the response is there but not the letter.

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Is there anything systemically in terms of the way Brisbane City Council files which seems to give rise to these documents being missing?-- This has got to be the worst file I have seen in my 20 years. It has been pulled apart - because it used the old system of clips and bending and metal, someone's pulled it apart, photocopied it either for an FOI - because it does indicate it has been FOIed - I can't explain why, because this file is not in a chronological order with folios how it would have been left. That's how we did things in the old days back in '94. It was - we didn't have computers so we didn't get ahead of ourselves. We had typists, things got put in the order that they did. They were done a lot slower then.

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All right. I just want to look generally about the characteristics of this land. It is low lying - it is a low-lying area, correct?-- Yes, yes.

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It is part of the Oxley Creek and Brisbane River floodplains?-- Yes.

Prior to development it was horse paddocks with a creek running through it?-- That appears from the early photos on the file, yes.

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Now, did the townhouse complex that's on it now, does it traverse an area of natural waterway?-- Yeah, the waterway traverses the matter of the centre of the site.

Just going through historically - and I will do it fairly briefly - the first approval given to permit development on the land was in response to an application made in 1989 under the City of Brisbane Town Planning Act 1964 through '78 for the rezoning of the subject land to residential A zone?-- Yes.

40

If you translate residential A to current terminology, it roughly translates as low density residential?-- Yes.

Now, rezoning approval to residential A was granted in 1991?-- Yeah, I believe the rezoning was gazetted then, yes.

Now, to be clear and to be fair, this was a long time ago and the assessment and development applications have obviously moved on. Now, I do - I want to come to whether and how things might be done differently now, if you were looking at it afresh. But just to place the consideration by this Commission of this development in context, I want to take you through some of the information the Commission has received so you can get a sense of the concerns. Firstly, 316 Long Street East flooded in January 2011. You accept that? Yes?-- Yes, sorry, yes.

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Now, we have received a submission from the owner of unit 31 who says that his townhouse had its bottom floor entirely flooded and its top floor flooded to .6 metres. Is that type of information consistent with what you know regarding flooding on the site in January '11?-- Based on my understanding of what the buildings were built to and the height of the floodwater, yes, about a metre inside the building - inside the upper level.

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So it flooded to a level well above the 1974 flood level?-- I would have to look at - I don't know what the '74 flood level - I would have to refresh myself about what the flood level was in '74.

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Are you able to do that readily or is it something that's better left for later?-- I will just leave it for later, just to continue on.

Now, the observation of that submitter is that the water rose approximately 35 feet from the road surface to enter his dwelling; that is the water came to about the level of top of the electricity post. Does that sound consistent with what you know regarding the flooding of the site in January of this year?-- In relation to the power pole, I couldn't tell you, only in relation to the internal - in internal areas in some of the units, I understand some of the units may not have flooded at all.

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So a reference point of about 35 feet from the road surface into the dwelling doesn't assist you?-- No, I would have to look at that and work out what feet was in metres.

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Is it consistent with what you know about the property that 81 of the 90 apartments flooded?-- Based on what we've looked at on that site previously and the surrounding areas, yes. Not all sites flooded on that site - properties.

But around 81?-- Yeah, it would be about.

We've also heard from the owner of 312 Long Street East, Graceville - and I want to show you Exhibit 647, please, photograph 1. Now, he says his house was inundated to the eaves of the house. Is that information consistent with what you know about flooding on that property out of the 2011 floods?-- It would be about that height, yes.

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All right. Now, his estimate - now, this was as a layperson, but I am just asking you to see if this seems to be consistent with what you know - would be that to build above the January '11 flood level, his house would need to be - the floor level will need to be 13.1 metres above sea level, which is about 4.6 metres above the current level set by council. Does that sound about consistent with what you know?-- The current level - when you are referring to that - are you referring to the level that's now referred to as the IRFL, or under the TLPI, or the level that existed prior to January?

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It is existed prior to January, so the Q100 plus 500-----?--

It sounds - we are receiving applications similar to that in relation to houses going up. About four metres off the ground in some of the lower areas in Graceville, yes.

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And do those requests seem consistent with the flooding experienced there?-- In various different areas, yes. People aren't - I - in relation - the closer you are to Oxley Creek, the higher the houses seem to go. The further you are away, or not in a gully, or lower down, they don't tend to be that high, but people are going up to four metres high.

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So people are asking for their floor levels to be able to be built now to four metres as the bottom level?-- No, to the January flood level plus 500.

Right?-- And that's contained within the TLPI document.

Yes. Okay, thank you. Now, I want to show you two photographs in this bundle of photograph 8, and this is a yard of 312 Long Street East, Graceville. You can see the fence and part of the Graceville apartments in the background?-- Uh-huh.

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Do you accept that?-- Yep.

You can see the build-up by a retaining wall to the Graceville apartments?-- Yes.

Do you accept that? I am going to take you to the next page, please. I will ask you to accept that's also part of the property at 312 and that's a rock wall adjacent to the Graceville apartments?-- Yes.

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Now, that witness has expressed a concern - as I say, as a layperson, not an expert - nevertheless he has expressed a concern that the cause of inundation to his property was the run-off from the higher set Graceville apartments. From what you know of the topography here, does that seem to you to be a logical connection?-- I am aware that as part of the Graceville development, the back of the units to his property, they dealt with overland flow. So they channelled it back through their site and not on to the adjoining neighbours' site, and that if water is coming over that it is because the overland flow must be blocked on the townhouse site. Other than water hitting that face, if it was raining and coming back down, water shouldn't as a normal course, if the stormwater overland flow is working, shouldn't go on to his property directly; it should be heading back in an easterly direction to the entrance of the site, and to the stormwater drains that should be picking it up.

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So the water essentially should be retained and directed -----?-- Yep.

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-----away from 312?-- There shouldn't be any water from that site other than the bit that hits the face going on to his property as part of that development. All stormwater should be directed to stormwater drain.

Do you know if council has conducted investigations to see whether or not water actually flowed as you describe it should?-- During the flood event?

Yes?-- No. I am not aware of that.

As I alluded to earlier, what I want to know is whether, if this development was being assessed by reference to today's City Plan, and by reference to today's practices within BCC, would anything have been done differently?-- It may be a lot less intensive on the site, and might have been more centred to the middle of the site or around the waterway corridor that traverses the site. The floor levels would have been definitely different, pre and post January flood event. And it is very likely there would have been risk management because they wouldn't have been - the standards have increased substantially since this was approved in '94.

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I would like-----?-- Assuming that the land still is an LR.

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I missed that?-- Assuming that it is in residential A or LR area designation and not some other designation had this development not proceeded.

You have identified four ways that it might be different. I would like to deal with each of them in turn, please?-- Uh-huh.

The first is that it would have been less intensive. Why?-- Because we would have increased the fill levels probably to provide a bit more immunity, and that would have meant that the impacts of increasing the fill on the site, under the current standards today would likely to mean that the development would have been pushed further away so it wasn't over-towering the existing houses that adjoin the site. So that would have pushed it in a little bit more.

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All right. So you do have a residual concern about neighbouring properties?-- Yes.

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Okay. And if you could elaborate on how that concern might manifest itself in terms of flooding effects through that neighbouring property - or properties?-- Well, the fill, as I understand both back then, as I recall, and today, there should be no impacts in terms of ponding, or stormwater, or run-off on adjoining properties. That requirement hasn't changed. So that wouldn't change, regardless of what development they did on that site, as such, or what filling that was carried out today and back then.

50

Okay?-- All I'm talking about is, though, the height of the filling, it might have increased a bit more and, therefore, would have meant that the setbacks and the stepping of the walls would have been greater than what they were back in '94.

So, I'll use the word "contouring", but that's as a layperson, so the step - you have sort of a-----?-- Yes.

-----contouring and shaping of the property so as to reduce the flow to neighbouring properties?-- No, the contouring took place on that site to direct water away from - so they could direct it to a lawful point of discharge. Since then there's been a bit more knowledge about lawful point of discharge in that there's been a few Court cases since then that have strengthened Council's ability to acquire a lawful point of discharge. That wouldn't - basically what it means is that predevelopment and post-development, the overland flow or the water that came off this site should be no different for 312 or anyone else surrounding that site.

10

The second feature you've mentioned is the development would have been more centred - I think you've probably just touched on that a little bit now - but can you expand on how it would be that - why you would have it more centred and how you would accomplish that?-- Only that by the time they built the ground levels up and set the retaining walls back a metre and then a step back and then up another metre and then step back and up another metre and then step back, you would have ended up building on the higher part of the land to get the level and, therefore, the development would have been centred to where those impacts don't impact on the existing residents. Some of the sites are high enough as it is, but in the lower area, closer to the entrance to the site in Long Street East, there might have been less development there and pushed further back into the site.

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30

I should have asked you this before, but when you speak of less intensive, how much less?-- Oh, that meant the GFO requirements for development back then; that would have been point 3 - gross floor area - the actual size of the units. It would be point 3 today as well for a development of a townhouse site in residential - in LR - low density residential. It's likely that they would have gone up and you might have had some three-storey units closer together. We don't have a lot of the requirements for buildings not being any more than 30 metres and a reluctance to go higher today than we did back then.

40

All right. So, we've got - roughly - 90 two-floor townhouses. Now you wouldn't approve 90 two-floor townhouses?-- To meet the standards that we have, you might reduce by, say, five to 10 additional units. If someone is clever, they might be able to get them in on - you know, three-storey units and closer together and do more of a built-in - greater bulk or more conventional apartment building on that site and contract it down there and get the same number of units but have different built form. It's really the market in that area that would determine what the developer did. We'd assess it against the requirements of the City Plan regardless.

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So, you say if a developer was clever, they could do those things-----?-- Well, they-----

But why would that satisfy Council?-- Because it would be meeting our performance criteria in the City Plan by doing alternative solutions that lessen the impact and made it more compatible with development surrounding that area.

So, is it a matter of ticking the acceptable solutions box?-- With regard to flooding, yes. With regard to built form and design, it's all subjective, and that's what we would look at - how they mix the two. There's a highly constrained site here for flooding and for traffic and a few other issues against how they did their built form, and I wouldn't expect this would be a Fred-shed development. It is likely designed by an architect or someone who wanted to make it more upmarket.

10

And would it be, by today's standards, impact or code assessable?-- That would still be impact assessable.

The third way in which you said that the development might be done differently today is that the floor levels would be different pre and post-January flood. Can you tell me how they would be different and why?-- Prior to the flood, it would have been the DFL plus 500, or 300 as this site was designed to in '94. So, an extra 200 in the floor levels prior to January.

20

All right?-- Post January.

I'll just stop you there while we're thinking about it. The extra 200 mils wouldn't have helped?-- No, but it would have been a taller development prior to January. Post January, under the TLPI, you would have been up a lot higher with regard to your habitable floor levels and the buildings underneath would have been more flood resilient, or the materials used.

30

Under the TLPI, if it was being built now, would the minimum habitable floor levels be above the January '11 flood levels?-- Plus 500, yes.

40

And that's why you're seeing applications for things to go up four metres or so; is that right?-- Yes.

Those types of applications present some more difficulties for the Council, don't they - that is, just increasing the height?-- Well, there's more to consider, yes, and under the TLPI, we look at building materials as well and how they utilise that lower level. If they just raised 312 up four metres, what happens underneath there and how it looks. But, over time, the whole street will go up as new development occurs, or people redevelop.

50

So, if I can indicate to you that the owner of 312 says he asked for his property to be lifted about four metres, roughly, and that was knocked back-----?-- When did he ask?

Since January '11. I'll just ask you to assume that for the

moment?-- Sorry.

1

Because I appreciate you won't have had a look at this particular issue, am I right?-- Not 312, no.

Okay. Is one of the criteria - the main criteria for assessing requests to heighten how it looks - how it would look?-- In a character residential, yes.

Here. Here?-- Here, not as much.

10

So, what are the main determinants in deciding whether or not to let somebody raise it by that sort of amount?-- Whether they were impacted by the January flood event, that the IRFL - or the Interim Flood Regulation Level - IRFL - is now set at that level for new development. So, you could go up to that height. We've changed the City Plan in relation to the height from 8.5 to 9.5 and also the Level of Assessments Code. We would also look at the immediate impact to the neighbours overlooking, making sure there was some screening devices, similar to we do now for other larger buildings or tall buildings. He's not on a small lot, so he has less obligations or requirements, and it overrides any new planning - in this area, there are some other new planning provisions with regard to the Graceville Neighbourhood Plan that came in, and it overrides those as well, too. Vehicle access, we look at that-----

20

Sorry, what overrides what?-- Oh, the TLPI overrides the new neighbourhood plan. In some areas there's a lot more requirements. I'm not too sure if this is. I'm just going through what the TLPI does for him. And we also look at accessibility and when you go up that high, a lot of the advice we give residents is you need a deck area up there because that becomes your new living area. You don't walk down four and a half metres like you used to go in your backyard and hang out your washing, generally.

30

Do you know anything about the buy-back scheme for these types of property?-- I know the buy-back scheme looks at properties that flood primarily at Q2, so he would have to be inundated - - I know some of the properties that they've acquired flood - were flooding on Sunday because of the rainfall that we had in Brisbane.

40

All right. So, the threshold criteria is Q2 flooding?-- Well, I understand - because it is very frequent, okay, and Q2 has been mentioned to me, but I don't know if that's the exact criteria.

50

Okay. And who makes decisions about the buy-backs within Council? Which division is it?-- I believe Water Resources does. There's an officer specifically assigned to go out and identify sites.

Okay. The fourth matter you alluded to in terms of how things would be done differently now is about risk management, and you said because standards have been increased. Can I ask you

to elaborate on that, particularly as to how the standards which were applied at the time don't withstand current scrutiny?-- Well, I recall on that site no-one wanted access to Haldane Street.

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Sorry, say again?-- At the time, a lot of the residents wanted to limit access to the major road and not Haldane Street, which is parallel there. It is very likely that Haldane Street has a better flood immunity than Long Street East because it is lower down, and conversely the cul-de-sac - and I don't know the name of the street - out to the west - to the north-east of that site - has better flood immunity.

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All right?-- And Council-----

Would it help to get that map up?-- Yes.

Which one, the aerial or the RP Online?-- The aerial will do.

Thank you. So, Exhibit 648, please. We'll - I was going to say zone in, but that's not the right word - zoom in?-- That will do. The area where I thought there was a little anomaly just out to the top where the water didn't get affected - the site didn't get affected-----

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Can I ask you to go up to the screen, please, and point out the access issues you're speaking about?-- This is the Long Street East frontage and obviously that - because that's lower down, that went under water first, and you have Haldane Street entrance here off that unnamed road, and then you have another access off this road here. So the site has three accesses, although that's not used. As I recall at the time, a lot of the residents didn't want any vehicles going out that site, so that was closed off for access.

30

The Haldane Street side?-- The Haldane Street side and limited access to this one as well too, because it was existing - even though it takes you back into what obviously went under water. But when I said risk management, those would be taken more into consideration than they were previously in 1994 because of the levels of the road and the access out of the site.

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All right. I'll just come back to that. So, how did they approach that issue in 1994?-- I don't recall we actually did. I don't know if there was a standard for that.

In terms of the development which went through on this particular property, those access roads, were they allowed to be built at lower than the Q100?-- The access to the site - a lot of the pad levels are below Q100 that were built - the units were built on. They used the upper level floor as the habitable floor level, from what I understand, from that site. So, I would say they're all below Q50 - or Q100, I mean, sorry.

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So, what problems does that present?-- Well, access issues out of the site during a flood event. Access into the site,

as I understand from one of the residents, during a flood event.

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And if you were doing it now and you had requests as to what access there should be and what roads didn't want access to and from, how does Brisbane City Council look at those requests now - in reference to what?-- We would look at - today, after the flood event, we would be looking at the time and the duration for the flooding to occur on that site, both from the river, Oxley Creek, which is a less timeframe - not the Brisbane River backflow converging back up, but the Oxley Creek if that went under flood and the water went back up that, and water coming back down the other part of the catchment. So, we would be looking at all of those now in relation to how long it took someone to get out of that site, or - and what roads were available or likely to be cut in the timeframe that the risk assessment was based on - you know, the time it took for those roads to be cut off.

10

And what other aspects relevant to risk management for flooding weren't looked at back then but would be now?-- Well, I don't know if there was - the risk issue was more of an engineering focus back then. I wasn't directly involved with that side of it. The structure back then was the Works Department would do all the hydraulic and come back, but now it is done within the teams and there is a more holistic approach to risk management and also we now have Australian Standards and the subdivision guidelines to actually look at specifically what we would need to assure that residential development of any kind went on that site.

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We can see from the file - tell me if I've got this wrong - that back then a full hydraulic study was not required by Brisbane City Council?-- No, I think there was a full hydraulic study done by the applicant and, in fact, they had several attempts at it, both at the rezoning and - because we were about to refuse the application because they didn't give us the hydraulic information - and then for the subsequent application - the town planning consent application - I think the applicant had three or maybe four goes at trying to get both - the hydraulic report done for this particular site that was satisfactory to Council.

40

All right. Can I ask you whether you agree with this statement in respect of the development, and just to get the timeframes, the development approval was granted in 1991 but the construction didn't proceed until 2001. Does that accord with your knowledge of the file?-- I understood the construction and operational works for that drain through the site or the overland - the natural water course commenced in 1998.

50

And then the construction of the townhouses proper?-- I don't think it finished until 2001.

Thank you. Do you agree with the observation that Council development records tend to indicate potential flood issues were proving difficult to deal with?-- Sorry?

Do you agree with the observation that Council development records tend to indicate that potential flood issues were proving difficult to deal with?-- For this particular site.

Yes?-- The applicant's failure to provide the information we needed to ensure that it met the standards of the day, yes, that's what happened.

All right. Ultimately, a decision was made to give the approval. In so far as you have been able to determine from looking at the file and looking at the information which the developer ultimately provided to Council, would that be good enough now?-- No, we would have different standards today.

10

Are you able to say with any particularity what wasn't good enough about it? What wasn't good enough about the material provided to you by the developer?-- No, I can't, sorry.

That's something you could do with opportunity to look at the file more closely?-- I'd have to - yeah, I'd get engineers to look at - I'd have to get an hydraulic engineer to look at the two and make a comparison. I wouldn't-----

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All right. If you just give me a moment, please. All right, Mr Kelly, we might move on to West End, now, thank you. Ms Kefford will be asking you these questions.

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MS KEFFORD: You've dealt with development at 28 to 42 Ferry Road, West End in your third statement, which is Exhibit 635. Firstly, if we could just orient ourselves? If we could bring up on the screen Exhibit 694 which was tendered this morning. It's the PD Online map showing the area classifications. Now, the property marked with a yellow circle on this exhibit, does that accord with where - with the property 28 to 42 Ferry Road, West End which you deal with in your statement, Exhibit 635?-- It appears to be, yes.

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Yes. And in your statement at paragraph 6, you tell us that Council records indicate that the subject land was subject to surface flooding impacts during the January 2011 flood event. In terms of the approval which resulted in the multi-unit development at that location, the development application was made in October 2005?-- Yes.

And at that time, City Plan was in place?-- Yes.

The application was impact assessable?-- Yes, as I recall. I haven't got anything in front of me, sorry.

50

And in terms of the application being impact assessable, that would mean that the application is assessed against the whole of the City Plan?-- Yes.

In attachment 47 to your third statement, you've attached a copy of what you tell us is a daily team meeting scoping

sheet?-- Yes.

1

And we can see from that sheet, can't we, that flooding was identified as an issue for this application?-- Yes.

And at paragraph 9 of your statement, you tell us that it's the standard practice of the Development Assessment South Team to generate a property history search for a subject site when a development application is lodged, and in this case that search indicated that the subject land was affected by flooding?-- That property history search is generated with - so, it goes in with DTM - the data team meeting that occurred at the time.

10

Yes, and it indicated the land was subject to flooding?-- Yes.

If Council has records indicating that a property is affected by flooding, will this type of search typically reveal that type of information?-- The property details - you then go to the property Floodwise search report and it identifies the levels.

20

And is it also standard practice to request a Floodwise report?-- The way DTM is set up is that we have a computer there and we just access that report based on - through our iBimap. Because we are electronic, we tend to do assessment electronically.

And is it typical practice in doing that assessment electronically to access the Floodwise property report?-- Yes.

30

To determine whether a property is subject to flooding?-- Well, it tells you the levels of the flooding on the site as recorded. It also tells you whether it is - if it doesn't tell you the DFL, it tells you that it is affected by, say, overland flow and that you need to seek further advice in regard to the impact, because that may not be the highest level of flooding on the site.

40

And in paragraph 9 of your statement, you were talking about it being standard practice of the Development Assessment South Team to generate the property history search. Is it also standard practice to look at this Floodwise report that you're talking about?-- Where it is impacted by flooding, as far as I'm aware, yes, it is.

And in terms of it being standard practice, do you know whether it is standard practice for all of the other development assessment teams in Council to also generate that search and look at that information?-- No, I can't tell you if it is. I haven't sat through any of their DTMs, but I don't see any reason why they wouldn't do it as part of their ongoing assessment of an application.

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You're not aware of any checklists or other mechanism which would ensure that the other assessment teams undertake this

process?-- As part of the DTM process?

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Yes?-- No, the admin area may have a checklist and, as I recall, the way we were able to do it, view it electronically, is that we would set up groups of reports, so we would run engineering reports, the DTM, and that would just spit out information on an iBimap that had this information, and you can tell from that also whether it is impacted by flooding. You don't have to go to the Floodwise report, but you might, if your site has identified it. Now, I know that a lot of the admin area people doing the reports might have scaled that down or changed it or provided more information with their DTMs, but generally there was a - the way iBimap works is that it allows you to package various bits so you can click on four things and it generates reports, whether there is something there or not, and then that can be used at DTM.

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You, as part of the Development Assessment South Team, obviously consider that process a beneficial one?-- DTM?

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The process at DTM of looking at the property history search and this package of documents that you're referring to?-- Yes.

Do you think it would be beneficial to have a checklist or a requirement for all development assessment teams to institute the same practices?-- It's a practice - I suppose there may be an SOP for that. Once you've done it a couple of times, you just do it automatically. It is not something you have to keep going back to and checking and saying, "Yes, I've done that." The SOP for DTM is that you look at the number of issues and you go forward on that basis.

30

And the SOP you mentioned earlier today, I think was that the Standard Operating Procedure?-- Standard Operating Procedures.

Mmm?-- I should add, too, that since 2009, SPA - I think it is section 260 - has some mandatory requirements, so we get a lot more information as part of our DTM than we did previously. In some respects that's like a checklist that the developer should have done through. So, prior to that, we were getting less information from the applicant and now we get more information from the applicant as part of their properly made checks through SPA.

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You said that the process of looking at these searches as part of a daily team meeting might be in the Standard Operating Procedure Manual. It may also not be within the manual?-- No.

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If it is not in the manual, do you think it would be worthwhile incorporating something in the Standard Operating Procedure Manual?-- It would be beneficial, yes.

If we go to Attachment RJK 48? Just one moment, we might have covered what I needed to ask you about this in some of your other answers. Sorry, I no longer need to go to that. Now,

at paragraph 10 of your statement, you say that the purpose of the daily team meeting is to identify the key planning issues for review and to allocate those issues to relevant Council officers. In this case, Paul Hills, an engineering officer, was identified as the engineering officer for the application; is that right?-- Yes.

1

Do you know whether he has qualifications in hydraulic engineering?-- No, I'm not aware he has qualifications, but if he was doing hydraulic assessment, Paul would refer it to a hydraulic engineer.

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So, is it practice within Council that the engineering officer decides whether an application needs to be further referred to a more specialist engineer for assessment?-- As a result of their investigations it might, but if there was a hydraulic report attached to the application, well, then, DTM might refer it up there, but we go through the engineering officer so someone can coordinate that and follow it up, because we set the engineering officer a timeframe to respond back to the assessment manager and if the engineering manager then negotiates the timeframes that they've got - he or she has got with an hydraulic person and lets us know as opposed to the assessment manager having to look after a range of people.

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And I appreciate that what I understand you to be talking about is the practice within Development Assessment Team South, do you know whether these types of procedures are spelt out in the Standard Operating Procedure Manual so that all assessment teams adopt this process of referrals to engineering officers and then potential further referrals?-- I believe the engineers have a greater reliance on checklists and procedure manuals than necessarily the assessment managers do, so, yes.

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And what's the basis of your belief?-- As part of preparing some information for you today to answer those questions, I asked an engineer whether they have an SOP for hydraulics and they were able to indicate, yes, they do - a checklist, sorry.

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And did you see the checklist for hydraulics?-- Yes.

And can you tell us what types of matters are covered on that checklist?-- It deals with velocity - it deals with velocity, it deals with the depth, it deals with a whole range of hydraulic information that I'm not familiar with in relation to that. I didn't have a good long look at it. I just identified that there was one that existed.

Is there - did you notice whether there was any correlation between the checklist and the criteria in the City Plan with respect to flooding?-- Well, I think the hydraulic checklist that they use is more of a technical nature and it looks at that. There could have been references to the City Plan - not references to what information one would need to look at the City Plan - I'd have to sit down with a hydraulic engineer or one of the engineers and ask them what it means.

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Okay, thank you. Could I ask, Madam Associate, if you could bring up attachment 49 on the screen, and this is a memo from Paul Hills to the planning officer about the application. The memo deals with a number of engineering disciplines, including traffic and the like. You can see that? Do you see that?--
Yep.

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And it notes that the site is subject to partial inundation by floodwaters during flood events and suggests the condition of the drainage work?-- Yes.

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You can see that? Yes. There's no reference there, is there, to the impact of filling on the site - of the site on floodplain storage?-- No.

And, obviously, there's no reference to flood immunity of the basement in this memo?-- No.

And Mr Hills doesn't state whether the condition he proposes is sufficient to achieve flood immunity on the site in Q100, does he?-- No.

20

Do you think the memo adequately deals with the flooding issues?-- It may be that the plans show that the building is above Q100 or the habitable floor levels at the time so it wasn't necessary. Paul's written this to Deborah, who was the assessment manager at the time, indicating what needs to be resolved prior to the approval of the application. So I'm assuming by that there's things that have been resolved or these are more the unresolved issues that still had to be done on that site before the engineers would set the conditions. So some of it may have been okay and some of it's not. This is not identifying all the issues, it's just what needed to be resolved before the approval of this application could occur.

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Well, you attached at attachment 46 to your statement a copy of the development approval with the plans attached?--
Mmm-hmm.

Those plans don't show details with respect to basement design, do they?-- No.

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They don't demonstrate how, for example, the basement might be designed to ensure that there's no inundation in a Q100 event?-- They do in - a Q100 event, not on the plans that you've got in front of you, but the driveway accesses for this are above the Q100, as required by the City Plan. There's an RL on those at the entrances, which you can't really see from these plans, but they do exist on the larger set, because these are A1 plans, and they do show that the entrance to the driveway is above or at Q100, which is the requirements under the subdivision code. As for whether the building is structurally - the basement has been structurally-designed, we don't tend to get into the structural integrity of the building, that's at the building application stage.

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But the Subdivision and Development Guidelines also deal with air vents being above Q100 - air vents for basements being

above Q100, don't they?-- I believe so, yes.

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And there was no detail on these plans as to whether the proposed air vents for the basement would be above Q100?-- Not that I can - I've determined - I don't know if the air vents are shown because, as I understand, the air vents to the car park for exhaust is something that they do - is a highly technical aspect for designing basement levels to ensure that you meet the Building Code of Australia or the building code - the building regulations, and that someone goes there once they've approved the building and once the building certifier is looking at the building and makes sure that there is an exchange of air that - and that assessment's done at the building stage, not as the planning stage, so that would then determine where the air vents are, what type of propulsion's required to push it through and, ultimately, where the air vents come out on the site.

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There was no documents on the file which demonstrated consideration of this issue of air vents being above or below Q100, were there?-- Not that I'm aware of, no, other than the applicants stating that they complied with the requirements.

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And in terms of the applicants stating that they complied with the requirements, could I show you a copy of Appendix E to the development application report? And if we go to page 1, where there's the Stormwater Management Code. Firstly, if I ask - this was the only information with respect to compliance with the Stormwater Management Code provided as part of this application, isn't it?-- From what I can recall it may have been, yes.

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And if we look at what information was provided we see there, starting at page 1, the Stormwater Management Code, and this is quite a common format that's used by town planners, isn't it, where they set out the performance criteria and the acceptable solutions as they appear in City Plan and then have a third column which deals with how the proposal addresses those criteria?-- Yeah, for the less complex applications.

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And if we turn over to page 2 we see the performance criteria that relate to flooding, and I'd ask you to note in the third column that the detail provided in this application with respect to how the proposal will meet those criteria is simply a statement that the site complies with acceptable flood levels, and then over the page, on page 3, with respect to Performance Criteria P3 of reducing property damage, it's simply said that the floor levels comply with minimum levels as set out in the Subdivision and Development Guidelines and that flood-free access is provided. Do you accept that those statements are really no more than bare assertions?-- Well, we tend to check those statements. If we just took them on face value, yes, but we generally - we tend to go through and do an assessment to make sure that they do. That's part of the checklist, I understand, the engineers do.

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And how can that be checked when no further information was provided?-- Well, we'd only ask for the information if it

wasn't provided to the standard we required-----

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So this-----?-- -----because it wouldn't - sorry.

This was the only information provided on this file with respect to compliance with the Stormwater Management Code. Is this then an indication that the council considered the bare assertion was acceptable?-- Well, this would be attached to plans and they would check the levels on the plans, and provided that the levels on the plans complied then that statement would be correct.

10

Well, in terms of the - the plans show that the basement will be below ground?-- Yes.

Below Q100. And the Subdivision and Development Guidelines include a requirement that if a basement is below Q100 the air vents not be below Q100?-- And the applicants indicated that their air vents will comply with the Subdivision and Development Guidelines-----

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By the bare assertion?-- Yeah, by the bare assertion.

MR DUNNING: Well, I object to that. The witness has made clear that the document would be read together with the plans. Now, if you want to - if what's to be put is that the council officer involved simply accepted this document at face value without more Mr Kelly should see the whole of the document, the plans included, because it might very well answer the inquiry that's currently being made.

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COMMISSIONER: All right. Well, that can be explored, I dare say. Do we have the accompanying documents?

MS KEFFORD: The plans are attached to the development approval and I asked a question of Mr Kelly earlier about whether the plans that were attached to the development approval showed the location of the vents and he indicated that they did not, so the witness has already answered with respect to the air vents that there was no indication of the air vents. In fact, he indicated that air vents are usually a matter of - a level of design that is dealt with at the building application stage.

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COMMISSIONER: All right. Well, that's one unsatisfactory aspect, I understand from what you are saying?

MS KEFFORD: Yes, in terms of it - there's no demonstration that the basement - when approving this development there's no demonstration that the basement will be able to meet the criteria in the City Plan, in fact it doesn't appear to have been considered

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COMMISSIONER: All right. Well, put all of that then.

MS KEFFORD: Yes. In terms of whether the proposal meets the requirement that - the requirement in the Subdivision and Development Guidelines that air vents not be below Q100, is

there any evidence of that having been considered in the development application file?-- Not that I could ascertain.

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Do you think the matter should have been considered?-- Having regard to the requirements of the Subdivision and Development Guidelines pending - based on previous experiences, unless the applicant is sure that the air vent has to go in that location or that location because they do this volume - this study of air flow in the basement levels, they tend to be inaccurate anyway, so they tend to show where they are but they move based on the assessment under the Building Act about ventilating basements and making sure there's air exchange on them, and as the ground level was more or less just a little bit above Q100 the - and the basement sticks out a little bit, it's very likely that those things would go out in vents somewhere anyway.

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Do you think that - can you - is there a mechanism that could be introduced to ensure that there is consideration of the location of the air vents above Q100?-- We would require more certainty that they could go in those locations and that would require the applicant, doing this study about air movement for the basements to make sure that the air is sucked out and, you know, clean air is down there, as part of the planning application, not as part of the building application. To give you certainty or to give us certainty that this air vent is going to go there and it needs to go in that part of building and not another part of the building that might require a higher or lower air vent.

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And where would you anticipate that would be introduced, through a performance criteria or-----?-- Well, it - generally the City Plan tries to stay away from - I believe we're required under legislation not to require reassessment of building matters so that would require a change in the legislation as well too, as I understand, to allow council to incorporate building matters into DA considerations, which is something that I understand that legislation requires us not to do in the new plans - new City Plan that we have prepared. I can't tell you the reference to that, only that they're most reluctant and there was some - a lot of discussions when we introduced some building materials in the TLPI. We went ahead and did it anyway.

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Is another potential means of dealing with it by imposition of a condition that specifically addresses the requirement that the air vents be above Q100?-- Well, we would set a condition if we knew we could achieve it. If it finds that they can't achieve it then it's a nuisance condition and they can get it struck out. So we have to have some certainty that that can be reasonably achieved on that site without putting an air vent up halfway up the side of the building if that's what they need to do to achieve it. So we'd need some assessment done upfront to make sure there is a reasonable chance that that air vent can go in that location and not another location that impacts on something else that we've considered as part of the assessment, and it's not normally one air vent, they normally have a number of air vents around a building to get

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the crossflow.

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Is the location of the air vents above the Q100, one would assume - the fact that the requirement is mentioned in the Subdivision and Development Guidelines, one would assume that it's an important consideration for the council in terms of the acceptable - acceptability of the development of basements below Q100; is that a fair assumption?-- I think because it - sorry, could you ask that question again?

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Sorry, it was possibly a bit awkward. The Subdivision and Development Guidelines include a requirement that if basements are to be below Q100 they be designed in a certain way - in a certain way. "Yes"?-- Yes.

Yes. And that design, the requirements with respect to that design are aimed at ensuring that in a Q100 event the basement does not flood?-- Or water doesn't go down a vent, I would think, yes.

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Yes. And so is the inclusion of that requirement important to the council in terms of the acceptability of a development that has a basement below Q100?-- Well, yes, we would be.

And so, in your opinion, should council therefore have the opportunity to consider the exact location of air vents during the assessment of the planning applications, the material change of use applications and the like, when determining the acceptability of the proposed use?-- Yes.

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And so would you recommend that the legislation be changed in this respect?-- Yes.

Yes. If I could tender a copy of Appendix E?

COMMISSIONER: Six hundred and ninety-nine.

ADMITTED AND MARKED "EXHIBIT 699"

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MS KEFFORD: If I could just have one moment? Yes, I have no further questions in relation to this development.

COMMISSIONER: Yes.

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MS MELLIFONT: Mr Kelly, I want to turn now to Mirvac, so can you please be shown Exhibits 633 and 634, which are your two statements in respect of Mirvac? Have you got those two statements with you there, Mr Kelly?-- No, I don't, sorry

All right. So we'll get those shown to you, please. All right, Mr Kelly, just with respect to the Mirvac development, we're obviously talking about the development at Tennyson

Reach which concerned the State Tennis Centre together with the residential development by Mirvac. Now, you at the time of assessing the applications, and I'll take you to them specifically for Mirvac, you were employed as the Principal Planner in Development Assessment South?-- Yes.

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And the Mirvac development, the Tennyson Reach development, is one you would describe as being both - involving both significant community interest and multiple issues of varying complexity; you'd agree with that?-- Yes.

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In so far as the community interest is concerned, what particular aspects did the Brisbane City Council receive by way of community interest in the project?-- It was previously a vacant site or a disused power station. I recall there was - in the preparation of the Stevens District Local Plan, some years before that, that this site was identified as a potential development area, when the uses - the DPI site moved on, because it was a large area of land undeveloped-----

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All right?-- -----so it was picked up back then in the early 90s-----

What was the DPI site?-- The animal husbandry site adjoining it, sorry. I think it was run by DPI, referred to as that. And the power station and then as part of this development, what was going on there and how it was going to impact on it was of - you know, a lot of community interest. Mirvac may have done some consultation with the residents prior to and it was a larger development, something likely to bring impacts into the area, so therefore it's likely to have a lot of significant community interest.

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To your knowledge were community concerns expressed to Brisbane City Council with reference to flooding issues which may arise if the site were to be developed as proposed by Mirvac?-- I think there were - during the public notification that occurred there may have been reference to flooding previously on the site.

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The site flooded in 1974; correct?-- Yeah. Oh, well, I believe so, yes. I haven't checked that out.

Sorry?-- Well, I didn't - I can't - it very most likely flooded in 1974, I just - I haven't checked that as part of it. I know it flooded in 2011 so-----

When you say you haven't checked it as part of it are you talking about haven't checked-----?-- Recently-----

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-----recently-----?-- -----to confirm the level in '74 that it flooded.

All right, but at the time of assessing the development application is your understanding that Brisbane City Council investigations revealed that this site flooded in 1863, 1864, 1870, 1893 and 1974?-- Someone may have investigated that. I'm saying that I would have looked at what - the Floodwise

Report and gone with the current level as part of my assessment or part of supervising the assessment of this application.

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All right. To ask you directly, in that role as supervising the assessment did you yourself ascertain whether this site had flooded in the years I've just mentioned? Is that something you looked at?-- I don't go back to 1860-something normally. We normally just go by what the current flood level is as part of the planning assessment. The hydraulic engineers might go back and look at the previous flood regime over the site as part of their assessment but as part of the planning assessment we deal with what is required under the current plan at the time and that's the flood level that existed prior to the January flood event over the site.

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So you would look at the FloodWise Report?-- The FloodWise Report and the levels there on that.

But not beyond that?-- No, and I also recall I might have looked at the hydraulic report to see if there was a difference because they did a hydraulic report looking at flood levels over that site as well.

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All right. When you speak about "the hydraulic report" which one are you speaking about?-- The application that was - the hydraulic report that was submitted with the application when it was lodged. They had a statement.

All right. So the hydraulic report provided by Mirvac as part of its development applications?-- And I believe I also did - in pre-lodgment looked at the flood levels both at Q50, Q100 and Q20 and conveyed those to the consultants acting on behalf of Mirvac.

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All right. Well, I will come to the pre-lodgment process soon. When you speak about multiple issues of varying complexity are you speaking of the fact that this involved a combined development application for a preliminary approval for a material change of use overriding the planning scheme together with development permits for the State Tennis Centre and residential buildings?-- Yes.

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All right. So, to put this in context, where approved and subject to its conditions a preliminary approval of this nature overrides the planning scheme in terms of the level of assessment and applicable codes for development to the extent of any inconsistency with the City Plan?-- Yes, that's what a preliminary report does.

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And so when you assess and approve any such application, that is an application for preliminary approval, council has to consider the proposal against the whole of the planning scheme, including it's applicable codes and planning scheme policies as applicable?-- Yes.

Now, you speak in your statement as being frequently involved in aspects of the - of the assessment of the applications for

the Tennyson Reach development. Was that due to the community interest and the varying - and the issues of varying complexity?-- It's more where the assessment manager preparing the - having the day-to-day management of that file would bring issues to me, they may involve those issues. They have may have involved also not meeting time frames about the processing of the application, what next steps to do, whether it had to be referred to any committees, et cetera, so a general processing, plus those issues as well that you just mentioned.

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All right. Now, you weren't the planner with direct responsibility for the file; is that correct?-- I Didn't have the day-to-day operation of the file but I supervised the person who did.

Okay-----?-- Or the people who did.

And the person who did was Mr Steven Schwartz?-- Yes.

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Who's no longer with the council?-- Yes.

Do you know where he is?-- State Government.

Do you know which department?-- Something related to planning. It might be assessing in - it may be assessing local planning - the local government's planning schemes as they come through for State interest checks.

All right. So at the relevant times, that is when these applications were being assessed, were you Mr Schwartz's boss?-- Planning - planning boss, yes.

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And did he answer to other bosses?-- Well, we have - I'm - I was the principal planner, you then have a team leader, but we also have a planning manager as well, too, at the time.

So he was answerable to the planning manager as well?-- Well, if I couldn't resolve it we would take it up to the planning manager generally.

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Now, so far as I can ascertain, there were several applications in respect to Tennyson Reach development. You'd accept that?-- Yes.

All right. One was a preliminary approval for a material change of use overriding the planning scheme under section 3.1.6 of the Integrated Planning Act, and that was for the four multiunit dwellings. That's one of the applications?-- It's for - yeah, for the - well, it was for the development on the site including the residential components and the future residential components, the towers that exist at the time, yes.

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All right. Specifically it was for 191 units in three buildings plus a park. Is that as you recall it?-- Yes. It's the bit that they didn't get the development permit for at the front part of the application.

Just expand on that for me, please?-- Let's say there's six buildings that were proposed. They sought development permits for three of those buildings and the three that they didn't they sought a preliminary approval for.

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Right, okay, thank you?-- And the parkland.

All right. So another of the applications was a development - application for a development permit for a material change of use for indoor sport and recreation, that is the Tennyson Centre Stadium, and outdoor sport and recreation, which are the outdoor courts, and associated use, including office, restaurant, shop and convention centre, that is the function rooms?-- Largely correct. The tennis centre is an outdoor tennis court, according to the applicant. The fact that it has a roof over it means it's still has an outdoor standard court, it's just that some of the function rooms in there could be used for other things as well.

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All right. So apart from that observation my description was correct?-- Much the same, yes.

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All right. Another was a development permit for material change of use for a multiunit dwelling, this time 114 units in buildings in E and F and a park?-- Mmm-hmm.

Now - excuse me. E and F buildings, do you know them as "Softstone" and "Lushington"?-- No, I just know them as E and F.

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All right. They're the ones closest to the river?-- Yes.

And, to your knowledge, they're the ones which flooded in the January 2011 floods?-- I thought all the residential buildings did but they would have flooded, yes.

It's probably poorly expressed. They were the worst inundated, is that as you understand, or you don't know?-- I don't know the levels that it came to and if they were any different than the building D.

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Okay. Another application was a development permit for a material change of use for a multiunit dwelling, this time 88 units in building D, a shop, restaurant and park?-- Yes.

And, finally, there was a development permit for operational works for disturbance to marine plants?-- Yes.

Okay. In so far as the following question which concerns historical aspects of the Tennyson Reach development, tell me if it's outside your area of knowledge, please. Generally-speaking are you aware that there had been a tender process through which Mirvac was selected to develop the land?-- Yes.

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And the development concerned the State Tennis Centre and associated facilities along with a residential development?-- Yes.

And is it your understanding that after the State tendering process a development application was lodged-----?-- Yes.

-----by Mirvac?-- Yes, they were the successful tenderer.

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Now, you mentioned at paragraph 6 of your first statement - and we had touched on this last week - but the branch consists of multidisciplinary teams which has allied professionals and technical specialist teams. Now, do all applications within council get referred to the allied professionals and technical specialist teams for their input?-- The allied professionals are the people in the team only to the extent that the issues are relevant to what they have to do. Because this was such a large development, it had noise issues, it had landscaping, park, flooding, engineering, it would have gone to every officer in the team that represented a professional area. As part of that, it would have gone to other areas of council as well, as part of the - as part of the process that we would have followed given the size of the development and the nature of the proposal they were doing.

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All right. So accepting that in this particular example, aspects were referred to specialists, my question is more directed to whether applications always get referred to the specialists in their particular areas, or is it only sometimes, and if so, if only sometimes, are there specific criteria which triggers that?-- By a technical specialist, do you mean people who are in the technical specialist team for hydraulic reports and traffic - detailed traffic assessments, or are you talking about the people in the team that can do the assessment?

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I am talking about both. I am talking about the in-house allied professionals, such as engineers, ecologists and architects; the technical specialist team with specialists in hydraulics, traffic and ecology?-- Okay. All applications that come in - or planning applications are most likely to be referred - well, a planner will get the application and an engineer will be involved. Depending on the issues of the type of application proposed, it will go to one of the other allied professionals in the team. If there are no noise, pollution, stormwater quality, it won't go to a pollution officer. If there is no landscaping issues, it won't go to a landscaper, and it won't go to an ecologist if there is no ecology issues.

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All right. So it is assessed on a case-by-case basis depending upon-----?-- It is a side-by-side, case-by-case basis. If as a result of their assessment, one of the allied professionals identifies that, "Oh, there is an issue here that has to be done by someone else", they are most readily allocated to another officer, because that's less work they have to do, and someone else will do that. If as a result of

their assessment they go - their regular meetings, "This is more than a hydraulic report, this needs this further information", they go and seek informal advice off their technical specialists. In traffic - for example, the traffic specialist will come in on Wednesday mornings, basically comes down and spends two hours in the team going through any jobs that people have. The hydraulic engineer does the same but on a more core basis because there is less hydraulic issues coming in to the team, but when they do, if he says - Andrew Blake, or someone else said, "That needs to come up to me", well, then it is formally referred and the assessment manager will be advised that time-frames may need to be lengthened or extended under SPA to meet the time-frames required.

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Right. In terms of engineering advice provided to you from the allied professionals, who checks their decisions? Who checks their advice?-- Generally the officers, it will go through one of the senior engineers that they have for looking at it and then it comes back in to the assessment manager. The assessment manager might notice some anomalies and refer it to their senior planner, or a planner because it conflicts, and then there will be a meeting organised within the team generally - this is the South team operation - and it might even be a formal - more formalised meeting where we get everyone together to talk about what the issues that have been identified and whether we've missed anything.

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All right. I want to go to Brisbane City Council's first involvement with the development at Tennyson Reach. It is correct, isn't it, that the council had some involvement in the development before a development application was lodged?-- I understand that to be the case, yes.

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Were you involved in the development before a development application was lodged?-- Only to the extent that prelodgement advice was requested from DA South, and I was involved with that, but I wasn't involved with any of the assessment of the various tenders - and there might have been - there is normally more than one tender - for the State Government to make their decision.

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All right. Your statement makes it quite clear the Brisbane City Council had no role with respect to the tender process in terms of selection of the successful tenderer?-- As far as I'm aware, yes.

As far as you're aware. Right. So you were involved in the provision of advice to two of the tenderers, that is Mirvac and Stockland, you agree with that?-- Stockland, yes. They approached us for advice about more detailed planning requirements for this site, but in a generic sense because they weren't able to give us details of what they were proposing to do.

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Was this part of the prelodgement meeting stage?-- It is a prelodgement meeting stage. That's the process where they get - obtain predevelopment advice from the teams or a team.

All right. In that initial contact with Mirvac and Stockland, was there some discussion about potential flooding of the site?-- I believe I identified the flood levels associated with - that it would have been identified in FloodWise, if I was at one of those meetings.

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I will just take you to paragraph 35 of your first statement. That's - we will just work off the hard copy, I think. Have you got your first statement there, Mr Kelly?-- Yes.

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You will see in paragraph 35 you note a difference between the defined flood level and the Q100 that applies to the site and that there was a misnomer in the use of Q100. Have you got that part?-- Yes.

There is a significant difference between the two in this case, you would agree?-- Yes.

Is there a uniform or practice internally within council to ensure everyone is referring to the same level; that is that apples are being compared against apples?-- What do you mean by that, sorry?

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Well, you talk - in paragraph 35 you say, "It is frequently the case that council officers use the term Q100 to loosely refer to the DFL."?-- Yes.

Now, is there a direction, a protocol, any kind of guideline or instruction to staff seeking to ensure that everybody actually uses consistent and correct terminology with reference to Q100 versus DFL?-- I am not aware that there is a direction to staff. I am aware that for a long time we referred to Q100 and assumed we were saying DFL, and that where there was a difference, people - until it is pointed out to you that the Q100 is not necessarily the DFL, and because there was a hydraulic report that identified Q100, and council adopted higher DFL, or defined flood level, there is inconsistencies. There is some inconsistencies within some of the codes in the City Plan that haven't changed over, for example, the house code, but the subdivision and development guidelines in the new FloodWise Reports sort of clarify that. When people say Q100, most likely they are talking about DFL. I point the difference out here because Q100 with the hydraulic report was substantially lower, but we were always talking, I think from my prelodgement minutes, Q100 was the DFL.

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The way you express your statement is that "currently council officers still use the term Q100 to loosely refer to DFL". Is that your current experience?-- Because the house code still says Q100; it doesn't say DFL.

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That needs to be fixed, would you agree?-- I agree, yes.

So we need to ensure that there is consistency of use of terminology in this regard?-- Yes.

How can we do that?-- Well, we now have a third - the TLPI

and the IRFL that's come over the top of that, so we use the IRFL now as our defined flood level for residential developments, or our level that we build to, and I am assuming in March next year when that gets devolved or resolved into the team - into the City Plan, it will fix up the anomalies where Q100 is not Q100; it is actually the DFL. 1

COMMISSIONER: IRFL is an acronym, is it?-- IRFL, yeah, is Interim Flood Regulation Line. It is - DFL now we use based on the January flood levels, and it overrides the provisions in the City Plan to the extent that it is referred to for residential development. So all new residential developments we refer to it as IRFL, not DFL anymore. 10

MS MELLIFONT: So do you have an expectation in terms of time-frames as to when the older, confusing terminology will no longer be part of our vernacular?-- I understand the TLPI and the provisions within there will be concreted once the Flood Commission findings have been finalised and we just do one amendment to the City Plan - or the City Plan is amended and all those anomalies are picked up. 20

All right. Excuse me for just a minute. Can I take you, please, to a document from the Brisbane City Council file which relates to conditions imposed as recently as 8 September 2011, and specifically I want to take you to condition 58 - which should be tabbed on your copy. Have you got that there?-- Yep.

All right. Now, you will see that so as recently as 8 September 2011 council has issued conditions for the site with headings of Q100 and Q50, as well as references in the body of the conditions to ARI 50 and ARI 100, which tends to indicate importance in the distinction between those two types of terminology, does it? Do you see those different types of terminology as still being important?-- Well, yes, but the reason for that was that this was a modification application to the tennis centre, and had we changed those, we would have changed all the requirements for the tennis centre that was constructed, or the levels above, and we left that how it was as part of it so we didn't go back and change what was already built. It was a committed development, it was built. The new stuff - or the new extensions we were doing were under that and that's why the condition has been included to - left basically the same for the existing development and additional information has been provided with regard to the new development that they were doing on the site. 30 40

Do you see this type of terminology being used in the future, or will it become superceded with the-----?-- It is likely to be superceded. 50

With the IRFL?-- Well, the IRFL applies to residential, but it will be superceded with the ultimate adoption of whatever comes out of the Flood Commission requirements, I'd say.

So whatever terminology applies - whatever the equivalent will be for tennis centres to the residential IRFL?--

Non-residential development, yes.

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Okay?-- And that's likely to be more reflective of what's in our new FloodWise Reports, that people can then equate levels to.

All right. Now, do you agree with the proposition that from the early stages of council's involvement, and, in fact, before any development application had been received, that flooding was identified as an issue on the site?-- Yes.

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That the defined flood level for the site was 7.9 AHD?-- Yes.

That it was identified that extensive filling would be required to achieve minimum development levels?-- I understand that's what it was, yes.

Right. And I want to take you, please, to Exhibit 7 to your first statement, and you will see that this is a memorandum from Mr Bruce McArthur, who is an engineer within the Development Assessment Team South to yourself, dated 6 August 2004, and he indicates to you in that memo that filling of the site is possible. Do you see that?-- Yes.

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Now, I think we have established that at this time, that is 6 August 2004, this is before the development application had been received, you'd agree?-- Yes.

Do you know what information that Mr McArthur had available to him when he expressed that opinion to you; that is, that filling of the site is possible?-- Well, he would have had the previous river corridor study that we're likely to have had. He might have formed the view that it was on the basis that filling in the Brisbane Corridor may or - well, may not have impacted on the site. It may have been as a result of discussions with the hydraulic engineer. We didn't have plans at the time because it was pre those plans. So he was asked to look at that. If it wasn't possible, he would have said that.

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When you say - are you speaking now of what you would have expected Mr McArthur to have had, or are you speaking from actual knowledge as to what he had before him?-- Well, the attachment 8 contains some advice I also prepared that would have gone to the engineers in the team, and it sort of outlines the fact that we have been asked to comment on the issues and likely development issues for this site without a development, and what Bruce has done is he's just gone through and looked at some of the issues that were possible on the site that we should mention. So it was very generic. It wasn't based on any particular design, it was just "you can fill some of the site, you can do this, you need to have regard to that." It wasn't specific to the current Mirvac or the Mirvac proposal that was lodged.

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All right. So I will see if I understand this correctly. In terms of what you know that Mr McArthur would have had at the time he did his memo of 6 August, it would have been your

memo, which is Exhibit 8 to your first statement?-- Uh-huh.

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Is that correct?-- Yes.

But beyond that you can only suppose as to -----?-- Yes.

-----what he would have likely to looked at in the ordinary course of business?-- Yes.

Okay. Now, in your experience can views be properly formed about matters such as the ability to fill a site prior to receiving a development application?-- Well, you can make - yes.

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Why? If you don't know the details-----?-- Only that I often hear the engineers - the hydraulic engineers indicate that when you fill within the Brisbane River corridor, the amount of fill that you'd have to do to change the level of water, or affect - you know, worsen the flooding on that site, is so massive that this site and lots of other sites can be filled and you still don't know any difference. You know, and I know of sites with 4,000 cubic metres of fill - 400,000 cubic metres of fill, and the studies that have come off that have indicated that it is not going to impact on - worsen flooding in the Brisbane River catchment. What the issue with this site would have been is where the filling was in any overland flood paths and that would have had an immediate effect. But that is only conjecture.

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Sorry?-- It would only have been his view that filling is possible of the site. I mean, they might have removed some fill and put some other fill somewhere else as part of that development as well, too.

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Well, insofar as filling may affect overland flow is that something which is capable of forming a proper opinion at this early stage; that is prior to a development application being lodged?-- I do notice elsewhere on the site there is some attachments. In attachment 6 they have shown the catchment area for the fill and a low area, which I have coloured in blue, or someone has coloured in blue, indicating where the water ponded, and on the basis of that they can probably work out where you can fill and where you can't fill so as not to affect the overland flow.

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In your view there would have been sufficient information to form that preliminary opinion?-- Yeah.

Is that right?-- Based on the information available, yes.

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Now, you've indicated that there were two stormwater catchments existing on the site, correct?-- Yes.

And there were existing stormwater pipes that discharged to the river, is that right?-- Yes.

Now, given the scale of what was being proposed - and I am talking about in these early stages - did you have any initial

concerns about the suitability of the site for that proposal particularly with reference to flooding or flooding risk?-- At that time, I can only make an assumption that they were in some residential and they were doing a tennis centre. I didn't know where they were on the site. This is before they actually gave us any information, because it was locked up in that tender process. So we were just trying to provide some generic advice back to all the tenderers, if they came and saw us. So we gave consistent advice back about development issues on that site.

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So just so I understand your state of knowledge about what was proposed, you knew that there was a State Tennis Centre being proposed on that site?-- Yes.

Being mooted as a world class facility?-- Yes.

With necessary things like carparks and administration centres and infrastructure relevant to the tennis centre, correct?-- Yes.

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And did you know at that point in time that what the tenderers were to do was to propose provision of a State Tennis Centre and - and at little or no cost to the State Government?-- No, I didn't know that that was - they would build it at little or no cost. I had none of those details.

What information did you have about the size of the proposed residential development by Mirvac and/or Stockland at that site at that time?-- Only that the development was likely to be a similar size to the existing power station, which was set at 27 AHD on the site or something along those lines. There was a big large power station there at the time, or frame - outline - the shell of a building, and that no doubt that would be pulled down or reused for residential and the tennis centre would be somewhere else.

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So in terms of number of apartments, or the dimension of the space to be taken by those residential apartments, you didn't have numbers at that point in time?-- No, and I think that advice is contained within the water and sewerage where until we knew that we couldn't give them a definitive on whether water mains would have to be upgraded, whether there was sewerage capacity.

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At this early stage, that is the early stages of speaking with Stockland and Mirvac, had either of them suggested to you that the development would involve proposing a relaxation of the 20 metre riparian setback?-- No, we didn't have any plans. We did this on the basis that there was some development to go on there, what were the likely impacts, in August 2004. Mirvac then came back to us after they were successful tender, gave us the proposals and we were able to give a bit more structured, formalised advice about what their proposal was.

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Are you able to pinpoint in time when it first became apparent to Brisbane City Council that the development proposed would involve a relaxation of the 20 metre riparian setback?-- Most

likely in the prelude - the first formalised prelodgement in about October after they had received the successful tenderer, and I do even recall the reason why that was proposed. It was because they had a high voltage powerline underneath their - underneath the site, or traverses the site, and that is a constraint for development on the site, and to meet other requirements they wanted to put their development - they couldn't traverse it because of its - the way it was and the structural integrity that needed to be maintained around it, so they put it either that side or the other side of the river, and we recall having a debate why that was.

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What did that debate entail?-- How - how close they would be going to the river. But we didn't have a lot of details and subsequently through the assessment of that application we looked at that proposal.

So given that they couldn't traverse the high voltage area, there was the possibility of putting it closer to the river on one side?-- Which they did, yeah.

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Which they ultimately did, but the other possibility was to put it on the other side. Now, why didn't that other possibility eventuate?-- Because they were putting the road, and I suppose it is the juxtaposition of the tennis centre, and where they could actually put it. They didn't want to put a road over that easement, as well, too, because the easement went parallel to the road.

So it is about fitting everything on the site?-- It is about fitting everything on the site, that's right. That's what it appeared to me, anyway.

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And in the course of that debate did council moot the possibility of simply not having buildings E and F rather than relaxing the riparian setback?-- At officer level we talked about that a fair bit, but we asked them to provide information. That 20 metre relaxation is more to do with the river scape than it is to do with the hydraulic functions of the river or anything to do with flooding. It is in precinct 2, and I believe it has been discussed before, but that's just looking at the values of that river and how this development can be - not exacerbate them, and we were getting some 500 metres of river frontage with parkland, which was seen to ultimately compensate for that development going a little bit closer than 20 metres to the river.

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In what way?-- Sorry?

In what way? What were you compensating against?-- Well, the building closer but getting area on the front of the river as park and maintaining the mangrove, the edge along that part of the river where it was closer, and ensuring that the boardwalk - well, there is a boardwalk area there, it was just used for connections to the continual lineal extension ultimately of that parkland when the Animal Research Institute developed, that we would look at - so we looked at a bigger picture in relation to that waterway, the corridor, but more so because

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we were leaving largely the vegetation in place and that we were getting the building set back a bit further than the power station on another part of the site with parkland. So we looked at the overall impact on the river scape along the river and we - on the file there is lots of photo montage of the development and how it would look from the river and how they would maintain it, how it looks now.

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Is it reasonable to say that in so far as the Council considered relaxation of the 20 metre riparian setback, that that was governed by reference only to non-flooding considerations? So, amenity, ecology-----?-- Well, it wasn't in the conveyance of the river. If the building had have been there, it would have been picked up in the hydraulic report as part of the modelling that they do - the Mike2, I understand - Mikell picks that up, and if it had have had any impact on the conveyance of flood waters, it would have been picked up in the flood report, because that assessment does that as well, and then we would have pulled it - even the structures along boardwalk or anything else into there that would have impacted - they can have as much impact on the conveyance of the water down the river.

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I need to come back to my question. When you are looking at relaxing the riparian 20 metre requirement, what you're looking at was - were questions of amenity, ecology, rather than flood mitigation; is that correct?-- Yes.

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COMMISSIONER: Is that a convenient time?

MS MELLIFONT: It is. And I should just - I should tender the approval package I took the witness to earlier on where I referred to condition 58. If I could tender that approval package, please?

COMMISSIONER: Exhibit 700.

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ADMITTED AND MARKED "EXHIBIT 700"

COMMISSIONER: Adjourn until 10 o'clock in the morning, please.

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THE COMMISSION ADJOURNED AT 4.31 P.M. TILL 10 A.M. THE FOLLOWING DAY

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